SENATE

WEDNESDAY, MAY 2, 1962

The Senate met at 12 o'clock meridian, and was called to order by Hon. J. J. HICKEY, a Senator from the State of Wyoming.

The Chaplain, Rev. Frederick Brown Harris, D.D., offered the following prayer:

Eternal God, Father of all, who art above all and through all and in all, without whom life has no spiritual source or destiny, but with whom there is power for the present and hope for the future, we seek Thee as our fathers before us have sought Thee in every generation.

When the problems which front us seem insoluble, when the very principles for which brave men have died are betrayed, when the seamless robe of world unity is rent in twain, when even the shining river of our fairest dreams seems to sink into the sands of futility, still may we labor on, serene and confident, knowing that while the weeping of hopes deferred may endure for a night, the joy of Thy sure victory cometh in the morning. In the Redeemer's name we ask it. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., May 2, 1962.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. J. J. HICKEY, a Senator from the State of Wyoming, to perform the duties of the Chair during my absence.

CARL HAYDEN,
President pro tempore.

Mr. HICKEY thereupon took the chair as Acting President pro tempore.

THE JOURNAL

On request of Mr. MANSFIELD, and by unanimous consent, the reading of the Journal of the proceedings of Tuesday, May 1, 1962, was dispensed with.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States submitting a nomination was communicated to the Senate by Mr. Miller, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session,

The ACTING PRESIDENT pro tempore laid before the Senate a message from the President of the United States submitting the nomination of Louis C. LaCour, of Louisiana, to be U.S. attorney for the eastern district of Louisiana, which was referred to the Committee on the Judiciary.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House had passed the bill (S. 1595) to amend the Natural Gas Act to give the Federal Power Commission authority to suspend changes in rate schedules covering sales for resale for industrial use only, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 5456. An act to provide for the conveyance of certain real property of the United States to the former owners thereof; and

H.R. 11413. An act to amend the Agricultural Act of 1961 to permit the planting of additional nonsurplus crops on diverted acreage.

ENROLLED BILL SIGNED

The message further announced that the Speaker had affixed his signature to the enrolled bill (H.R. 3008) for the relief of Hom Hong Hing, also known as Tommy Joe, and it was signed by the Acting President pro tempore.

HOUSE BILL REFERRED

The bill (H.R. 5456) to provide for the conveyance of certain real property of the United States to the former owners thereof, was read twice by its title and referred to the Committee on Agriculture and Forestry.

ORDER FOR ADJOURNMENT UNTIL NOON, TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate concludes its session today, it adjourn until 12 o'clock noon tomorrow.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

LIMITATION OF DEBATE DURING MORNING HOUR

On request of Mr. MANSFIELD, and by unanimous consent, statements during the morning hour were ordered limited to 3 minutes.

Mr. ELLENDER. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PROHIBITION OF COMMITTEE MEETINGS DURING SENATE SESSIONS

Mr. DIRKSEN. Mr. President, I wish to take only a minute to remind the Senate that there has been objection to committees meeting when the Senate is in session. I understand that notwithstanding the objection some of the committees have been meeting, and I wish to have it noted for the RECORD that I have objected to the meetings of committees while the Senate is considering the pending business, and it would be a violation of the rule if the committees were to meet.

EXECUTIVE COMMUNICATIONS, ETC.

The ACTING PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

REPORT ON AGREEMENTS UNDER AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954

A letter from the Administrator, Foreign Agricultural Service, Department of Agriculture, transmitting, pursuant to law, a report on title I agreements under the Agricultural Trade Development and Assistance Act of 1954 (with an accompanying report); to the Committee on Agriculture and Forestry.

AUDIT REPORT ON HYDROELECTRIC POWER AND RELATED ACTIVITIES, MISSOURI RIVER BASIN PROJECT

A letter from the Comptroller General of the United States, transmitting, pursuant to law, an audit report on hydroelectric power and related activities, Missouri River Basin project, Corps of Engineers (Civil Functions), Department of the Army, and Bureau of Reclamation, Department of the Interior, fiscal years 1959 and 1960 (with an accompanying report); to the Committee on Government Operations.

PROPOSED CONCESSION CONTRACT IN PETRIFIED FOREST NATIONAL MONUMENT, ARIZONA

A letter from the Assistant Secretary of the Interior, transmitting, pursuant to law, a proposed concession contract in the Petrified Forest National Monument, Arizona (with accompanying papers); to the Committee on Interior and Insular Affairs.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, or presented, and referred as indicated:

By the ACTING PRESIDENT pro tempore:

A concurrent resolution of the Legislature of the State of Hawaii; to the Committee on Agriculture and Forestry:

"Whereas the Congress of the United States has passed numerous legislative measures assisting farmers in the production of specific agricultural commodities; and

"Whereas such assistance and support through programs authorized by the Agricultural Adjustment Act of 1938, as amended, is necessary to encourage the growing of coffee in the State of Hawaii: Now, therefore, be it

"Resolved by the House of Representatives of the First Legislature of the State of Hawaii, regular session of 1962 (the Senate concurring). That the Congress of the United States is hereby respectfully requested to enact legislation to include coffee among the basic agricultural commodities assisted and supported by programs under the Agricultural Adjustment Act of 1938, as amended, and to authorize parity payments to coffee growers in the State of Hawaii; and be it further

"Resolved, That certified copies of this concurrent resolution shall be sent to the

President of the Senate and the Speaker of the House of Representatives of the Congress of the United States, to the Secretary of Agriculture and to Senator OREN E. LONG, Senator HIRAM L. FONG, and Congressman DANIEL K. INOUYE."

A resolution of the House of Representatives of the State of Hawaii; ordered to lie on the table:

"Whereas an increase in the basic price of steel is soon reflected in subsequent increases in the prices of many consumer goods such as automobiles, refrigerators, and certain building materials; and

"Whereas such increases would further burden the economy and people of Hawaii and retard the development of the 50th State; and

"Whereas President Kennedy, by speedy and forceful action, has forestalled an unnecessary increase in basic steel prices, to the benefit of the people of the Nation and of Hawaii: Now, therefore, be it

"Resolved by the House of Representatives of the First Legislature of the State of Hawaii, budget session of 1962, That the President of the United States be congratulated and thanked for his prompt and effective action in holding the line on steel prices; and be it further

"Resolved, That a duly certified copy of this resolution be forwarded to the President of the United States, to the President of the Senate, and to the Speaker of the House of Representatives of the Congress of the United States."

A resolution adopted by the City Council of the Town of Los Altos Hills, Calif., remonstrating against the imposition of a Federal income tax on income derived from public bonds; to the Committee on Finance.

A resolution adopted by Four Flags Barracks No. 1093, Veterans of World War I of the U.S.A., Inc., of Niles, Mich., favoring the discharge of the House Committee on Veterans' Affairs from further consideration of the bill (H.R. 3745) to amend title 38, United States Code, to provide for the payment of pensions to veterans of World War I; to the Committee on Finance.

REPORT OF A COMMITTEE

The following report of a committee was submitted:

By Mr. DWORSHAK, from the Committee on Interior and Insular Affairs, with amendments:

S. 1485. A bill to authorize the Secretary of the Interior to sell certain public lands in Idaho (Rept. No. 1381).

BILLS AND JOINT RESOLUTION INTRODUCED

Bills and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. ELLENDER (by request):

S. 3235. A bill to facilitate the work of the Forest Service, and for other purposes; to the Committee on Agriculture and Forestry.

By Mr. PROUTY:

S. 3236. A bill to assist in the reduction of unemployment through the acceleration of public works programs of the Federal Government and State and local public bodies; to the Committee on Public Works.

(See the remarks of Mr. PROUTY when he introduced the above bill, which appear under a separate heading.)

By Mr. KEFAUVER (by request):

S.J. Res. 182. Joint resolution extending the duration of copyright protection in certain cases; to the Committee on the Judiciary.

HEALTH CARE INSURANCE FOR CERTAIN RETIRED INDIVIDUALS—AMENDMENTS

Mr. JAVITS submitted amendments, intended to be proposed by him, to the bill (S. 2664) to provide a program of health care insurance for individuals aged 65 or over who are retired, which were referred to the Committee on Finance and ordered to be printed.

NUTRITIONAL ENRICHMENT AND SANITARY PACKAGING OF CERTAIN RICE—ADDITIONAL COSPONSOR OF BILL

Mr. ELLENDER. Mr. President, I ask unanimous consent that the name of the junior Senator from California [Mr. ENGLE] may be added as an additional cosponsor at the next printing of the bill (S. 3152) to provide for the nutritional enrichment and sanitary packaging of rice prior to its distribution under certain Federal programs, including the national school lunch program, which I introduced on April 11, 1962.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONVEYANCE OF CERTAIN LANDS IN SOUTH CAROLINA TO FORMER OWNERS—ADDITIONAL COSPONSOR OF BILL

Mr. MANSFIELD. Mr. President, on behalf of the Senator from South Carolina [Mr. JOHNSTON], I ask unanimous consent that at the next printing of the bill (S. 3172) to provide for adjustments in the lands or interests therein acquired for the Hartwell Dam project, South Carolina and Georgia, by the reconveyance of certain lands or interests therein to the former owners thereof, the name of the junior Senator from Georgia [Mr. TALMADGE] may be added as a cosponsor.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NOTICE CONCERNING CERTAIN NOMINATIONS BEFORE COMMITTEE ON THE JUDICIARY

Mr. EASTLAND. Mr. President, the following nominations have been referred to and are now pending before the Committee on the Judiciary:

Robert C. Zampano, of Connecticut, to be U.S. attorney, district of Connecticut.

Joseph T. Ploszaj, of Connecticut, to be U.S. marshal, district of Connecticut.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in these nominations to file with the committee, in writing, on or before Wednesday, May 9, 1962, any representations or objections they may wish to present concerning the above nominations, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

NOTICE OF HEARING ON S. 2813, IN REGARD TO WIRETAPPING LAW, AND S. 1495, A RELATED BILL

Mr. EASTLAND. Mr. President, on behalf of the Committee on the Judiciary, I desire to give notice that a public hearing has been scheduled for 10:30 a.m., Thursday, May 10, 1962, in room 2228, New Senate Office Building, on S. 2813, to prohibit wiretapping by persons other than duly authorized law enforcement officers engaged in the investigation or prevention of specified categories of criminal offenses, and S. 1495, a related bill.

NOTICE OF HEARING ON AMENDMENT IN THE NATURE OF A SUBSTITUTE TO S. 1396, TO AMEND THE ACT ENTITLED "AN ACT TO PROVIDE FOR THE REGISTRATION AND PROTECTION OF TRADEMARKS USED IN COMMERCE, TO CARRY OUT THE PROVISIONS OF CERTAIN INTERNATIONAL CONVENTIONS, AND FOR OTHER PURPOSES"

Mr. McCLELLAN. Mr. President, on behalf of the Committee on the Judiciary, I desire to give notice that a public hearing has been scheduled for Wednesday, May 16, 1962, at 10 a.m., in room 2228, New Senate Office Building, before the Subcommittee on Patents, Trademarks, and Copyrights, on an amendment in the nature of a substitute to S. 1396, to amend the act entitled "an act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes" approved July 5, 1946, as amended.

At the indicated time and place persons interested in the hearing may make such representations as may be pertinent.

The subcommittee consists of the Senator from South Carolina [Mr. JOHNSTON], the Senator from Michigan [Mr. HART], the Senator from Tennessee [Mr. KEFAUVER], the Senator from Wisconsin [Mr. WILEY], the Senator from Pennsylvania [Mr. SCOTT], and myself, as chairman.

CONSTITUTIONAL AMENDMENTS—NOTICE OF HEARINGS

Mr. KEFAUVER. Mr. President, on May 10, 1962, the Subcommittee on Constitutional Amendments will begin hearings on proposals to amend the Constitution to provide representation for the District of Columbia in the Congress. Senate Joint Resolution 85 and Senate Joint Resolution 181 are now pending in the subcommittee on this subject.

The subcommittee will meet at 10 a.m. in room 457 of the Old Senate Office Building.

Those who are interested in testifying should contact the offices of the subcommittee at extension 5581 or room 141 of the Old Senate Office Building.

ADDRESSES, EDITORIALS, ARTICLES, ETC., PRINTED IN THE RECORD

On request, and by unanimous consent, addresses, editorials, articles, etc., were ordered to be printed in the RECORD, as follows:

By Mr. MUSKIE:

Statement relating to the expansion of leather and rubber footwear imports.

VISIT TO THE SENATE OF DISTINGUISHED VISITORS FROM THE FEDERAL REPUBLIC OF GERMANY

Mr. DIRKSEN. Mr. President, as a parliamentary body we are honored this morning to have present with us in the Chamber the very distinguished majority leader Dr. Heinrich von Brentano of the Bundestag of the Federal Republic of Germany and the onetime Foreign Minister of his country. We also are honored to have with us this morning the very distinguished Ambassador of the Federal Republic of Germany, to the United States, Ambassador Wilhelm G. Grewe. We also have Dr. Wolfgang Pohle with us, who was a member of the Bundestag.

I wonder if they will rise up and accept the plaudits of the Senate.

[The visitors rose and were greeted with applause.]

Mr. MANSFIELD. Mr. President, will the distinguished minority leader yield?

Mr. DIRKSEN. I yield to the distinguished majority leader.

Mr. MANSFIELD. I join my colleague in extending my best wishes and greetings to our distinguished guest. This is not the first time our distinguished visitor has visited us in this country, nor is it the first time he has honored us by appearing in this Chamber, but Dr. von Brentano is a man of illustrious background. He has served his country and the free world well, and we are delighted to welcome him, once again, and express the hope that his visit this time will prove to be fruitful and that he will visit us many times in the future. I also extend our welcome to Ambassador Grewe and to Dr. Pohle, who have accompanied Dr. von Brentano to the Chamber.

Mr. AIKEN. Mr. President I wish to add my word of welcome to our distinguished visitors from Germany, Dr. von Brentano, Ambassador Grewe, and Dr. Pohle, the latter of whom, incidentally, was on this floor 5 years ago as a visiting member from the Bundestag of West Germany.

We hope that the visit of our distinguished guests will be fruitful in cementing still further the already cordial relations which exist between our countries, and we hope that they may return and visit us in the near future.

Mr. FULBRIGHT. Mr. President, I join with my colleagues in welcoming our distinguished guests here today, I am sure the discussions which are going forward today between the representatives of the German people and their associates in the Common Market and our people are perhaps the most important development, certainly since World War II, for the future not only of our bilateral relations, but for all the people of the free world.

I cannot exaggerate the importance of these discussions, and from what I have learned this morning in our discussions, and from the attitude of our friends from Germany, I assure them we wish them well, and hope that all our plans succeed.

Mr. JAVITS. Mr. President, I have had the honor of being met and hospitably treated by Dr. von Brentano and the associates whom he has with him this morning, both in the Federal Republic of Germany at Bonn and in their Embassy in Washington. I join my colleagues in extending a warm welcome to Dr. von Brentano and his associates.

There is no more urgent problem in the world than the integration of Europe, and in that the German Federal Republic plays a key and vital role.

I join with the distinguished chairman of the Senate Foreign Relations Committee in recognizing these negotiations and developments as key conferences to the security of the free world, and as emphasizing the fact that the German Federal Republic thus far has shown a pan-European attitude, which is affirmatively reassuring to all of us who have assessed the results and record of World War II. Dr. von Brentano has been one of the leaders in that effort, strongly sustained by the German Ambassador, and under the fundamental policy guidance and direction of the leader of the German people, Dr. Adenauer. This represents a most significant development in our relations and is one of the most affirmative steps in the direction of solving the problems we have in the world.

Mr. DIRKSEN. Mr. President, I add to what I have said that, through understanding, I am sure the problems of the areas involved can be equitably solved; and I trust that as our visitors come back year after year I shall have the privilege of seeing them in the Senate.

THE ABUSE OF LITERACY

Mr. MANSFIELD. Mr. President, is morning business concluded?

The ACTING PRESIDENT pro tempore. Morning business is in order.

Mr. TALMADGE. Mr. President, there appeared in this morning's Wall Street Journal an outstanding editorial entitled "The Abuse of Literacy." This outstanding editorial concludes its excellently stated position with this statement:

> Passionate arguments about discrimination ought not to obscure the real question, which is whether a free society has the right to require that those who pass on public issues be, at the very least, not illiterate.
>
> For our own part, we think those who would deny society that right have not been very literate readers of the history of fallen democracies.

I ask unanimous consent that the editorial in its entirety appear at this point in the RECORD.

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

THE ABUSE OF LITERACY

Although you might never know it from listening to the impassioned oratory, the senatorial debates over the proposed literacy bill really involve two separate, and quite distinct, public questions. Indeed much of the passion of the debate is sparked by confusing the two.

There is first the question about the abuse of literacy tests in some of the many states which require them before they give a man the privilege of voting. It is said that in many localities these tests are merely subterfuges to disfranchise people because of the color of their skin or other irrelevant reasons.

The answer to this problem ought to be a simple one. Any requirement for voting—whether dealing with literacy, age or length of residence—must apply equally to all comers. If there are literacy tests the same questions should be put to every applicant and the same answers demanded. And the authorities ought to be vigilant to see that this is so.

The basic responsibility for this vigilance rests on the State governments, which by the Constitution are required to establish the voting requirements. But if they fail in a just administration of their laws, then it is difficult for any man to argue that the national authorities can stand aloof. If we need it, let us by all means have a Federal law—and Federal enforcement—to guarantee impartiality in this most basic privilege.

But here, as always, the abuse of a thing is not to be confused with the thing abused. The other and separate question is whether, as a matter of good public policy, we should ask that a man be able to read, and understand what he has read, before he is entitled to vote on public candidates and public issues. And if so, what those literacy requirements should be.

If there is any single cornerstone supporting a free society it is the existence of an informed public. We recognize this implicitly when we do not extend the voting privilege to children or when in local elections we ask that a man, however intelligent, live in the community a time before he passes judgment on local affairs.

We can also see, when we look around at the world, what happens when this cornerstone is absent. Achieving democracy among the emerging peoples, as in the Congo, is so terribly difficult precisely because the great mass of the people are illiterate or so poorly educated that they cannot understand what the issues are about. Even in some older nations, as in South America, the great obstacle to political stability and progress is the low educational level.

That is why the raising of the educational level has been a primary concern of this country since its foundation. It is the most powerful of all arguments for demanding high and equal educational opportunities for all our citizens. It is why in welcoming strangers to become citizens of our country we have wisely insisted that they demonstrate a literate understanding of the political principles of our society and of the language in which our affairs are conducted. It is why if anything we should raise, not lower, the requirements for voting.

Yet what is now proposed is the opposite. The proposed bill says that if a person attended as much as six grades in any elementary school, no literacy test could be required. And there are those who contend that the schooling need not even be in English.

The argument for all this is that literacy tests pose an obstacle for Puerto Ricans who speak only Spanish and for many Negroes whose schooling, through no fault of their own, has been inferior.

This is true. But is it not also true that an inability to read the language in which all our Nation's affairs are conducted also poses an obstacle to understanding what an election is all about. And it is certainly

curious to argue that a backward school gives an inadequate education but at the same time that six grades of any such school are automatically adequate to make an informed citizen. Any way you look at it, a man who cannot read is an easy prey for any demagog who can catch his ear.

New York and other States have long applied literacy tests sensibly and fairly, and the correction of abuses in other places is to halt the abuses. Passionate arguments about discrimination ought not to obscure the real question, which is whether a free society has the right to require that those who pass on public issues be, at the very least, not illiterate.

For our own part, we think those who would deny society that right have not been very literate readers of the history of fallen democracies.

A BERLIN AGREEMENT IS NOT AN IMPERATIVE AT THIS TIME

Mr. JAVITS. Mr. President, if I may have the attention of my colleagues, I ask unanimous consent that I may be recognized for 6 minutes, instead of the usual 3 minutes.

Mr. ROBERTSON. Mr. President, how long did the Senator say?

Mr. JAVITS. Six minutes.

Mr. ROBERTSON. Reserving the right to object, I am not going to object to this request, but I hope no other Senator will take more than the agreed to 3 minutes.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from New York? Hearing none, it is so ordered.

Mr. JAVITS. I am very grateful to my colleague from Virginia for his understanding of my desire to make this statement. I desire to address myself to the issue of Berlin.

The Berlin issue is the primary topic on the agenda at the ministerial conference of the North Atlantic Treaty Organization, which will get underway in Athens Friday. As the U.S. and allied policy on Berlin is being crystallized, it is imperative that our Government know the views of public officials who have followed events closely in this dangerous area for a long time.

In that constructive spirit, I should like to discuss today what in my view are the indispensable guidelines to an effective Berlin policy.

The recent preliminary meetings between Secretary of State Dean Rusk and Soviet Ambassador Anatoly F. Dobrynin have given rise to a disquieting tendency to accept as fact that a Berlin agreement with the U.S.S.R. must be the immediate and primary objective of our current policy on Berlin. I believe that action based on the assumption that we must somehow have an agreement is dangerous and ignores the fundamental principles and objectives of our Berlin policy, to which we have remained steadfast under three Presidents. The fact is that ultimatums by the Soviet Union on Berlin have lapsed from time to time and we are still where we were; therefore, apparently the U.S.S.R. also can live without a Berlin agreement.

A Berlin agreement would certainly be desirable if it would bring greater security to Europe and higher hopes of peace to the world, but it is not an indispensable condition of American policy at this time. Indeed, rather than make concessions that are inconsistent with our fundamental principles, it would be better to do without a Berlin agreement for the time being.

Our Berlin policy has been one of fidelity to the freedom of the people of West Berlin, respect for the integrity of the German Federal Republic and refusal to compromise the ultimate hope for self-determination of the Soviet satellites in central and southern Europe. In adhering to those principles, we have run risks and we have faced up to many crises. Impatience over continued tensions must not lead to a feeling that an agreement is now imperative—whatever may be the cost. We can live without an agreement; and we should make one only when we have reasonable grounds for believing that it contributes materially to the security of Europe and to world peace.

I believe the primary considerations for a Berlin agreement now must be based on the following:

First. Uncontrolled access to West Berlin from West Germany. This is the primary and immediate objective which the free world must seek in any negotiations which admittedly would be directed at an accommodation awaiting permanent settlement of the larger German and Central European questions.

Such access could be achieved through the establishment of a United Nations Commission, responsible directly to the General Assembly, to administer the uncontrolled access routes. Under such a plan, the United States, the United Kingdom, France, and the Soviet Union would bear the financial responsibility for the administrative costs. A clearly delineated United Nations Commission would avoid the impotence which has plagued such neutral commission as those in Korea and Laos which have failed in their jobs. An official complaint to the Secretary General of the U.N. by any of those four nations should be cause for an immediate reevaluation of the Commission, its members and functions, by the General Assembly. Should the Commission fail to get a vote of confidence from the Assembly, it would have to be reconstituted within a stated term by the Assembly or power over the access routes would devolve upon the four nations—the United States, United Kingdom, France, and the U.S.S.R.—having ultimate responsibility, and conditions would revert to their present state.

Second. Integration of West Berlin into West Germany. This could be symbolized by granting voting rights to the Berlin representatives in the Bundestag and Bundesrat and by making West German laws effective in West Berlin. It would represent a logical legal step forward. Nor need it interfere with the prewall status of the relation of the Soviet forces to the divided city and the divided Germany.

Third. Removal of the Berlin wall. The wall is illegal as a violation of the four-power agreement on Berlin, and it is an affront to the dignity of the United States, British, and French position in Berlin. It should be removed if there is to be any rational relationship between East Germany and West Germany. Substitute arrangements with the U.S.S.R., even if the dividing line were treated as a border, would still not be the foreboding horror of the wall.

Fourth. Maintenance of present U.S. troop strength in West Berlin. Our garrison is there to do a job: to defend occupation rights and the rights of the citizens of West Berlin. We need an effective force not only to serve as a deterrent to military action but also to prevent Communist-inspired subversion or violence.

Fifth. A nonaggression pact between NATO and the Warsaw Pact powers should not compromise NATO's internal capability for defense, including a nuclear capability, or give any legal sanction to the domination of central and southern European nations by Communist regimes installed by the U.S.S.R.

Negotiations always suggest hope. I am all for them and I want to encourage them when they offer even the slightest possibility of success. I want us to continue negotiations. But concessions made on Berlin which are not consistent with the basic objectives I have outlined will only lead to conjectures, false hopes, and more trouble.

Let us remember that the prime objective of Chairman Khrushchev's policy is to expand Soviet influence into the German Federal Republic just as the objective of our policy is to maintain the independence of the German Federal Republic under free institutions as a key basis for an integrated free Europe. The objective of our policy, therefore, must be to take careful account of what any Berlin agreement with the U.S.S.R. means to the people of the German Federal Republic. It must mean that we are adhering to our objectives as they have been stated successfully by Presidents Truman, Eisenhower, and Kennedy. If not, we are better off without an agreement at all at this time.

Mr. President, I thank my colleague from Virginia for his forbearance.

DIVERSIFICATION OF INDUSTRY ON LONG ISLAND

Mr. KEATING. Mr. President, much has been said before on the Senate floor and elsewhere with regard to the serious crisis now facing Republic Aviation Corp. and its employees as a result of an abrupt shift in Defense Department procurement. It is unfortunately evident that the Defense Department does not intend to alter its basic decision. Whether that decision is correct, only time and events will tell. What all those who are concerned with our national economy must continue to regret, however, is the manner in which many of these decisions are made and particularly the way in which the Defense Department permits defense work to accumulate in certain areas.

As Defense Secretary McNamara himself pointed out on my March 11 television program, "Defense business is an unstable business. For an area to build its economy on the foundation of defense seems to me contrary to the interest of that area." I would carry

that reasoning one step further and suggest that it is also contrary to the interest of the Nation and to the interest of strategic security. I would further suggest that the Defense Department has a responsibility to consider active policies that would discourage the concentration of procurement divisions and military installations, as well as defense-oriented industries, in a few parts of the country.

On a more optimistic note, however, Mr. President, I should like to make note of the fact that Long Island is not taking this blow lying down. A committee has been formed, consisting of local elected officials and Dr. Harold Gleason of the Franklin National Bank, to counteract the impact of Department of Defense methods by encouraging more diversified industries on the island. Although I am informed that Defense Department procurement on Long Island has increased by about a quarter billion dollars in fiscal 1962, and will go up by about $170 million in the next fiscal year, defense industries are always unstable and liable to shifts in defense technology.

Therefore, one of the main interests of the group is to find other areas in which Long Island efforts can be expanded and the great potential of local industries developed. One meeting has already been held at which representatives of the Federal Government, including the Defense Department, were present to explain how existing Federal programs could be utilized and coordinated with State efforts to meet the demand. At that time the Labor Department was asked to assist in a labor survey to determine what skills are most readily available and how they can best be channeled into the area's already growing economy. Another meeting is scheduled for this week.

To assist this important community effort, I directly contacted Labor Secretary Goldberg, urging him to support the project as rapidly as possible. He has indicated that a study may be undertaken soon. I have also been in touch with the State agency which has direct responsibility in initiating the study. I shall be following these efforts very closely to insure that all the available State and Federal resources are made available. Planning on the community level has been started in time and I take this opportunity to wish the group great success in their foresighted efforts to meet the economic challenge.

Mr. President, I ask unanimous consent to include in the RECORD the text of Secretary Goldberg's letter.

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

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, April 20, 1962.

Hon. KENNETH B. KEATING,
U.S. Senate, Washington, D.C.

DEAR SENATOR KEATING: In response to your letter about a labor survey in Nassau and Suffolk Counties, the Bureau of Employment Security of the Labor Department sponsors area skill surveys, as funds are available, as part of its national responsibility for development of skills and utilization of the work force.

The initial determination of where the studies are needed and the actual conduct of them, is the responsibility of the State employment security agencies.

In the Nassau and Suffolk case, these counties are part of the New York metropolitan area, for which it may be necessary quite soon to conduct a survey in connection with the Manpower Development and Training Act, to determine training needs. Such a survey would include data useful to Nassau and Suffolk, and perhaps could be made so as to provide information on them separately.

The responsible person in New York is Mr. Alfred L. Green, executive director, Division of Employment, New York State Department of Labor, and we are bringing the matter to his attention.

Yours sincerely,

ARTHUR J. GOLDBERG,
Secretary of Labor.

NEED FOR INTEGRATION OF NATIONAL GUARD

Mr. KEATING. Mr. President, I welcome the recent Defense Department move to integrate Reserve units throughout the country. This will rectify one serious and glaring area of discrimination in the Armed Forces of our Nation.

There still remains, however, another area, an area which admittedly does not come directly under Federal control, but an area in which State action has been deliberately used, with no Federal objections, to retain segregation. I am referring to the segregated National Guard units now maintained in 10 States. We can rejoice that there are only 10 States in which National Guard units are segregated today, but that is still 10 too many. No effort should be spared to bring an end to segregation in those units.

Mr. President, I have protested to the National Guard Bureau and have received a reply from Major General McGowan, Chief of the National Guard Bureau. I am very glad to note that within the last 2 months General McGowan has been in touch with the adjutants general of these 10 States urging serious consideration of the situation.

Frankly, however, I am disappointed by the implication of one of General McGowan's other comments. The general writes:

> The problems incident to integration in the National Guard are not easily separated from the problems of the community from which the membership is drawn. Fundamentally, the concept of the National Guard is that membership is voluntary. The strength of the National Guard can be assured only by making membership appealing to qualified men of the community.

I, for one, find it very hard to believe that qualified Americans are only interested in joining a segregated National Guard, that an integrated National Guard would not be "appealing" to qualified men of the community. To my mind, one of the most important qualifications for any serviceman or potential serviceman is the ability to accept other men on the basis of their individual abilities and achievements, regardless of race and to use their skills in the best interests of the national security.

Mr. President, we cannot afford to have any qualifications in any of our service requirements directly or indirectly based on racial discrimination. I urge General McGowan to step up his efforts and to make an appeal to the qualified men of the Nation's communities on the basis of fairness and equality for all those who wear the uniform of the United States.

Mr. President, I ask unanimous consent to have included in the CONGRESSIONAL RECORD the letter which I have received from Major General McGowan.

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

APRIL 25, 1962.

Hon. KENNETH B. KEATING,
U.S. Senate.

SENATOR KEATING: This will supplement my interim reply of March 7, 1962, in response to your request for information as to the procedures in progress to eliminate segregation in the National Guard.

At the present time there are only 10 States in which, because of State law, or practices and customs, the National Guard units are not integrated. This reflects a considerable advancement in recent years, both in the elimination of all Negro units and in the appointment and enlistment of personnel in National Guard units without regard to race. It is true that in some States there may be no Negroes in National Guard units. But this does not connote discrimination, and it is accounted for by such things as lack of applicants or, in some instances, little or no Negro population in the area from which the unit draws its personnel.

As I am sure you know, federally recognized National Guard units and personnel have dual State and Federal status. The Federal status stems from the State status. When the National Guard is in an inactive status—or, as the language of the Constitution provides, when not "called into the actual service of the United States"—there are constitutional and statutory provisions which make the attainment of the objective of our national administration with respect to integration more difficult than in the active Armed Forces where Federal authorities have the direct authority to require integration. The National Guard, not in Federal service, is composed of State forces serving under the command of a State Governor. Section 3079, title 10, United States Code, provides: "When not on active duty, members of the Army National Guard of the United States shall be administered, armed, equipped, and trained in their status as members of the Army National Guard." Section 8079 contains similar provisions for the Air National Guard.

As you mentioned in your statement, the National Guard units are organized and manned according to the structures of the active services. The procurement of personnel within these structures is the responsibility of the States. The State laws which authorize the organization, consolidation, or reorganization of National Guard units by State authorities are designed to permit them to reorganize their units to conform to the everchanging organization of the active Army and Air Force and the composition of Army and Air Force units, as envisioned by section 104 of title 32, United States Code. Since such laws are to be found in States where discrimination or segregation has never existed, it is apparent that they are not aimed at creating or maintaining segregation or discrimination.

The Federal recognition of a National Guard unit is a function of the Department of the Army or Department of the Air Force, respectively. To obtain or continue Federal recognition, all organizations and reorganizations of units must be approved by these Federal authorities. Support from Federal funds is contingent upon such Federal recognition.

The source of your statement that barely 5 percent of the financial support of the

National Guard comes from the local or State governments is not known. The total appropriation by the Congress for fiscal year 1961 was, in round figures, $663,500,000, for the Army and Air National Guard. Information furnished us by the States reveals that the State legislatures annually provide approximately $50 million for National Guard support. Not reflected in the uncalculated but tremendous additional support the States provide through making available a large number of State-owned camps and other areas for field training purposes, such as Camp Smith at Peekskill. As a single example, estimated conservatively the value of the land provided by State or local governments on which armories have been constructed exceeds a quarter of a billion dollars.

You mentioned the statutes of certain States. North Carolina is the only State in which the statute reads as you have quoted on page 3 of your statement. West Virginia is the only State in which the statute would seem to require the organization of separate Negro units; however, that State has for a number of years maintained integrated National Guard units.

To attempt by denial of Federal funds to enforce integration at this time in the 10 States referred to at the beginning of this letter would result in a serious weakening of our Nation's combat capability. This is a risk our Nation can ill afford at this time, and it does not appear to be justified as long as progress in integration can be made through such means as we are now using. I have within the past 2 months again communicated with the adjutants general of those 10 States, urging that they give this subject their most serious consideration. The responses reflect the full appreciation of the adjutants general of the urgency of the problem. There is a cautious optimism and a definite indication that the number of segregated States will be reduced in the coming months. Thus, I feel that integration is being accomplished on a gradual and relative basis which will in the reasonably near future assure that membership in the National Guard will be based entirely on ability and willingness to serve.

The problems incident to integration in the National Guard are not easily separated from the problems of the community from which the membership is drawn. Fundamentally, the concept of the National Guard is that membership is voluntary. The strength of the National Guard can be assured only by making membership appealing to qualified men of the community.

When National Guard units have been ordered into active Federal service, they are filled out by personnel assigned by the active services. Thus, there is no question as to the integration of these units when in Federal status, regardless of the State of origin. We hope that their active duty experience will demonstrate to the personnel in the units of all the States that, irrespective of race, qualification to perform the duties involved should be the overriding factor in the selection of personnel for membership to fill vacanices which will occur after the units have returned to their home States.

I trust the foregoing will be helpful to you.

Sincerely,

D. W. McGOWAN,
Major General, Chief, National Guard Bureau.

"THE GRAND JURY: SWORD AND SHIELD"—ARTICLE BY JUDGE IRVING R. KAUFMAN

Mr. KEATING. Mr. President, the April issue of the Atlantic Monthly contained an excellent article by Judge Irving R. Kaufman entitled "The Grand Jury: Sword and Shield."

The article explains the function and usefulness of the grand jury with great cogency and reflects unusual insight into this important subject.

I know that this article will be of interest to many Members and, therefore, I ask unanimous consent that it be printed in the RECORD.

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

THE GRAND JURY: SWORD AND SHIELD

(By Judge Irving R. Kaufman)

(NOTE.—As district judge for the southern district of New York, Judge Irving R. Kaufman presided over several prominent civil and criminal trials, among them the Rosenberg atom-spy case, the Apalachin conspiracy, and the New Rochelle segregation case. Last September, he was elevated to the U.S. Court of Appeals for the Second Circuit, which includes New York, Connecticut, and Vermont.)

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury." So begins the fifth amendment to the Federal Constitution, which also protects the individual against compulsory self-incrimination, double jeopardy, and the deprivation of life, liberty, and property without due process of law. Most State constitutions contain similar language, all attesting to the importance placed upon the grand jury by the architects of our Government. Yet in recent years the very institution of the grand jury has been under increasingly severe criticism.

There is no lack of provocation for these attacks. In one part of the country, a grand jury hands up a presentment subjecting the private conduct of individuals to scathing attack without an opportunity for retort. In another region, persuasive evidence is apparently ignored by a grand jury because of the racial overtones of the crime charged. Moreover, the criticism is by no means limited to exaggerated reaction to isolated instances. It goes to the very heart of the institution. Lawyers, scholars, and even judges charge that the grand jury is a useless vestige of another age, when the regime was the main enemy of its own people. It is said that the grand jurors themselves have acquiesced in this judgment by becoming mere rubberstamps for the prosecutors' cases. On the other hand, it is urged that the grand jury is at times guilty of nullifying important legislation because of the local popularity of the criminal or public lethargy to the crime. Other critics point out that the grand jury may occasionally run away on an irresponsible tear, using its tremendous power to muddle the law-enforcement process, not to mention the lives of innocent individuals. Even more basic is the thought that the grand jury is a sport among our legal institutions in that it operates in secret and its members are accountable to no one for their actions. The sixth amendment to the Federal Constitution assures a public trial in criminal cases, yet a grand juror could find himself in contempt of court for divulging the testimony he heard in the grand jury room. Star-chamber proceedings are feared.

All of this criticism has a certain degree of validity. It has led to the abolition of the grand jury in England, the land of its origin, and to the curtailment of the institution in certain of our States. Nevertheless, I believe that the grand jury, with all its acquired flaws, is well worth retaining. Its abolition, even if this could be achieved, could be a serious net loss.

Because the grand jury does its work in secret and because its function is so often misunderstood, it is important that this ancient institution be reviewed in its modern context and that its place in the criminal law be appreciated.

From the time the illegal act is committed, and for a long time after, a criminal case is in the almost untrammeled control of the executive branch of the Government. Generally it is the enforcement agency—the local police, the FBI, the Securities and Exchange Commission, or some other investigative agency—which first acts on suspicion of crime.

If at any time the police become satisfied that no crime has been committed, or that further pursuit is impractical, the case aborts.

Because this system is inevitable and rarely abused, few realize the tremendous power it confers upon the police. This becomes apparent enough when the sheriff of a corruptly governed county chooses not to investigate corruption, or when certain ordinances are enforced only against political enemies of a local administration. When the enforcers are satisfied that they have a criminal case, the matter is turned over to another arm of the executive department, the prosecutor. In the Federal system he is the U.S. Attorney, who operates under the Attorney General of the United States. He may take steps to bring the case to court, but he does not have to. If, in his judgment, the suspect's acts are not in law a crime, or if he believes that it is impossible to secure a verdict of guilty, he, too, has the power to let the matter drop. If he believes that he has a triable criminal case, he will then lay the facts before the grand jury and ask for an indictment.

The Federal grand jury, the type with which I am most familiar and to which I will direct most of my attention, is composed of 23 persons. For 12 years, I was U.S. District judge for the Southern District of New York. In that district, which covers a territory roughly from the lower tip of Manhattan to a point just south of Albany, N.Y., the grand jurors are selected by public drawing from a jury wheel containing names assembled from the same voter registration lists and other sources which provide trial jurors. The judge presides over this first session and passes upon requests by prospective grand jurors to be excused. Hearteningly, these are few. I have found that business and professional persons are more willing to serve on grand juries than they are to serve on petit, or trial, juries. As a result, the grand juries tend to have a high educational level with concomitant ability to follow complex cases.

The judge then selects a foreman and his deputy. In the case of a Federal trial jury in New York City, the first person selected is automatically the foreman; not so with the grand jury. Because the grand jury has much more initiative, and because the grand jury foreman may question witnesses and control the questioning by other grand jurors, the selection of a proper foreman may set the tone for everything that follows. Most judges try to select as a foreman a person with previous grand jury experience or some other background which fits him for this unusual responsibility. The 23 men and women will serve for at least 1 month, and may serve up to 18 months in an extended investigation.

The judge now charges the grand jurors, instructing them in general terms on their powers and duties. These are extremely broad. It is the grand jury's duty to investigate suspected crimes committed within its territorial jurisdiction. Following the charge, the grand jury retires to hear its first case. From now on the jurors will rely heavily upon the guidance of the prosecutor. Ordinarily the grand jury will investigate only suspected crimes brought to its attention by the prosecutor, and will pass upon the filing of the indictments which he prepares. Evidence, witnesses, and documents will ordinarily be brought before the grand

jury by subpena prepared by the prosecutor in the name of the grand jury. It is upon this subpena power, the ability to compel the attendance of witnesses and the production of records, that much of the grand jury's effectiveness depends. This is a power which the prosecutor himself lacks.

The prosecutor will begin by briefing the grand jury on the particular crime involved in the case and the law applicable. In a few minutes the grand jury is ready to hear the first of its witnesses. No witness hears the testimony given by any other witness. In fact, no one is permitted in the grand jury room except the jurors, the prosecutors, the witness being interrogated, and a court reporter. None of these persons may divulge what he has heard.

PRESENTING THE EVIDENCE

Someone familiar with courtroom procedure would find much in the grand jury hearing that seemed strange if he failed to keep in mind that this body is not passing on guilt or innocence but only on whether a minimal case has been made out. Leading questions are permitted. There is only one lawyer in the room, and he, the prosecutor, will present only one side of the case. A suspect is almost never called. In the rare instances when a suspect is granted permission to appear, he must do so without counsel. Moreover, television-trial aficionados would miss their favorite objection: "That question is irrelevant, incompetent, and immaterial." So broad is the grand jury's power to question that rarely is a question genuinely irrelevant.

Naturally, this doctrine cannot be attenuated indefinitely. The grand jury may not subpena clearly irrelevant documents. Neither may it demand evidence that is privileged, such as communications with one's lawyer or religious adviser.

But by far the most important limitation on the grand jury's power to demand answers is imposed by the privilege against self-incrimination, guaranteed by the fifth amendment. So complete is this privilege that without special immunity statutes, many important investigations would be entirely frustrated.

Basically, special immunity statutes allow a U.S. attorney, with the approval of the Attorney General, to make a choice. If he decides that the story that a particular witness may tell is worth allowing the witness' own crimes to go unpunished, he can make application to the court to compel the witness to answer all questions. But if he does, that witness can never be prosecuted for the crime under investigation. In the case of State grand juries, immunity statutes are often broad and are frequently invoked. The result is sometimes an "immunity bath," a situation in which the grand jury finds that it has given up the bird in the hand and is still unable to locate the two in the bush. In the Federal system, on the other hand, the immunity statutes are limited to particular types of cases—for example, espionage and narcotics.

Generally the grand jury hearings progress rapidly, with the average case consuming less than 30 minutes. The prosecutor lays out the bare bones of his case. The prosecutor, then the foreman, and the individual grand jurors may question the witness—usually a Federal investigative agent. The grand jurors may also request that the prosecutor call additional witnesses if they are not satisfied as to a doubtful point.

Sometimes the grand jury embarks on a full investigation. No one knows what the outcome will be. For example, a number of years ago one of the country's most famous and conservative drug houses was suddenly thrown into receivership. In a single day its bonds fell from 103 to 57, the stock from 7½ to 1¼. The Securities and Exchange Commission ordered an investigation, and for the next 8 days, one after another of the Federal, State, and local law-enforcement agencies began to investigate this corporation. At first the results were inconclusive. The U.S. attorney was not even sure that a crime had been committed, or if so, by whom. The grand jury was impaneled to consider the case. All the facts were presented, and a vast amount of new evidence was unearthed through the use of the grand jury subpena. This investigation took months to complete. Several hundred witnesses, 91 bank accounts, and 57 brokerage accounts were minutely examined before the details of an ingenious multimillion-dollar embezzlement emerged.

It is thus apparent that grand jury investigations are not always narrow. Sometimes State grand juries will broadly investigate a type of suspected illegal activity, such as wiretapping, ticket fixing, or municipal graft, with a view to eventual indictment.

Whether the investigation is long or short, broad or narrow, the prosecutor's job is only to present the evidence. When this has been done, the grand jurors dismiss everyone from the grand jury room and commence their deliberation in secret. Their job is to decide not the guilt or innocence of the suspect but only whether the prosecutor has presented sufficient evidence to permit the case to go on to the next stage, the trial. The judge has instructed them that they must not indict unless "upon the credible evidence which you have heard, absent an explanation by the defendant, you would be willing to convict * * *."

Sixteen of the grand jurors constitute a quorum. Unless 12 of them believe that the prosecutor has made out a case, a "no true bill" is voted. If 12 believe an indictment is proper, the grand jury votes a "true bill" and subsequently hands the written charge (indictment) to the judge.

At that moment, the secretly suspected becomes the publicly accused, bound to stand trial, with his liberty, and perhaps his life, turning on the decision of a 12-man trial jury. From this moment, too, the defendant is surrounded by the myriad safeguards subsumed under the phrase "due process." He need not speak a word in his defense, for the prosecutor carries the burden of proving guilt beyond a reasonable doubt. At trial, rules of evidence will be vigorously applied to exclude hearsay and prejudicial material, and the defendant has a constitutional right to counsel and to present his case. But none of this can change the fact that even if found innocent, he will have been a defendant in a criminal case, a fact that, unfortunately, will not be forgotten by many of the community.

The significance of the handing up of the indictment is reflected in procedural requirements. The document must be handed directly to the judge in open court and in the sight of a quorum of the grand jury. Our bewigged forebears were unwilling to let so important a document out of authorized hands even for a moment. They were concerned lest an enemy of the accused get possession of the indictment and write an additional crime at the bottom of it. In the days when courtrooms were more imposing than they are today, a direct reach between foreman and judge was impossible, and there are preserved in England several long poles with clamps which were used to make sure the passing of the indictment was direct.

With a picture of the workings of the modern grand jury in mind, we can now consider some of the criticisms that have been lodged against its functionings.

RUBBERSTAMPING

The grand jury's function of screening the prosecution's cases has been solidly established in this country from earliest times. In 1734, William Cosby, a particularly incompetent royal governor of New York, was stung by the attacks upon him carried in the New York Weekly Journal. Cosby had his handpicked chief justice indicate to the grand jury that John Peter Zenger, the paper's printer, had committed the crime of seditious libel. The grand jury refused to indict, and repeated its refusal when Cosby tried again several months later. The fact that Zenger was later charged in an information and that he won his acquittal through the heroic efforts of his lawyer, Andrew Hamilton, does not change the fact that for the best part of a year the grand jury stood between a thoroughly ruthless executive and an unjustly accused citizen.

There is little doubt that such cases as Zenger's were very much in the minds of the framers of the fifth amendment. They probably considered that the grand jury's most important function was its job of screening the prosecutor's cases.

But it is not necessary to go back to Peter Zenger to realize the importance of this function. The power to subject whomsoever the executive wishes to the ordeal of a criminal trial is the power to tyrannize. The grand jury is the people's check on that power. However, I am as much concerned with the possibility of sloppy police work and opportunistic prosecution as I am with the possibility of tyranny. Not every police officer is a J. Edgar Hoover, nor is every prosecutor one who believes it is his function not to obtain a conviction but to see that justice is done. If there were no check on the executive's power to bring citizens to trial, it is quite possible that the litigious tendency, which is unfortunately so prevalent in civil matters, would be imported into the criminal law.

Some power must screen the prosecutor's cases. The real question is, Does the grand jury accomplish this effectively?

I believe that it does the job, not perfectly, but probably as well or better than it could be done by any other body or person. Those who read rubberstamping into the fact that indictments are forthcoming in the great majority of cases presented to the grand jury are misinterpreting the evidence.

First of all, the vast majority of prosecutors are sufficiently conscientious to screen their own cases. They do not ask for an indictment unless they are convinced that the accused is guilty and reasonably sure that a trial jury will eventually convict. They realize that if a weak case does get by the grand jury, it will probably founder at the trial. The rare prosecutor who is too callous to care that a defendant suffers unnecessarily is probably tenderly solicitous of his conviction record. Thus, it is only in the unusual case that the grand jury's screening power comes into play. Furthermore, with the grand jury, as with other institutions, the existence of power is more important than its exercise. The power to refuse to indict need be used only often enough to demonstrate that it has not atrophied. This power-in-being automatically eliminates cases brought for improper motives and with no hope of success. The fact that the grand jury rarely refuses to indict may be more of a tribute to its success than evidence of a failure.

NULLIFICATION

The question remains why this admittedly important function must be performed by a group of 23 citizens. One well-trained man might do the job as well or better; one well-trained man does do the job in England, on the Continent, and, most of the time, in Michigan. Moreover, it is said that an indicting magistrate, or one-man grand jury, would be less likely to nullify important legislation because of local prejudice.

Critics of the present system point out that the ideal grand jury is a machine, a calculator for weighing the facts. All of the evidence is considered, weighed according to the credibility of its source, and then measured against the standard supplied by the judge in his charge. The answer—true bill

or no true bill—should follow automatically, they say, dependent only on the facts in the case, not upon the identity or the state of mind of the trier of those facts. These critics say that the employment of ordinary citizens as sifters of the evidence allows the mores of the time and place to permeate the judicial process. To that extent, they say, we dilute the evenhanded justice which is our pride.

There are those who would answer this argument by striking at its major premise. They urge that the grand jurors with their commonsense soften the sometimes cruel logic of the law. But I do not favor the grand jury because it reaches less logical results than would be reached by an indicting magistrate. After almost a quarter century of working with criminal juries and grand juries, I am convinced that in a difficult case a body of citizens is likely to reach the correct result.

The grand jury is sometimes deprecated as irresponsible, but it is this very "irresponsibility" which caused the institution to be so cherished by the framers of the Bill of Rights. The grand jury is answerable to no one. Its members are not subject to reelection or reappointment by one man. They owe no political debt to anyone, and when their job is done, they disperse. When a grand juror swears that he will present no one from envy, hatred, or malice; nor shall he leave anyone unpresented from fear, favor, or affection, for reward, gain, or the hope thereof, but shall present all things truly as they shall come to his knowledge, there is every reason to believe that he will fulfill his oath.

Some months ago the people of New York were justly incensed over a series of hit-and-run accidents. At the height of this indignation, a taxicab struck a small girl. The driver stopped, carried the injured child into his cab, and said he would take her to a hospital. Several hours later, the body of the girl was found abandoned beneath a parked car. A howl of rage arose from public and press. When the driver was apprehended, the newspapers pointed out that he might well be guilty of homicide. Evidence was presented to the grand jury, but a homicide indictment was not sought because there was no evidence of that crime. In fact, the grand jury did not even indict for the two less serious crimes charged, but sent the case to the court of special sessions instead. There the driver was charged by information with the two lesser crimes, to which he pleaded guilty. His sentence was 30 days (which he had already served pending trial) and 1 year, suspended.

The public accepted the judgment of its own representatives without a murmur. I cannot help wonder whether the reaction would have been the same had a decision not to prosecute for homicide not been accepted by a grand jury, but been made solely by an elected or appointed official. It is likely that such an official would have resisted the great pressures upon him. But it is best to minimize the number of times a man is called upon to choose between his honor and his future.

Finally, a decision to indict or not to indict must be more than just. It must be accepted as just by the public. One object of the criminal law is the achievement of a sense of security on the part of the community. As the hit-and-run case demonstrated, there are few cries of "foul" when unpopular decisions are made by grand jurors, selected at random and beholden to no one. The public has great confidence in this honored institution.

Certainly there are occasional cases where a grand jury is swayed by prejudice and so fails to indict. But I do not think that this is really a criticism of the grand jury as such. It is a flaw in our basic system of entrusting citizens with factual decisions in criminal cases, a system very few of us would change.

THE RUNAWAY GRAND JURY

The importance of the grand jury's role in screening cases stems from the fact that it is generally the first nonexecutive power to review criminal cases. Here it serves as the people's shield against unfair accusations. However, its unique position may also require that it be a sword against the unjustified refusal of an executive to prosecute. If the executive refuses to initiate criminal proceedings against wrongdoers, the grand jury may. The local district attorney who expects a grand jury tamely to confine itself to handling indictments in a few major cases may suddenly find that his own office is under searching investigation by that same body.

Occasionally we still read of such runaway grand juries. Sometimes they perform a valuable service; sometimes they merely represent 23 good citizens momentarily carried away by power. Sometimes the runaways must be restrained. In a fairly recent case in the West, one grand jury got completely out of hand. The Federal district judge sitting in the district concluded that the jurors' attacks on privacy had overstepped decent bounds. He decided that justice required the dismissal of the grand jury.

Runaway grand juries are faced with immense procedural difficulties. Modern investigation is a job for professionals, and when the grand jury takes off on its own, it cuts loose from the investigatory agencies which are its eyes and ears. Unless it somehow obtains facts, counsel, and a staff, substantial investigations are likely to be hopeless. Furthermore, its zeal may cause it to cut away from the restraints which bind all responsible investigators.

THE PRESENTMENT

A more serious problem, however, arises when a grand jury is active and vocal but does not indict. We recall that more than 2 years ago a New York State grand jury began an investigation of television quiz shows. In the course of 59 session days covering a 9-month period, the grand jurors heard 200 witnesses. It soon became clear to the panel that a shabby trick had been played upon the viewing public. It became equally clear that, aside from possible perjury, no crime had been committed. The grand jury decided that in lieu of an indictment it would hand up a presentment, or a report setting out its findings and its conclusions. It was hoped that the report would become a matter of public record, and public opinion might be expected to mete out its own punishment. Anticipating such a report, counsel representing certain television interests, the obvious subjects of such a report, sought to submit memoranda of law in opposition to its filing. Soon four bar associations, the Citizens Union, the Civil Liberties Union, two grand jury associations, and the district attorney's office had joined in an argument that vividly delineated the most controversial question involving grand juries. Should these bodies be permitted to inform the public upon immoral and undesirable conduct of private citizens where there is no evidence of the commission of a crime by these citizens?

Before the case could be decided, a congressional committee had laid bare the facts of the television quiz scandals. The public was justifiably incensed and eager for further details on how it had been duped. Nevertheless, a judge presiding in the court where the grand jury had been impaneled eschewed the easy solution. He suppressed the report. More recently, the highest court of New York has reaffirmed that grand juries may not report on misconduct if they do not indict.

Those who oppose presentments of the quiz-show type point out that numerous judges have used the term "foul blow" to describe this kind of presentment. They point out that any report issued by a grand jury is armored with tremendous prestige. For most people, no number of fine legal distinctions between accusation and conviction will change the fact that the person named has been accused by a public body whose primary function is to indict for "infamous" crimes. Since there will be no trial, the victim is deprived of a forum for answering the charges made against him. He does not have even the military officer's alternative of demanding a court-martial. Moreover, the secrecy of the grand jury proceedings is an insurmountable obstacle. The accused man has no way of knowing the real nature of the evidence against him. The result can be devastating.

Several years ago a Federal grand jury handed up a report on the alleged Communist affiliation of certain labor leaders. During the hearing, witnesses were question as to their views on religion, God, baptism, their particular religious beliefs, the length of adherence to them, atheism, and agnosticism. The labor leaders had invoked the 5th amendment when questioned about non-Communist affidavits which they had filed, and the grand jury concluded that the affidavits were thus not "worth the paper they are written on." No names were used, but on the day the report was handed up, the newspapers carried the names of 13 labor leaders who had testified before that particular grand jury. A Federal judge concluded that the names had been deliberately leaked, whether officially or unofficially. It is doubtful whether even the expunging of this report by a judge could have repaired any damage already done.

Reports concerning inefficient, incompetent public officials stand on a somewhat different footing. Some States apparently grant their grand juries the power to investigate the conduct of public officers and to report on malfeasance falling short of a crime. The New Jersey Supreme Court, for instance, last year upheld such a right. This practice is defended on historical grounds and on the need for good government. It is contended that the public interest requires that officials must accept a certain degree of loss of privacy. Furthermore, many of these reports are careful to criticize a condition but avoid naming names.

On the other side is the argument that this very need for good government should deter us from making public service forbiddingly disagreeable. Officials, too, are entitled to fair play.

A few years ago in Florida, a dispute arose as to the handling of an incompetent's estate. Somehow the matter came to the attention of the grand jury, which proceeded to investigate and to report on the action of a circuit judge. The report purported to tell "what happens to helpless old people who seek the protection of Judge ———'s Court." The grand jury concluded that the judge should resign. Must an official submit to unanswerable accusations of this kind at the price of his office? The Florida Supreme Court answered this question in a ringing opinion.

"For the future guidance of the grand juries of this State, we repeat the admonition * * * that a grand jury will not be permitted to single out persons in civil or official positions to impugn their motives, or * * * hold them to scorn or criticism. * * * Neither will they be permitted to speak of the general qualifications or moral fitness of one to hold an office or position."

While such general attacks on public officials are rightly to be condemned, there remains the question of a report on general conditions which the grand jury encounters in the course of its investigations of indictable crime.

For example, a New York judge once recalled a report which had been handed up to him some years previously. Without vituperation the grand jury had pointed out that a type of school run by the city had outlived its usefulness. As a result of this one report, the taxpayers were saved millions of dollars. Would the general interest have been served if this report had been automatically suppressed because it did not charge a crime? Perhaps there is a compromise. Where the grand jury uncovers a condition which it believes requires remedial legislation, there should be orderly machinery for making a secret report to the appropriate body of the legislature. The report would remain forever sealed, but it could be used by the legislature as a basis for its own investigations. If the legislators then wished to draw the public's attention to the condition, they might.

Proponents of this plan point out that when a congressional committee makes a charge, the political careers of its members stand surety for some standard of fair play. This is a safeguard entirely absent in the case of the grand jury.

SECRECY

The secrecy surrounding the grand jury proceeding is admittedly designed to aid the jury in carrying out its law-enforcement duties. Witnesses at grand jury hearings are more likely to talk freely if they are assured that their testimony will not be made public. Moreover, it is a practical necessity that the subject of a grand jury investigation remain secret. If a suspect has advance notice that he is under investigation, not only can he seek to put pressure on the grand jury directly or to intimidate witnesses, but he can destroy documentary evidence, and, if palpably guilty, flee. The secrecy of its proceedings also protects the grand jury from public hysteria, either for or against indictment. So much is obvious. But we often lose sight of the fact that the total secrecy of the grand jury room is also a valid protection to the accused. We have seen that the grand jury hears only evidence against the suspected. Some of this evidence is hearsay; all of it is usually damaging; and the accused is not represented by counsel. If an indictment is returned, it is undesirable that this testimony, some of it inadmissible at trial, yet carrying the prestige of the grand jury, be made known to prospective jurors or to the public. Even if the accused proves his innocence at trial, his reputation will thus have suffered additional besmirching.

More important, however, is the position of a person investigated but not indicted. He will never have the opportunity to rebut the charges made against him, if the secrecy has been lifted, in any forum comparable to a courtroom. The witness before the grand jury may have been mistaken or untruthful. This is all the more likely since the grand jury had refused to indict. But revelation of these charges would nevertheless deal a blow to an innocent reputation. Yet the knowledge that a grand jury was investigating may seriously harm the individual's good name. Many would choose not to invest through a stockbroker who had been under a grand jury investigation for allegedly defrauding investors, although he was not indicted. In balance, it appears that secrecy of the grand jury proceedings is desirable and necessary, both from the standpoint of effective law enforcement and protection of individual reputations.

The grand jury operates as a check upon the executive in an area wherein few checks occur other than the ballot. Occasionally it acts as a prod to unwilling officials. It can save a man from embarrassment and unmerited punishment, and it can, by being lax, inflict both. But, whether used as a sword or a shield, it is an implement of the public, the unofficial, nongovernmental public. It is the citizen's personal entry into government and justice. As such it has its justification, and because it is such, it should be retained.

FEDERAL AID TO EDUCATION

Mr. TOWER. Mr. President, I ask unanimous consent to have printed in the RECORD following this brief introduction, an article entitled "National Interest, Si—Federal Aid, No" by Dr. Roger A. Freeman of Claremont Men's College, Calif. This article will appear in the Graduate Journal of the University of Texas as a part of their important study of Federal aid to education.

Dr. Freeman is an outstanding authority in this field, and one who apparently feels that such aid is unnecessary, unwanted, and inadvisable.

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

NATIONAL INTEREST, SI—FEDERAL AID, NO

(By Roger A. Freeman)

Not so many years ago, when President Truman's Commission on Higher Education (1946–48) advocated a comprehensive program of Federal aid, the Association of American Universities sponsored the Commission on Financing Higher Education which, after laboring for 3 years, roundly condemned the demand for Federal funds: "This Commission has reached the unanimous conclusion that we as a nation should call a halt at this time to the introduction of new programs of direct Federal aid to colleges and universities. We also believe it undesirable for the Government to expand the scope of its scholarship aid to individual students."

One of the Commission members, President Carter Davidson of Union College, Schenectady, explained in an article: "One broad highway to financial security the members of the Commission viewed unanimously as the 'primrose path that leads to everlasting bonfire.' This road was named 'Federal Government support.' * * * There was a feeling that increased Government support from Federal sources was not only a blind alley, but also blinded those who traveled down it." Soon after, the American Council on Education developed an income tax credit plan for educational expenses as the proper method for the National Government to express its interest in higher education. The suggestion was seconded by President Eisenhower's Commission on Education Beyond the High School in 1957. But Congress never acted on it despite widespread interest as evidenced by more than 40 such bills in the 86th Congress, from sponsors covering the whole ideological spectrum from Senator HUMPHREY to Senator GOLDWATER.

Sharply rising support seemed to suggest that the established sources of financing higher education produced satisfactory results during the 1950's. Between 1950 and 1960 educational and general expenditures of colleges and universities jumped from $1.7 to $4.5 billion (if organized research is included from $2.3 to $6 billion). At that rate of advance, the institutions' educational budgets will exceed $10 billion by 1970. What reason do we have to assume that the long-range trend of allocating, through the existing channels, a growing share of the national income to higher education—from 0.6 percent in 1930, to 1.0 percent in 1950 and to 1.5 percent in 1960—will not continue through the 1960's?

Whatever the prospects are, there can be little doubt that the prevailing sentiment in higher education circles has swung around 180 degrees: proposals for vast Federal aid programs have become acceptable and are being assiduously lobbied for. A poll among institutions would now return a large majority for Federal Aid.

What explains this turnabout? Have budgetary problems suddenly become overwhelming? Have charges by the Secretary of HEW that college presidents really don't care about education—"None of you educators was interested in doing something for education as a whole" hit home? Did academic administrators hold a wet finger in the wind blowing in from the New Frontier and heed William Jennings Bryan's warning: "There is no percentage in batting one's head against a stonewall, even in a righteous cause"? Or is it just that the sweet scent of "free" money proved too strong a temptation to resist any longer?

Whatever the reasons for this change of mind may be, the common attitude is that the only taint that attaches to Federal money is that it'aint enough. This position is being justified by stressing the national interest in education which, like any sincere interest and honorable intentions, ought to be expressed in cash.

Of course, nobody would deny that there is a national interest in education. Under every division of labor such as established by our Federal system of Government, each member has an interest in the performance of his partners. But that does not mean that he may take over his partner's chores. There is a national interest in almost every activity of State and local governments and of private organizations and individuals. Likewise there is a State, local and individual interest in defense, foreign affairs, and every function of the National Government. If dissatisfaction with the other party's performance were sufficient grounds for getting into the act, might not the States have a good case for sticking their fingers into foreign relations?

It is generally agreed that the allocation of powers and responsibilities by the Constitution left education in the realm of the States and the people. Few find fault, nor is there much argument, with the principle advanced by the U.S. Commission on Intergovernmental Relations (Kestnbaum Commission) that public functions should, to the extent possible, be handled at community and State levels and by private initiative, and that we should "reserve national action for residual participation where State and local governments are not fully adequate, and for the continuing responsibilities that only the National Government can undertake." Few hold that only within the National Government is there sufficient brainpower to direct higher education. But some assert that State and local governments and individuals lack the capacity to raise the vast funds which higher education needs, estimated at over $10 billion by 1970. So, one Federal aid advocate reasoned, "the logical source of funds seems to be the Federal Government, the only entity that can provide large sums for national purposes, the only entity that has a taxing authority commensurate with the job to be done."

This suggests some pertinent questions: If the Federal Government has a taxing authority commensurate with its job, why has it been unable to raise enough revenues to meet its expenditures in 26 years of the past 32, with a cumulative deficit that averages $9 billion annually? If, on the other hand, the Federal Government already is trying to bite off more than it can chew, as the record suggests, why give it additional responsibilities? What taxing authority, is it claimed, does the Federal Government have which the States do not also possess? What types of income, property or transactions can it tax which are not located within the boundaries of the 50 States and subject to their taxing powers? What makes the Federal Government such a logical source of funds when it seems incapable of financing

its established activities, while the States have multiplied their educational appropriations beyond expectation? Is it because Federal money is believed to come for free from an inexhaustible National Treasury? Are State tax systems inadequate to meet requirements? "The weakness of State and local taxing systems is the impact of heavy Federal taxes" advised New Jersey Gov. Robert B. Meyner before a congressional committee.

The National Government has boosted its share of the tax dollar from one-third some 30 years ago to about two-thirds now. This, it has been charged, leaves State and local governments with inadequate revenues and imposes an obligation upon the National Government to aid them. But, we may ask, what caused the national tax share to rise? Largely soaring defense needs and partly the assumption of functions which used to be in the State, local, or private sphere. Can we improve that situation by shifting more responsibilities to Washington? Or shall we try to correct it by leaving a larger share of the tax dollar in State treasuries and private pockets? In the postwar period the Federal portion of the revenue dollar shrank from 79 to 65 cents. This trend is not very likely to continue if additional responsibilities are transferred from the States to the national level.

THE LOW SALARIES

It has been said that low salaries clearly prove the inadequacy of the established financial arrangements. They force faculty members to engage in consulting and other outside business activities and to turn into contract-getters at the expense of their teaching function.

If it be true that college teachers accept—or hunt for—research projects because of low salaries, why is it that, as a rule, the best-paid professors at the institutions with the highest salary scales hold the most numerous and juiciest research contracts while lowly paid instructors and assistant professors, and low-paying institutions in general, receive far less of the manna from heaven? Is it not likely that the magnitude and location of sponsored research is governed by factors other than the salary level? Does it not appear that, by and large, the job is seeking the man rather than the man seeking the job?

In his provocative article "The Affluent Professors" (the Reporter, June 23, 1960) Spencer Klaw observed correctly: "The need to supplement low academic salaries is only one of the reasons why professors consult. When a group of sociologists were asked a few years back about their extra-curricular activities, more than 90 percent of those who consulted said that even if their salaries were much higher they would go on doing so. Professors point out that consulting can be exciting, intellectually stimulating, and good for their teaching." It is unlikely that even a sharp rise in college salaries would reduce the practice of consulting to a significant extent.

My heart does not bleed for professors who, it is charged, are "systematically engaged in stock market ventures or real estate trading" because I know some of them. They regard such extracurricular escapades as a fate far less worse than death, and are not sorry for themselves, save in time when the Dow-Jones drops or land prices sag. Some even tell me that they like "business ventures on the side," and, in fact, the experience of having to meet a payroll may elevate their understanding of the practical working of our economic system. I could name some to whom such an experience could prove most beneficial.

HIGHER SALARIES AND COLLEGE EFFICIENCY

All of this does not mean that colleges should not continue to boost faculty salaries. Better pay for academic work is an urgent and most worthy objective. But the solution is not simply support for current operations by the Federal Government. It is a strange fact that so many academicians are unable to see the connection between the effectiveness with which college resources are used and their level of pay. Executives in private industry seldom suffer from such myopia. But then, an industry which utilized its skilled staff and costly facilities as inadequately and wastefully as colleges would have been bankrupt long ago.

In its better utilization of college teaching resources the fund for the advancement of education outlined four "handles" to attack the problem of increased efficiency: place greater responsibility on students for their education, rearrange course structures, discover new resources both in teaching and in performance of duties ordinarily expected of the teacher, and increase the institutional reach of colleges and universities.

When will institutions be ready to abandon the superstition that a low faculty-student ratio is a measure of quality? "All that is accomplished [by low ratios] is to enable the teacher to communicate his mediocrity in an intimate environment" commented the late President Charles Johnson of Fisk University. All over the country the faculty-student ratio has been falling in recent decades and is now far lower than in European universities. Hundreds of studies and experiments have failed to show an advantage of small classes over large or of low faculty workloads. John Hicks of Purdue wrote in the summary of the American Council on Education conference report on faculty workload: "To the best knowledge of the author, no objective study has ever been made of the relationship between quality of faculty performance and faculty workload." Also, an outstanding course on TV, once on tape, such as the famous White physics course can be taught to hundreds at a fraction of the cost of live instruction.

Most institutions keep spoonfeeding their students just because high schools do not train them adequately in the essential skills nor teach them study habits. Could not higher admission standards force the common schools to shift from more pleasurable pursuits to the grim business of education? Is there any reason why our institutions of higher learning should not place upon the student more responsibility for getting an education, as universities do throughout the rest of the world?

In a recent survey of several studies Samuel Baskin reported in a booklet "Quest for Quality," published by the U.S. Office of Education "The data from the present experimentation in independent study seem clear on this point: Students are able to learn as well with much less classtime than we have been accustomed to require of them."

Why must we continue the "phantastic proliferation" of the curriculum which Seymour Harris, head of the Harvard economics department called "a scandal from the viewpoint of both economics and education"? I wonder what Mr. Khrushchev thought when on visiting Iowa State University he was shown a class in "ironing"? But then maybe we were lucky he did not drop in on courses in fly casting, family camping, or bachelor living.

Beardsley Ruml and Donald Morrison (both since deceased) proposed in their book "Memo to a College Trustee," prepared for the fund for the advancement of education 3 years ago, to trim the curriculum and to double the number of students per faculty member to about 20. This would enable the institutions to double salaries without additional funds. The authors concluded that "new money is not needed in anything like the amounts presently estimated. Many of the necessary funds are already at the disposal of the college or can be made so; but they are being dissipated through wastes in curriculum, wastes in methods of instruction, wastes in administration, and in the use of property and plant."

We have stretched 12 to 13 years of education and spread them over 16 or more years. This fritters away the institutions' resources, and the students' time. It postpones their earnings career and dissuades many talented young men from following academic pursuits.

Columbia University President Grayson Kirk wrote an article in the Saturday Evening Post that "College Should Not Take 4 Years" but compressed into 3. Chancellor Edward H. Litchfield of the University of Pittsburgh pioneered the trimester plan which keeps the plant in operation the year round and enables students to obtain a B.A. degree in 3 years. A few other institutions are now using or considering similar plans. Why should this not become more general? Dean Elmer Easton of Rutger's Engineering College pointed out in a booklet, "Year-Around Operation of Colleges" that such a schedule would provide up to 56 percent more degrees, per year, make up to 30 percent more use of instructional facilities, increase faculty salaries approximately 30 percent.

PLANT NEEDS AND SPACE UTILIZATION

The need for additional college facilities is sometimes pictured to be staggering. A study of the American Council of Education by John D. Long and J. B. Black placed the 1958–70 requirements at $11 to $14 billion. A U.S. Office of Education report by W. Robert Bokelman and John B. Roark set the 1956–70 needs at $17 billion ($7.1 billion for academic, $5.3 billion for residential facilities, $4.8 billion for replacement, rehabilitation, and repair). But several studies have shown the present inadequate use of college facilities. A recent M.S.U. survey of 100 schools placed the utilization, on the basis of a 44-hour week at 46 percent of capacity; at only 25 percent of capacity in terms of student stations.

Space Utilization Analysis, a group of management consultants who have done work for several universities, Government, and industry, placed the 1957–70 facility requirements of American colleges and universities at $12.7 billion under current space utilization practices but estimated that with better space programing in new buildings the amount could be cut to $7.2 billion, with such practices in all (new and old) buildings to $4.3 billion.

The above-mentioned ACE and USOE estimates call for annual plant expenditures slightly over $1 billion. Outlays for physical plant of all colleges and universities totaled $417 million in 1950, $685 million in 1956 and exceeded $1 billion in 1958. There is no indication that the construction boom in higher education is about to collapse. With national income and produce expected to climb another 40 or 50 percent in the 1960's, what reason do we have to believe that the established sources will not be able to meet all essential requirements for plant funds?

ARE TOO FEW GOING TO COLLEGE OR TOO MANY?

A more fundamental question may be raised about the desirability and potential effect of sending two-fifths—and if current trends continue much longer, one-half—of our young people to college. Few of the culturally leading countries have as much as 10 percent of their youth in higher educational institutions. Do they all fail to meet their professional manpower needs?

It may at first glance appear to be encouraging that, under current projections, between 1930 and 1970 the population of the United States will have grown 72 percent, the college-age population (18–21) 61 percent while college enrollment and the number of earned degrees will have jumped 500 percent. But will it really advance the Nation's welfare that in our eagerness to make everybody fit for college we have made

college fit everybody? "Are we going to get fewer sheep just by handing out more sheepskins?" asked Fordham President Father Gannon a few years ago.

Seymour Harris concluded in 1948 "that we may be turning out too many graduates and that there is a danger not only of a relative but of absolute deterioration—falling income and employment" ("How Shall We Pay for Education?" p. 67). While employment has absolutely risen there has been a relative decline in the earnings of professional workers. David Blank and George Stigler pointed out in their book, "Demand and Supply of Scientific Personnel," that supply has been rising faster than demand and that scientific earnings have been drifting downward in relation to manual workers, as census statistics also show and as academicians well know.

In a paper for the National Manpower Council's Arden House Conference in November 1959, Professor Harris predicted that it will not be easy to find openings for an average of a half million college graduates in the next 10 years in managament and the professions. They may find jobs but at depressed wages. What this country needs is not more college graduates but better qualified ones who are more broadly educated and thoroughly trained. Our present love affair with numbers may be leading us into a blind alley.

Over the past 20 years professional workers have lost 15 to 20 percent in earnings relative to manual workers. In 1939 the annual earnings of the average professional or technical worker exceded those of a craftsman by 38 percent; in 1960 by only 17 percent. In 1939 the professional worker was 80 percent ahead of the operative (semiskilled factory hand); in 1960 only 48 percent.

Albert Rees of the University of Chicago reasoned that the gains of wage earners relative to salaried workers have been the result of economic forces—the vast increase in the supply of highly educated white-collar workers. In his book "American Higher Education in the 1960's" Robert J. Havighurst concluded that beginning in 1960 the demand for college-trained people will be exceeded by the supply and that there will be less incentive for going to college. Why spend 4 years in college when an electrical worker makes $198.40 a week working 35 hours? This may well explain the large number of young men who are intelligent enough to qualify for college but smart enough not to apply.

Present projections foresee an increase in the population of the United States over the next 10 years of 18 percent; in the number of earned degrees of 75 percent. What impact will that have on the wages of the average college graduate? Clearly, the United States cannot and should not do what the Soviet Union did: freeze higher education enrollment. But it can become more selective by raising standards. Is it not about time to do some rethinking of investment in marginal prospects for higher education? Gary Becker's study for the National Bureau of Economic Research raises some weighty questions in regard to comparative rates of return (American Economic Review, May 1960).

WHO SHOULD PICK UP THE CHECK?

No matter how successful colleges and universities may be in using their resources more wisely and more effectively, they will still need to boost their income very substantially. Some have estimated that funds ought to be doubled while others want them tripled. Such increases are well within the realm of possiblity if government spending for other purposes does not get out of hand.

What indication is there that the States will not continue to expand their financial resources and educational appropriations? Since World War II national income increased 130 percent, National Government revenues 96 percent. But State and local government revenues from their own sources jumped 298 percent and State-local educational expenditures 583 percent.

The public schools had prior claim on State funds during the 1950's when 12-grade enrollment climbed 43 percent. But most of the rush is over and school attendance will rise only 20 percent in the 1960's. This will help channeling a larger share of State funds to colleges and universities.

Private giving also has shown a splendid growth. Why should students and their parents, as well as private donors, not be able to augment their contributions as incomes rise, particularly if the Federal Government keeps its budget under control and grants tax relief?

The most neglected source of higher educational income is tuition payments in State institutions. Most State colleges and universities charge no or low tuition, or mere token fees. It has at times been charged that the American people spend more on liquor and tobacco than on education. This is incorrect except for many students at State colleges and universities who spend more on cigarettes than on payments to their alma mater, and far larger amounts for cars, liquor and various forms of entertainment.

It has been suggested that higher tuition fees might ease the parking problem around certain campuses where now one-half or more of the students park their cars. It is, of course, possible that some of our students would rather part with college than their car. If so, why should they not be allowed to spend their time as well as their money according to their own set of values?

The "Carnegie Foundation for the Advancement of Teaching" suggested in its 1956–57 report:

"Private institutions may eventually have to charge the full cost of education in tuition. They can then go even further than they have to date in providing various forms of scholarship aid for those students who need it." Grants and loan scholarship funds from State and private sources have shown a healthy growth and may be expected to expand further unless the Federal Government decides to enter the field with a major program which would tend to dry up other sources. Private finance companies are now advertising loans for college students. Most promising is the plan by the United Student Aid Fund to set up guarantees for student loans for educational purposes. Some observers, however, frown on what they call "students mortgaging their future" although they find no objection to no downpayments on large purchases and debts for more mundane purposes.

Earlier I referred to proposals which would permit students and their parents to offset part or all college expenses on the Federal income tax through additional exemptions, deductions or tax credits. This would make higher tuition fees easier to bear. Students from families which pay little or no income tax would still be eligible for scholarships. Donations to institutions could also be encouraged by a more liberal form of income tax credit.

Why do those who believe financial aid from the National Government to be necessary not support such proposals? Tax credits would eliminate the controversial problem of an equitable allocation of governmental grants among public, private nonsectarian and sectarian institutions and leave the freedom of choice to students and their parents, as the GI bill did. If it is held that the support of higher education has become a national problem, or even a national responsibility that calls for action by the National Government, why not use the fiscal powers of the National Government without disturbing the structure of higher education?

In summary: Higher education, under our Federal system, is no more a responsibility of the National Government than foreign relations is a responsibility of the States. To be sure, all levels of government have an interest in the essential functions of all other levels, and a duty to further them within their own proper range of activities. But there is no justification for any Government to enter another Government's domain without clear proof that such action is absolutely necessary.

No such proof has been advanced for the expansion of National Government activities in higher education by assuming responsibility for support of institutions, construcion, or students. There are three ways of meetmg higher education's financial needs: greater funds from established sources and wiser use of those funds; Federal income tax credits; direct Federal grants. But the worst of these is Federal grants.

PROPOSED DRUG LEGISLATION

Mr. KEFAUVER. Mr. President, because of its great importance I ask unanimous consent to have printed in the RECORD a copy of the President's letter of April 10, 1962, to the chairman of the Judiciary Committee [Mr. EASTLAND], in which he urges prompt enactment of S. 1552, the drug bill.

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

THE WHITE HOUSE,
Washington, April 10, 1962.

Hon. JAMES O. EASTLAND,
U.S. Senate, Washington, D.C.

DEAR SENATOR: In the message I sent to the Congress on March 14, I called attention to the need for new legislative authority to advance and protect the interests of consumers in the marketing of drugs.

S. 1552, which is now pending before your committee, incorporates the major recommendations I made. It will strengthen and broaden existing laws in the food and drug field, contribute toward better, safer and less expensive medicines, and establish a better system of enforcement. As you know, the bill is the outgrowth of the 28 months of intensive investigation and hearings by your Subcommittee on Antitrust and Monopoly. I believe that early passage of this legislation will substantially improve the ability of the drug industry to serve the Nation and help provide consumers with quality drugs at low competitive prices.

I understand that the members of the Subcommittee on Patents have decided that the compulsory licensing feature of the legislation requires further study and consideration. I would hope that this would not, however, delay enactment of the other provisions of the bill—provisions which will establish necessary safeguards to assure the reliability and effectiveness of drugs placed on the market, provide for standardization of drug names, and thereby encourage physicians to prescribe drugs by nonproprietary rather than by brand names, require disclosure of adverse as well as beneficial effects of drugs in drug promotion, and assure consideration of therapeutic effectiveness in the granting of patents for drugs that are modifications of other drugs.

The message I sent to the Congress made several other suggestions which, it would seem to me, might appropriately be included in the bill now before your committee. They are:

1. Drug manufacturers should be required to keep records on and report to the Department of Health, Education, and Welfare any indications of adverse effects from the use of a new drug or antibiotic.

2. The Department of Health, Education, and Welfare should be empowered to withdraw approval of a new drug on the basis of a substantial doubt of its efficacy or safety.

3. The provisions requiring drug manufacturers to maintain facilities and controls to assure the reliability of their product, and to institute more effective inspection to determine whether drugs are being manufactured in accordance with the law, cannot feasibly be limited to a particular class of drugs and should therefore be made applicable to over-the-counter as well as prescription drugs.

4. An enforcible system of preventing the illicit distribution of habit-forming barbiturates and amphetamines should be provided.

The need for these amendments is based upon the accumulated years of experience of the Food and Drug Administration, and they appear to be properly within the scope of the subject matter dealt with in the extensive hearings of the Subcommittee on Antitrust and Monopoly.

In addition, I recommend two minor procedural changes:

1. In the section having to do with the rendering of advisory opinions by the Department of Health, Education, and Welfare to the Patent Office on the therapeutic effect of modifications and combinations, I suggest that the requirement providing the applicant with an opportunity for a plenary hearing be deleted. Under the provisions of S. 1552 in its earlier form, the Secretary's finding was conclusive and therefore should have required a formal hearing. But since the bill in its present form requires no binding decision to be made by the Secretary, the requirement of the hearing seems inappropriate and would tend to unduly delay the rendition of the Secretary's purely advisory opinion to the Commissioner. The action of the Commissioner is, of course, subject to well-established de novo judicial review.

2. The provision requiring the filing of patent agreements with the Commissioner of Patents should more properly be in the form of an amendment to the Patent Act rather than the Sherman Act.

I have asked the Department of Health, Education, and Welfare to transmit to you promptly any additional recommendations to strengthen, clarify, or improve the bill that it may have and that will not require additional hearings or substantially delay action on the bill.

It would not appear that the consideration of these proposed changes should occasion any further delay in the approval of this important measure.

With the above changes, S. 1552 adequately deals with the most pressing problems in the drug field, and it is my sincere wish that it be enacted during the current session of the Congress. Your cooperation and assistance to this end will be greatly appreciated.

Sincerely,

JOHN F. KENNEDY.

Mr. KEFAUVER. Mr. President, I also ask unanimous consent to have printed in the RECORD an editorial published in the Washington Post and Times Herald, April 21, 1962.

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

J. F. K. ON DRUGS

President Kennedy has followed up commendably on his general recommendations in the recent consumer message by directly appealing for the passage of drug legislation now before the Senate. In a letter to Chairman JAMES O. EASTLAND, of the Senate Judiciary Committee, Mr. Kennedy not only specifically endorsed proposals for policing the drug industry but suggested some useful improvements on the pending legislation.

In essence, the President approved suggestions for testing drugs for reliability and efficacy as well as safety. He asked for the standardization of drug names, in order to encourage physicians to prescribe medicine by generic rather than more costly brand names. He proposed that Congress require disclosure of adverse as well as beneficial effects in drug promotion and that consideration be given to therapeutic effectiveness in granting patents for drugs that are modifications of other drugs.

All of these reforms are embodied in the bill that is the fruit of 28 months of hearings and investigation by Senator KEFAUVER's Antitrust Subcommittee. In addition, drawing on advice of the Food and Drug Administration, Mr. Kennedy urges that drug manufacturers be required to keep records of the adverse effects of new drugs. His other suggested modifications are technical and are designed to tighten-up the application of the bill.

The President sidestepped the question of requiring that drugs be licensed, as they are in most other major democracies. But since this provision has been dropped from the present legislation, the White House is wise to focus attention on what can be achieved in this Congress. The major provisions of the bill before the Judiciary Committee are broadly supported by medical authorities and should have the effect of assuring better and cheaper drugs for the public. We hope Mr. Kennedy also follows up on other important recommendations in his consumer message.

Mr. KEFAUVER. Mr. President, the editorial commends the President for following up his general recommendations with respect to drugs in his recent consumer message by "directly appealing for the passage of drug legislation now before the Senate."

This proposed legislation, as the editorial correctly notes, "is the fruit of 28 months of hearings and investigation by Senator KEFAUVER's Antitrust Subcommittee." The editorial also correctly notes that the major provisions of the bill, S. 1552, now before the Senate Judiciary Committee, "are broadly supported by medical authorities and should have the effect of assuring better and cheaper drugs for the public."

HIGHER FACULTY SALARIES NEEDED IN AMERICAN COLLEGES

Mr. YARBOROUGH. Mr. President, an interesting and highly informative article on the subject of salary levels for the academic profession was published in the New York Times Sunday, April 29, 1962.

The report touches on the possibility of a relation between academic salary levels and the quality of educational institutions in the United States, and shows high and low points in various parts of the country.

The article, by Fred M. Hechinger, is based on a report made by the American Association of University Professors, titled "The Economic Status of the Academic Profession." Since I am a member of the Senate Subcommittee on Education and strongly support bills now pending in the Congress to aid higher education, and since the Congress is exploring means by which to assist in the educational advancement of our country and is therefore interested in all problems related to this goal, I ask unanimous consent to have printed in the RECORD the article published in the New York Times entitled "Dollar Yardstick: Report on Professors' Salaries Hints at Quality Criteria."

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

[From the New York Times, Apr. 29, 1962]

DOLLAR YARDSTICK: REPORT ON PROFESSORS' SALARIES HINTS AT QUALITY CRITERIA

(By Fred M. Hechinger)

An extensive survey of faculty salaries by the American Association of University Professors, made public last week, combines in its findings a mixture of progress and danger signals. A total of 588 colleges and universities were taken under the close economic scrutiny of a committee headed by Dr. William J. Baumol, professor of economics at Princeton. By contrast with most educational statistics, this survey is up-to-date—it compares faculty salaries during the 1961–62 academic year to those of the year before.

By way of summary the survey finds the overall salary picture better by 6.5 percent than a year ago, but adds that at many institutions salary levels remain "scandalously low" and the public universities, which had been doing well in the past, are slipping.

What are the key findings and their implications?

1. Bright spots: Although Harvard, with average salaries of just over $15,000 and an average for full professors of $18,750, is in a class by itself, the list of top-level averages just below Harvard's level now includes nine other institutions: Princeton, Duke, Yale, Amherst, the Massachusetts Institute of Technology, and the four municipal colleges of the City University of New York. Duke is the first southern university to be placed in the top list.

IMPROVED CONDITION

Teachers' colleges and church-related institutions, which started from a dangerously low level and therefore still have a long way to go, have improved significantly in the past year.

The AAUP considers it especially praiseworthy that "many of the institutions which are not the large and notoriously affluent" are crowding the lists of those with outstanding performance."

If there is any relationship between such improvement of faculty salaries and educational excellence—and at a time of intensive competition for college teachers this is inevitable—then the extensive "honors lists" in the report may add new yardsticks by which institutions can be judged. This is important because too few yardsticks now exist.

Faculty salaries: Average annual pay in U.S. colleges, 1961–62

Professors	$11,595
Associate professors	8,926
Assistant professors	7,461
Lecturers	6,706
Instructors	6,033

What is most encouraging is that "honors lists" find side by side some well-known prestige colleges and other institutions which, it would be safe to bet, few college applicants have ever heard of. It would, of course, be foolish to equate colleges simply because they are doing equally well by their teachers or are improving salaries at the same rate, but it is worth looking at Ripon College in Wisconsin or the University of the Pacific in California if they are on the same improvement list as Cornell and Bryn Mawr. It is even more appropriate to look at, say, Lake Forest College in Illinois or Harvey Mudd College in California if, as happens to be the case, they share the actual salary rating with a Barnard, Brandeis or California Institute of Technology.

Finally, the AAUP has added a special "honor roll" of the 20 institutions which are offering the highest faculty salaries per full-time students enrolled. In other words, this measures the high investment in teaching

staff made by some institutions on behalf of a relatively small number of students. Admittedly this is a "somewhat controversial" yardstick. In some instances, it may merely signify that the faculty's time is squandered. But in general, a high ratio of well-paid teachers can be taken as a hint of high quality. And while this list includes some of the prestige colleges, it also is significant because some less widely recognized institutions are represented on it.

2. Trouble spots: here are wide areas of such serious lag that they may constitute a threat to American higher education at a time when a demand for unprecedented expansion is imminent. Thirty-one institutions, for example, were found to be paying their full professors less than an average of $6,000.

The most depressed region remains the South. Typically, southern colleges and universities lag behind comparable institutions in the rest of the country by between 12 and 20 percent.

But probably the most serious and, from the national point of view most ominous, aspect of the report is its summary of the lack of progress of State and municipal universities.

STATE UNIVERSITIES LAG

Whereas five private independent universities were in the highest category, no State university reached the very top level.

Even this is not as serious as the fact that almost half of all public universities are in category D on a scale that ranges from AA to F. Only 3 percent of the independent institutions range as low.

Rapid growth and huge enrollments are, of course, a problem for many State universities. As a consequence, they must rely heavily on the services of low-salaried instructors to cope with masses of sections, especially in the required courses of freshman and sophomore years. But this also depresses quality, particularly at a time when better prepared high school students are more demanding.

This is a crucial problem now that the public institutions already enroll more than 60 percent of all students and, according to some predictions, may eventually educate 80 percent. Yet, faculty recruiting will become much tougher.

TREND MAY REVERSE

If the gap between private and public universities thus becomes wider, the trend toward academic excellence which marked public institutions in recent years would be reversed. And this would inevitably mean that students who cannot afford the rising tuition costs of private institutions would be condemned to an education of lower quality than can be afforded by their wealthier contemporaries. This would be a serious blow to that equality of opportunity which a combination of scholarship aid in private colleges and free or low-cost education in high-quality public colleges has offered in the past.

Further details on the report, which is titled "The Economic status of the Academic Profession," may be obtained from the AAUP, 1785 Massachusetts Avenue NW., Washington 6, D.C.

Mr. YARBOROUGH. The present occupant of the chair, the distinguished Senator from Montana [Mr. METCALF] is one of the most able exponents of increased aid to higher educational institutions in our country. I believe he, too, will be interested in the article.

MORE RATHER THAN LESS AIR TRANSPORTATION IS NEEDED FOR ALASKA

Mr. GRUENING. Mr. President, the House-Senate conference committee on S. 1969, the supplemental air carrier bill, has been so amended in the House as to change completely the concept and purpose of the bill. The Senate version of S. 1969 would have acted to preserve the supplemental air carriers and take advantage of the yardstick which they provide for establishing and maintaining low cost competitive air transportation. The bill, with the crippling House amendments, would, in effect, create a starvation diet for most of the supplemental air carriers and most probably would result in the elimination of this very necessary group of competitors to the airline industry.

Too often, the CAB has used its authority to eliminate small air carriers whose only crime has been to exceed the standards of frequency and regularity in their competition with the major airlines.

In Alaska the Territorial legislature twice memorialized the CAB to permit the continued operations of the number of air carriers that were serving Alaska up to as late as 1953. However, these appeals were totally disregarded and every one of the supplemental carriers whose low cost passenger and cargo transportation had filled a great need for Alaska, were put out of business. Although my colleague, [Mr. BARTLETT] and I protested against these actions at the time along with chambers of commerce, labor organizations, and citizens of Alaska, the services of these carriers were terminated. The consequences were that transportation charges on cargo from Seattle to Anchorage and Fairbanks, Alaska, increased. Passenger fares also increased. I pointed out, and the Senate Small Business Committee report of 1951 made clear, that Alaska did not have the alternative rail and highway systems that are available in the continental United States, and therefore should receive special consideration from the CAB. The Senate report recommended this special consideration for Alaska but these recommendations were totally ignored. If the pattern of congressional action is to support the restrictive policies of the CAB, we can look forward only to a monopoly control of our air transportation system under which the average consumer in Alaska or elsewhere will be unable to register his demand for lower price transportation. In other words, the average consumer is to be economically disenfranchised, having no lower cost service to turn to.

This, I believe, is the heart of the question we must face. Is the consumer to be permitted an opportunity to select, if he so desires, a slower but safe transportation at lower cost, or is this choice to be denied him? I have been informed that three tragic accidents in charter transportation were the cause of much concern in the House, and consequently may have resulted in restrictive provisions in the House language in S. 1969, but I feel that it should be pointed out that these accidents particularly involve charter operations as differentiated from ticketed supplemental air carrier service and that the House bill nevertheless is not concerned with charter operations. The strange and important story appears to be that the opponents of the original Senate bill are attempting to eliminate the independent ticketed operations when such operators have an amazing history of having no passenger fatalities for the last 10 years. Such a record is unequaled by any other group of carriers in the airline industry. In addition to this exemplary record of safety, these ticketed supplemental carriers have consistently provided lower cost transportation between essential traffic points throughout the Nation. Of fundamental importance to an area such as Alaska is the continuation of this service.

The Congress should have new hearings to expand rather than reduce the field of economic operating authority permitted these carriers. It should be especially noted that these are the only carriers that offer price competition. The larger scheduled air carriers merely compete at the same fare levels.

THE FINANCING PROVISIONS OF THE STANDBY PUBLIC WORKS ACCELERATION ACT OF 1962

Mr. HICKENLOOPER. Mr. President, the Republican policy committee and those members of the Republican conference who were present at a meeting May 1 authorized a statement regarding the financing provisions of the Standby Public Works Acceleration Act of 1962.

At the direction of the committee the action was released to the press.

I ask unanimous consent to have printed in the RECORD at this point a copy of this press release.

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

The Republican policy committee, and those members of the Republican conference present at the meeting today, unanimously resolved to oppose the financing provisions of the Standby Public Works Acceleration Act of 1962, as reported by the Committee on Public Works.

Despite the efforts of Republican committee members to revise the bill submitted by the administration, the bill reported to the Senate contains provisions which set a dangerous precedent and strike at the financial stability of institutions in which the American public has great faith and confidence.

According to the committee's report, the bill as introduced would have authorized the President of the United States under certain circumstances to expend $2 billion for new public works as often as three times within a period of 2 years. Republicans on the committee opposed any standby authority, and the committee limited this authority to one expenditure of $2 billion.

The provisions which still remain in the bill, however, and to which the Republican Party object most vigorously, would allow the President of the United States, and those to whom he would delegate the power, to take up to $2 billion—without the approval of the Appropriations Committee—of the funds set aside in the U.S. Treasury for the World Bank (International Bank for Reconstruction and Development), the Housing and Home Finance Agency, the Federal Home Loan Banks, the Federal Savings and Loan Insurance Corporation, and even the Federal Deposit Insurance Corporation.

The four Federal agencies involved were established by the Congress of the United States to protect the homes and savings of American citizens. Their reserve capital would be switched to public works projects,

under this bill, at a time of crisis when these funds would be most needed.

The Congress of the United States never intended these funds to be used for any purpose other than that specified by law. It is inconceivable that power be given the President not only to bypass the appropriations process, but also to transfer from agency to agency funds authorized by the Congress for established programs and specific purposes.

This vast money scheme could jeopardize the financial stability of the agencies concerned, and would constitute a unique and peculiar method of deficit and backdoor financing. The Republican members of the Public Works Committee moved to strike this provision in committee, and when it was not removed voted against the bill.

The Republican Party intends to make an issue of this financing method when the standby PWA program comes before the Senate, and will do its utmost to place the facts before the American people.

NARCOTICS HOSPITAL CONSTRUCTION AND MEDICAL RESEARCH

Mr. JAVITS. Mr. President, I am pleased to note the administration's favorable report to the Senate Judiciary Committee on S. 1694, the bill to provide for civil commitment of certain narcotics addicts for medical treatment in lieu of criminal prosecution. This bill, introduced by my colleague, Senator KEATING, myself, and a bipartisan group of cosponsors, was part of a series of bills which were designed to complement each other in a forward-looking approach to combating this grave national problem.

But clearly, a system of civil commitment must have both adequate physical facilities for treatment and a constant effort to develop the medical techniques necessary to make such treatment permanently effective. Such a bill was also introduced by virtually the same group of sponsors—in this case with me as principal sponsor. It is S. 1693, which provides for narcotics hospital construction needed to receive those addicts who are committed under the provisions of S. 1694, where there is the major density of such addicts. Present facilities at Lexington, Ky., and Fort Worth, Tex., are, of course, essential, but cannot fill the on-the-spot need if the program of civil commitment under S. 1694 is to work out successfully. S. 3098, introduced subsequently, provides for Federal aid to continuing research into methods of control and cure of addiction.

I ask unanimous consent that an article in the splendid series of the New York Journal-American on this subject be inserted in the RECORD at this point in my remarks. It underscores the great immediate need for additional hospital facilities. I also ask unanimous consent to have inserted an editorial in the Journal-American which supports this view.

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

[From the New York Journal-American, Apr. 27, 1962]

THE ADDICT'S PLIGHT: NO PLACE TO GO

(By James D. Horan, Dom Frasca, and John Mitchell)

His name is Edmond. He is 27, but he looks older. Suffering has lined his face and deadened his eyes.

Edmond has been addicted to heroin for 3 years. He is trying to kick the habit. But he must wait. And for Edmond, time is not measured by the hour hand of the clock. It is measured by the seemingly endless minutes between "fixes."

At this moment there are 400 others like him in New York City. His story could very well be all of theirs.

HE WANTED HELP

Edmond came yesterday to the New York Journal-American from his home in the Bronx. He sought help.

"I'm desperate, I need help. You're my last resort," he pleaded.

"It's getting hard to find there on the street," he remarked, referred to the heroin he injects into his arm three times daily.

One of these reporters went with Edmond to the admissions office at Manhattan General Hospital, 18th Street and Second Avenue.

The clerk, a woman with sympathetic eyes, was pleasant.

"You've been here before, haven't you?"

CALL US MONDAY

It was more of a statement than a question.

Edmond told her he had been there twice before as an addict-patient. She pulled his card from the file.

"You call us on Monday," she told him.

Monday was 100 hours away.

"He needs help now," pressed the reporter, who identified himself as Edmond's friend.

"I can see he does," the woman nodded. "But his name won't come up before the hospital board until Monday."

"What happens then?" the reporter asked.

"If readmission is approved the name goes on the bottom of the waiting list."

"How many on the list?"

"One hundred and fifty," she replied.

Edmond shrugged his shoulders, as if to say, "See, what's the use?"

"We're taking about four addict patients a day," the clerk continued, as if to explain that the fault wasn't hers.

"That means Edmond won't get a bed for 37 days," the reporter observed.

"More or less," the clerk affirmed. "I'm sorry. We just have 97 beds here for men. First applicants get priority."

IT'S TIGHT HERE

"What are Edmond's chances at Metropolitan Hospital?" the reporter asked.

"It's tight here," the woman replied. "The wait is much longer.

"I'm sorry. Call us Monday."

The words hung in the air for a few moments. Then Edmond and the reporter headed uptown in a cab.

Riding through sun-splashed streets, the city seemed at peace. Kids scampered in the park, women peered in shop windows, elderly men talked on street corners.

NO BEDS AVAILABLE

And the city's addicts, hunched with pain and sickness, besieged New York's narcotics wards and were turned away by the hundreds.

The reason: no available beds.

Waiting periods range from 2 to 4 months.

Nowhere in the city—or out of it—can an addict obtain immediate admission to a hospital unless he is prepared to pay at a private institution.

"It's no good the way it's set up, you know?" Edmond remarked during the taxi ride. "You stay in a hospital 2, maybe 3 weeks. You're over it physically, but it's still in your mind."

"And there's nothing to do. So you just hang around back in your old neighborhood and you associate with your friends and they're using the stuff and sooner or later you're sticking a needle in your arm again."

The reporter asked what he would suggest to avoid this posthospital trap.

ONLY ONE SOLUTION

"Man," said Edmond, blinking at sunlight on the East River. "There's only one thing. Get out of town."

Then they were walking down a long hallway on the third floor of Metropolitan Hospital, 1st Avenue and 97th Street. There are 50 beds for addicts here. Half for boys, half for men.

"He needs a bed," said the reporter to a nurse in the mental hygiene clinic.

The nurse looked at Edmond with genuine concern. She seemed to be echoing her counterpart downtown because suddenly she said:

"I'm sorry. He would have to be screened first. You want an appontment?"

"When?"

The nurse consulted her datebook. "June 11," she said.

"Nothing before then?"

"I can give you a standby for May 7. That means if the applicant scheduled at that time doesn't show up, you get the appointment."

Edmond's last "fix" was beginning to wear off. His eyes watered.

"I can't wait that long," he said. "I need help today."

"Try Manhattan General," said the nurse.

Edmond smiled. "Ma'am," he said. "We tried it. There's just no place."

There was "one place," however. A call to Mrs. Angela Gallo at Manhattan State Hospital, which has a backlog of applicants equivalent to 2½ weeks waiting, drew hopeful response.

Mrs. Gallo said Edmond could have an appointment at 9 a.m. today to be screened for admission to the State's addict ward at Central Islip, Long Island.

"If everything goes all right," she said, "he'll be under treatment out there next Thursday. That's the earliest possible date."

Edmond has promised to keep his appointment with Mrs. Gallo.

But in the twilight world of heroin addiction, where physical craving for dope is intense, appointments are not always honored.

Edmond needed a bed yesterday.

What he needs today might be something entirely different.

WAGNER ACTION ASKED

The problem facing addicts was considered so acute that a Brooklyn church leader today urged Mayor Wagner to take emergency steps to provide more beds.

The Reverend Richard L. Francis, executive secretary of the Brooklyn Division of the Protestant Council of New York City, wired the mayor:

"New York City must act now to provide hospital beds for these people. They should not have to wait 1 month to get into a hospital, or even 1 week."

Dr. Alexander K. Krueger, general medical superintendent for the department of hospitals, said the city was expanding its bed facilities for addicts rapidly. He said the present total of 355 beds for addicts in municipal or city-supported institutions would be increased to 480 in mid-July.

The film, "Assignment: Teenage Junkies," detailing the New York Journal-American expose of the narcotics racket, will be shown to several hundred teenagers and their parents tonight at the Upper Park Avenue Baptist Church, 85 East 125th Street.

[From the New York Journal-American, Apr. 30, 1962]

WE NEED U.S. NARCOTIC HOSPITAL

A survey by this newspaper has disclosed the tragic fact that there are more than 400 dope addicts in this city desperately seeking help to kick the vicious habit that has made their lives a living hell.

But no help is available because every city and State institution that has facilities for rehabilitating these pitiful victims of narcotics is jammed to capacity.

Not only are there no beds available—there is a waiting list so long that addicts who apply for admission are told to come back next week, even next month.

And medical experience has shown that no addict can kick the habit by himself. He must undergo withdrawal from the drug under supervision which only a hospital can provide.

Under the plan announced by Mayor Wagner, the number of beds available in city institutions will be doubled to a total of 710 this year. This should be sufficient to handle voluntary commitments.

But under the new Metcalf-Volker law enacted by the State, another 6,000 persons arrested each year in this city on narcotics charges will be able to apply for hospital treatment instead of going to jail.

Under what standard of morality could the courts decree that addict A may be committed to a hospital because a bed is available and addict B must go to jail without treatment because no beds are available?

Theoretically, if 6,000 defendants eligible for Metcalf-Volker treatment were to occupy beds in a security hospital for 30 days each—the standard minimum for physical withdrawal—we would need 500 beds for this group.

Yet all city hospitals presumably would be filled with voluntary patients. Where are we going to find 500 additional beds, since the State now provides less than 200?

That is why we must have a Federal narcotics hospital in the New York area if we are to implement effectively the humane provisions of the Metcalf-Volker law, which treats the addict as a sick person, not a criminal.

It is a shameful fact that although the metropolitan area has one-half of all the dope addicts in the country, the nearest Federal rehabilitation center is in Lexington, Ky.

And Lexington has no facilities for aftercare, which is considered essential if the addict is to be kept from returning to dope. With a Federal hospital here, such aftercare would be available right in the area.

The objection has been raised that a narcotics hospital might be expensive to operate. Police estimate the average addict steals an average of $50 a day to finance his habit. Certainly, hospital ward treatment for one addict is going to cost less than that.

We believe that President Kennedy should put the power and prestige of his office behind the Javits-Keating bill which calls for a Federal hospital here with the Government paying 75 percent of construction cost and 60 percent of operating expense.

If you agree, clip and sign this editorial and mail it to the President, the White House, Washington 25, D.C.

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

JAMES M. NORMAN—LITERACY TEST FOR VOTING

The ACTING PRESIDENT pro tempore. Without objection, the Chair lays before the Senate the unfinished business, which will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (H.R. 1361) for the relief of James M. Norman.

The Senate resumed the consideration of the bill (H.R. 1361) for the relief of James M. Norman.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the so-called Mansfield-Dirksen amendment in the nature of a substitute.

Mr. ROBERTSON. Mr. President, before beginning my remarks against the so-called literacy test proposals, I would like to commend the senior Senator from Texas [Mr. YARBOROUGH] for the position which he took when the Senate leadership moved to substitute S. 2750 for the body of H.R. 1361, a bill which would grant relief to James M. Norman, a citizen of the State of Texas.

The distinguished senior Senator from that State said last Friday:

I share my constituent's surprise at finding this bill (H.R. 1361) the center of another great constitutional controversy.

I might add that the junior Senator from Virginia is no less surprised at the method employed to bring S. 2750 to the Senate floor, when this bill had been referred to the appropriate committee but 3 months previously and when subcommittee hearings on the bill had not even been printed, much less acted upon, prior to the leadership's action.

The senior Senator from Texas stated further:

Mr. President I consider that I am still bound by the obligation I undertook to a constituent to secure action for the relief of James M. Norman, American. Accordingly, I shall be compelled to vote against any substitutes, amendments, or other motions which would prevent the Senate from undertaking action on the subject matter of H.R. 1361 now before us.

I commend the senior Senator from Texas for his unwillingness to depart from normal Senate practice, particularly when this departure would deny one of his constituents what the Senator considers to be appropriate relief.

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

Mr. ROBERTSON. I yield.

Mr. RUSSELL. I was interested in the commendation by the Senator from Virginia of the Senator from Texas [Mr. YARBOROUGH] for undertaking to prevent his constituent from being a victim of the proposed amendment. Undoubtedly the constituent of the Senator from Texas is a fine man. I would not like to see him victimized. But does not the Senator agree that the great victim of the proposed legislation, should it ever be enacted into law, would be the Constitution of the United States, under which that constituent is tilling his soil and enjoying his liberties as an American citizen?

Mr. ROBERTSON. There is no doubt about it. The measure would pull out two of the cornerstones of the Constitution—section 2 of article I and the 17th amendment—which expressly give to the States the exclusive control of the qualifications of their electors, subject only to the 14th, 15th, and 19th amendments.

We from the South have stood upon the floor of the Senate hour after hour, and day after day, commencing early last week, continuing through this week, and prospectively into next week, explaining first the provisions of the Constitution and all of its amendments, explaining that our Founding Fathers, the courts, and including even the Reconstruction Congress left no question about the fact that the Constitution, as framed, reserved to the States the right to determine the qualifications of electors.

We have cited Willoughby on the Constitution, Coolidge on the Constitution, and Corwin on the Constitution. We have called the Senate's attention to the comments of the attorneys general of nearly all the States of the Union and of many of our country's ablest constitutional lawyers. They are almost unanimous in the opinion that the measure before the Senate is clearly and unequivocally unconstitutional.

However, we are told that a petition for cloture will be filed. The opposition, we hear, will attempt to muzzle us, strangle us, notwithstanding the fact that all Senators have taken a solemn oath to uphold and support the Constitution.

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

Mr. ROBERTSON. I yield.

Mr. RUSSELL. I am interested in the statement of the Senator. I am surprised that an attempt to apply a gag rule has not been made earlier. Those who support the measure, to protect what is left of their consciences, do not remain in the Chamber in order to hear the unanswerable arguments against the bill on the ground that it would be violative of the Constitution. They stay away from the floor of the Senate. The argument resolves itself down to the question, "What is a little thing like the Constitution of the United States between friends in an election year when we need a few votes? Therefore we will gag this group and proceed to run roughshod over them and the Constitution of the United States."

Mr. ROBERTSON. A great Englishman named Lord Bacon wrote an essay on truth. He started the essay with the statement, "What is truth? said jesting Pilate; and would not stay for an answer."

I believe I have the truth, certainly several pages of it. Who has remained in the Senate Chamber for an answer? Only the distinguished Senator from Georgia [Mr. RUSSELL] and myself. We have before us a serious issue. There is an attempt to undermine the Constitution by running roughshod over the one amendment—the 10th amendment—without which the Constitution would never have been adopted. Senators will remember Madison's assuring the colonists that:

As soon as we meet, I will put in this Constitution the essence of George Mason's Bill of Rights.

One of our great Presidents, Woodrow Wilson, said:

I would rather have been the author of that instrument than of any political document that has ever been framed.

The Bill of Rights is a part of all State constitutions in one form or another. It expresses the philosophy of government of those in Virginia who contributed, in my humble opinion, as much or more than anyone else in any other State to the formation and birth of a new nation, a nation which gave us a private enterprise system within the framework of American constitutional liberty.

Under that system we have prospered. Nevertheless we now have a proposal before us to destroy one of the very essential principles upon which our Union

of self-governing sovereign States was founded.

How can we have a strong, representative democracy without intelligent voters? The great political philosopher from Virginia, Thomas Jefferson, said:

> I am willing to trust the judgment of the people when they are informed.

He did not say, "Let every Tom, Dick, and Harry vote." Oh, no; he did not say that. He said, "Let us educate the people."

Thomas Jefferson wanted public schools in Virginia. He wanted the university established. Why, Mr. President? It was because he believed that the people could be trusted provided they were informed.

We say that our classrooms are bursting at the seams; that our schools can no longer accommodate the great population increase; that we are in a scientific age, and that more and more intelligence is required of our people in order to compete successfully with other nations.

The literacy test bill, therefore, is a most definite step backward.

Furthermore, it is farcical in this day of social promotions to provide that a student who has completed the sixth grade shall, by act of Congress, be declared literate.

Schools make social promotions because they choose not to let the big fellows with broad backs and small minds stay long in one grade. A person might be a veritable dumbbell, but few school authorities would have him at a grade level compatible with his intellectual achievements. He may not be able to read B from bullsfoot, and he may not even know who is on the ticket, but his sixth-grade certificate would, nevertheless, qualify him to vote.

On the other hand, someone who had not gone to school, and who may be as smart as Abraham Lincoln—who did not go to school either—would be subject to a test.

We could at least require a voter to meet the standards expected of a foreigner before he can be naturalized. What do we require of a foreigner? We provide that he must be able to read and write English. We do not say to a man from Spain, for example, "If you have finished the sixth grade in Spain, you can qualify for citizenship in this country. You do not have to read and write English. You do not even have to know anything about our form of Government or our history. If you have finished the sixth grade in Spain, we will make you a citizen after you have lived here for 5 years."

We do not do that.

That is one of the absurdities of this whole thing.

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

Mr. ROBERTSON. I yield to the Senator from Georgia.

Mr. RUSSELL. The Senator is making a very telling point, which I have not heard emphasized heretofore. It so happens that one of the greatest scholars that I have ever known never went to school a day in his life. Yet he could read Greek and he could read Hebrew. He had worked perhaps more diligently than anyone else to educate himself. He had done more to educate himself than most people do who have degrees of all kinds from various schools and colleges and universities throughout the land. As the Senator points out, a person who was probably forced out of the sixth grade, and was finally forced out of school as being completely incapable of digesting any education whatever, could be held, under the provisions of the bill, to be entitled to vote. On the other hand a man who is a scholar and who can speak 8 or 10 languages, and who can read the hieroglyphics of the past and understand and read the Rosetta stone, could be subjected to any examination that a registrar might desire to impose upon him.

Mr. ROBERTSON. That is exactly correct. It shows the unreality of the position of the Attorney General, when he says that the provisions of the bill do not represent a qualification, but only a test to which all States shall conform. He does, however, say that if this bill did fix voter qualifications—and to hold that S. 2750 does not do this challenges commonsense—it would be unconstitutional.

The Attorney General went to a good school, Mr. President. He graduated from the University of Virginia Law School. He was trained in sound principles there. However, somehow the Attorney General has gone overboard on this matter, particularly in view of his admission, I believe, before the Subcommittee on Constitutional Rights that he could not cite even a justice of peace ruling to sustain his position on the bill.

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

Mr. ROBERTSON. I yield.

Mr. RUSSELL. I understood that the distinguished Senator from North Carolina, who is chairman of the subcommittee, had addressed a letter to the attorneys general of the several States of the Union, seeking their opinion as to the constitutionality of this measure, and that practically all of them in their replies had analyzed the bill based upon their experience as attorneys general for many years in dealing with constitutional matters, as being wholly and completely unconstitutional. Is that a correct statement?

Mr. ROBERTSON. The Senator is correct.

The attorney general of Virginia, Hon. Robert Y. Button, said that the bill is clearly unconstitutional. A former attorney general of Virginia, one of the ablest teachers in my State, Hon. Frederick F. Gray, testified before the subcommittee for an hour and made one of the most convincing arguments. If it becomes necessary for the Senate to proceed beyond next Wednesday—and I hope it will not be, because we really have much important business to consider—I plan to read that wonderful dissertation by the former attorney general of Virginia, which illustrates quite clearly the constitutional flaws of this measure.

Mr. RUSSELL. I dislike to draw comparisons, because they are always invidious; but as between the training and experience of men who have been elected, in most instances, by the people of their States to serve as attorneys general, and the present Attorney General of the United States—all of the State attorneys general may not have replied, but a pretty good sampling has been received from Alaska to Florida; there may have been some in between who did not answer—none of the State attorneys general contended that the bill is constitutional.

I agree that the Attorney General of the United States is a brilliant, able young man.

Mr. ROBERTSON. He attended a first-class law school.

Mr. RUSSELL. I shall not get into an argument about that. All of us believe our respective schools are the best. There was a time when a man could hardly get a job in Washington unless he had been graduated from Harvard Law School. But that day is past. I am glad to see that the University of Virginia has been able to have one of her graduates become Attorney General of the United States.

The President once, in attempted humor, said that some persons were objecting to his appointing his brother Attorney General. He said he did not see anything wrong with giving his brother a little on-the-job training. Unfortunately, so many persons throughout the country took that statement seriously that, to my knowledge, it has not been repeated.

Mr. ROBERTSON. He cannot be accused of a lack of vigor.

Mr. RUSSELL. Many persons know Mr. Kennedy only as a graduate of the University of Virginia Law School; but he also worked for a long time on Capitol Hill.

Mr. ROBERTSON. And he served here as a conscientious young attorney.

Mr. RUSSELL. We know he is an able, diligent young man; but he has not had nearly the experience in the actual operation and application of constitutional law as have a large number of attorneys general of the States, men who are, in most instances, elected by the people, not appointed; and who were elected on the basis of their maturity and understanding.

I think we may safely say that the mere fact that a man serves in the exalted office of Attorney General of the United States does not necessarily make him a constitutional lawyer. Greater qualifications are necessary for the attorney general of a State, who has perhaps served in that capacity for a number of years.

Mr. ROBERTSON. That is correct. I think that, with all due modesty, I can boast of the reputation of Dr. D. F. G. Ribble, dean of the Law School of the University of Virginia, where he teaches constitutional law. Prior to the unfortunate development in 1954, when the Supreme Court began to cite sociological works as authorities for amending the Constitution, Dean Ribble was cited as a constitutional authority no less than any current teacher or lecturer on constitutional law in the Nation. I submitted to Dean Ribble my rather extended discussion of the voter qualification bill and

asked him to check the validity of my constitutional arguments. He replied by giving his full approval to them. He also was highly commendatory of Attorney General Gray's statement, which I had sent him.

So I maintain that we who claim that the bill is unconstitutional have the backing of the legal fraternity, a fraternity which justly claims recognition for its constitutional analyses. The Attorney General of the United States and Dean Griswold, of Harvard, a member of the Civil Rights Commission, admitted, I believe, that they could not cite any real constitutional authority for their position. That is the whole thing in a nutshell.

Mr. RUSSELL. One or the other of them—I do not now recall which it was, although I read their testimony—testified that the bill would be unconstitutional were it not for the declaration of facts which precedes the legislation.

Mr. ROBERTSON. I shall discuss that. Everyone who has ever studied logic will concede that a deduction can be made from a fact. But a deduction cannot be made from a deduction; that is not good logic, and it is not good law either.

Mr. RUSSELL. The Senator knows, however deplorable the fact may be, that there is no basis for changing the Constitution of the United States by statute. A rash of murders may break out in some State, and the State may be incapable of grappling with the situation. But to have Congress enact a statute to punish the murderers in Federal courts because the State government could not handle them properly would certainly violate the Constitution. Unless such a situation happened to accur in one of the Southern States, no one would think of seeking to have Congress pass such a statute.

Then there might be two statutes: one for the Southern States and one for the rest of the Nation.

Mr. ROBERTSON. There was a time when the Supreme Court would uphold the limitations upon the spending powers of Congress. Congress, those former judges held, could spend only if the purchase were authorized under the powers specifically delegated to Congress in the Constitution.

Congress then resorted to the device of the pious declaration. Congress said, "We want to spend for this particular project. The project is in the general welfare. Although the project may be for the benefit of a single county, the welfare clause of the Constitution gives Congress the power to spend for anything which it says is for the general welfare."

That question went to the Supreme Court. The Supreme Court said, in effect, "We have tried for the last time to hold Congress within its powers. If Congress wishes to construe the general welfare clause as an unlimited grant of power, in spite of the fact that all grants of power to the Central Government are specific—as confirmed by the 10th amendment—then, Congress, you be the keeper of your own conscience. You have taken an oath to uphold the Constitution. If you now wish to violate it and spend for what you please, that is up to you."

What has been the result? Congress no longer bothers even to salve its conscience with a pious declaration in order to spend for what it chooses.

Mr. RUSSELL. Mr. President, I should like to ask the Senator from Virginia what would be the effect of this proposed law on the law of a State regulating the registration of voters, if a State had a law providing that a person who had passed the fourth grade or the fifth grade of grammar school should be permitted to register. Would not this measure likewise strike down that law?

Mr. ROBERTSON. The point is that this measure would violate the rights of the States to determine all voter qualifications.

Furthermore, if Congress can provide at this time that completion of the sixth grade shall be the standard, subsequently Congress could provide that completion of the fourth grade shall be the standard; or Congress could go in the other direction by providing that only those who had graduated from high school could register and vote. So the standard could fluctuate up or down, forward or back, according to the uncertain majorities in Congress and the political considerations of the future.

At the present time, we are supposed to be moving toward what is called the New Frontier. Evidently some think we shall reach it sooner if everyone is allowed to vote. However, that trend could be reversed—with the result that perhaps in the future only property owners would be allowed to vote.

So we see the evil which was recognized by the framers of the Constitution. They did not attempt to tell the States what the qualifications of voters must be.

If S. 2750 were to become a law, and if by chance the Supreme Court were to overrule every decision it has ever made on this subject by upholding such a law, the States would have no protection.

Mr. President, let no one think that the effects of this measure will be felt only by Puerto Ricans in New York or by Negroes in some 100-odd southern counties. No, Mr. President; this measure would apply to every State of the Union.

Some have asked, "Why do not the proponents of S. 2750 follow the constitutional method in this case, as was done in connection with the attempted repeal of the poll tax?" Mr. President, it is significant that only five States would be affected by the poll-tax repeal. Those who favored a constitutional amendment to accomplish this result thought they could overrun that small group of States. But 21 States of the Union have literacy test requirements; so the proponents of S. 2750 do not dare to propose this measure in the form of a constitutional amendment to be submitted for ratification by three-fourths of the States.

Mr. RUSSELL. I thank the Senator.

Mr. ROBERTSON. Mr. President, in order to assist those who may hereafter read in the CONGRESSIONAL RECORD my objections to the bill S. 2750, I ask unanimous consent to have printed at this point in the RECORD an outline of my subsequent remarks.

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

I. Introduction.
II. Unconstitutionality of S. 2750.
A. History of article I, section 2:
1. Constitutional Convention.
2. The Federalist.
3. Ratifying conventions.
4. The 17th amendment.
B. History of article I, section 4:
1. Constitutional Convention.
2. Federalist interpretation of "manner."
3. Ratifying conventions.
C. Court decisions regarding article I, sections 2 and 4.
D. Presidential electors.
E. The 14th and 15th amendments.
1. Introduction.
2. History of the 14th amendment.
3. History of the 15th amendment.
4. Court decisions re State voter qualifications.
5. "Appropriate legislation."
6. Conclusive presumptions.
III. Public policy objections to S. 2750:
A. Literacy tests and naturalization requirements.
B. "Arbitrary denials" and "inadequate statutes."
C. "Six primary grades."
D. "Spanish language."

Mr. ROBERTSON. Mr. President, I wish to express my unqualified objection not only to S. 2750 but also to S. 480, which was introduced by the senior Senator from New York [Mr. JAVITS], and S. 2979, introduced by the junior Senator from New York [Mr. KEATING].

Although these bills are dissimilar in some respects, they have in common a purpose to encroach further upon the rights of sovereign States and make meaningless the 10th amendment. Each bill is reprehensible; however, I shall address my remarks toward S. 2750, sponsored by the majority and minority leaders. The objectionable features of this bill are, with minor exceptions, identical to those of S. 480 and S. 2979.

During the past 25 years, I have watched with alarm and deep regret the steady, persistent erosion of State sovereignty, a process which has continued despite the efforts of a dwindling minority to halt the dangerous drift toward centralized government.

The pending assault on State sovereignty is one of the most deplorable, because the proposed legislation would in effect strip each State of its sovereign and constitutional right to protect itself. If a State cannot exercise its constitutional right under article I, section 2 to determine the qualifications of its voters, it cannot guarantee to its citizens the election of responsible representatives. Certainly, the constitutional right of a State under the second amendment to maintain its militia is no more of an integral part of a State's sovereignty than is the related right of a State to determine the qualifications of its voters.

I intend to show that S. 2750, a bill completely political in its inception and scope, is neither constitutional nor otherwise in the public interest.

UNCONSTITUTIONALITY OF S. 2750

A. HISTORY OF ARTICLE I, SECTION 2

1. CONSTITUTIONAL CONVENTION

The deliberations of our Founding Fathers at the Philadelphia Convention

in 1787 establish conclusively their intention that the power to determine the qualifications of voters be reserved to the States.

Article I, section 2 of the Constitution states in part:

> 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.

It will be recalled that the Constitution originally provided for the election of Senators by State legislatures.

According to James Madison's notes in "Elliot's Debates on the Federal Constitution," volume 5, page 385:

> Mr. Gouverneur Morris moved to strike out the last member of the section, beginning with the words, "qualifications of electors," in order that some other provision might be substituted which would restrain the right of suffrage to freeholders.

Most of the original States including Virginia had property-ownership voter qualifications.

Thomas Fitzsimons seconded the motion of Gouverneur Morris, and James Wilson of Pennsylvania then rose to discuss the matter.

In summarizing Wilson's remarks, Madison continues:

> This part of the report was well considered by the committee (of detail), and he did not think it could be changed for the better. It was difficult to form and uniform rule of qualifications for all the States. Unnecessary innovations, he thought, too, should be avoided. It would be very hard and disagreeable for the same persons, at the same time, to vote for representatives in the State legislature, and to be excluded from a vote for those in the National Legislature.

Wilson's arguments against any alteration of article I, section 2 emphasizes the following two points: First, the formulation of a "uniform rule of qualifications for all States" would be "difficult"; and second, the practice of having different voter qualifications for State and Federal elections would be "very hard and disagreeable."

Morris, however, in support of his proposed amendment argued, according to Madison:

> Another objection against the clause, as it stands, is that it makes the qualifications of the National Legislature depend on the will of the States, which he (Morris) thought not proper.

Here the very delegate to the Constitutional Convention who proposed that the language of article I, section 2, be altered admits that this section as it then stood, and also as it now stands, left to the States the power to determine the qualifications of electors.

During the debate Mr. Oliver Ellsworth of Connecticut made the practical observation that if the Constitution did not give the States this power, they might refuse to ratify it.

I quote again from Madison's notes:

> Mr. Ellsworth thought the qualifications of the electors stood on the most proper footing. The right of suffrage was a tender point, and strongly guarded by most of the State constitutions. The people will not readily subscribe to the National Constitution, if it should subject them to be disfranchised. The States are the best judges of the circumstances and temper of their own people.

To this Col. George Mason, the author of Virginia's Declaration of Rights, said:

> Eight or nine States have extended the right of suffrage beyond the freeholders. What will the people there say, if they should be disfranchised? A power to alter the qualifications would be a dangerous power in the hands of the [National] Legislature.

At the conclusion of the debate the proposed amendment of Gouverneur Morris was defeated by a vote of seven States to one. Think of that, Mr. President. Only one State voted in favor of having the Federal Constitution set voter qualifications. Quite clearly the delegates assembled at the Philadelphia Convention intended that the power to determine the qualifications of voters be reserved to the States.

They could hardly have reinforced this intention with words less susceptible to a contrary interpretation. As Mr. Justice Brewer said in *South Carolina* v. *United States* (199 U.S. 437, at page 449):

> It must be remembered that the framers of the Constitution were not mere visionaries, toying with speculations or theories, but practical men, dealing with the facts of political life as they understood them, putting into form the Government they were creating and prescribing in language clear and intelligible the powers that Government was to take. Mr. Chief Justice Marshall, in *Gibbons* v. *Ogden* (9 Wheat. 1, 188), well declared: "As men whose intentions require no concealment, generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they said."

2. THE FEDERALIST

Madison's notes confirm that the delegates to the Constitutional Convention were conscious that the American public must be satisfied with the Convention's recommendation on the question of suffrage. This was, therefore, one of the subjects that received close attention in the Federalist Papers which themselves were written to convince State conventions of the Constitution's merit.

In No. 52 of the Federalist, Madison points out that the right of the States to determine the qualifications of voters is established in the Constitution with the single limitation that these qualifications must be the same as those for the electors of the most numerous branch of the State legislature:

> The definition—

He said—

> of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the Convention therefore to define and establish this right, in the Constitution. To have left it open for the occasional regulation of the Congress, would have been improper for the reason just mentioned. To have submitted it to the legislative discretion of the States, would have been improper for the same reason; and for the additional reason, that it would have rendered too dependent on the State governments, that branch of the Federal Government, which ought to be dependent on the people alone.

The following words of the paragraph should be noted:

> To have reduced the different qualifications in the different States, to one uniform rule, would probably have been as dissatisfactory to some of the States, as it would have been difficult to the Convention. The provision made by the Convention appears therefore, to be the best that lay within their option. It must be satisfactory to every State; because it is conformable to the standard already established, or which may be established by the State itself. It will be safe to the United States; because, being fixed by the State constitutions, it is not alterable by the State governments, and it cannot be feared that the people of the States will alter this part of their constitutions, in such a manner as to abridge the rights secured to them by the Federal Constitution.

Then in the 54th Federalist, it was remarked:

> The qualifications on which the right of suffrage depend, are not perhaps the same in any two States. In some of the States the difference is very material.

3. RATIFYING CONVENTIONS

Later, at the Massachusetts Ratifying Convention, in answer to a query as to whether Congress might prescribe a property qualification for voters, Rufus King, a member of the Federal Convention, said:

> The idea of the honorable gentleman from Douglass * * * transcends my understanding; for the power of control given by this section extends to the manner of election, not the qualifications of the electors.

And James Wilson, who had warned in the Constitutional Convention of the difficulty that might result if qualifications of State and national electors were different, had this to say in the Pennsylvania convention:

> In order to know who are qualified to be electors of the House of Representatives, we are to inquire who are qualified to be electors of the legislature of each State. If there be no legislature in the States, there can be no electors of them; if there be no such electors, there is no criterion to know who are qualified to elect Members of the House of Representatives. By this short, plain deduction, the existence of State legislatures is proved to be essential to the existence of the General Government.

In explaining the voting plan to the North Carolina convention, John Steel said:

> Can they, without a most manifest violation of the Constitution, alter the qualifications of the electors: The power over the manner of elections does not include that of saying who shall vote. The Constitution expressly says that the qualifications are those which entitled a man to vote for a State representative. It is, then, clearly and indubitably fixed and determined who shall be the electors; and the power over the manner only enables them to determine how these electors shall elect—whether by ballot, or by vote, or by any other way.

Those familiar with the Virginia ratifying convention know that Patrick Henry opposed the ratification of the Constitution on the ground that it gave the Federal Government too much power. One issue was whether the Fed-

eral Government could pass on the qualifications of the voters or whether Virginia, as in the past, could fix those qualifications.

Wilson Nicholas, a delegate to Philadelphia, assured the Virginia ratifying convention that article I, section 2 reserved to the States, and the States alone, the power to fix the qualification of voters:

I will consider it first, then, as to the qualifications of the electors. The best writers on government agree that, in a republic, those laws which fix the right of suffrage are fundamental. If, therefore, by the proposed plan, it is left uncertain in whom the right of suffrage is to rest, or if it has placed that right in improper hands, I shall admit that it is a radical defect; but in this plan there is a fixed rule for determining the qualifications of electors, and that rule the most judicious that could possibly have been devised, because it refers to a criterion which cannot be changed. A qualification that gives a right to elect representatives for the State legislatures, gives also, by this Constitution, a right to choose representatives for the General Government. As the qualifications of electors are different in the different States, no particular qualifications, uniform through the States, would have been politic, as it would have caused a great inequality in the electors, resulting from the situation and circumstances of the respective States.

Uniformity of qualifications would greatly affect the yeomanry in the States, as it would either exclude from this inherent right some who are entitled to it by the laws of some States at present, or be extended so universally as to defeat the admirable end of the institution of representation.

Virginia agreed to ratify only on the assurance that the first session of the Congress would propose bill of rights amendments to the Constitution and even went a step further when the convention named a committee, headed by Gov. Edmund Randolph and including James Madison and John Marshall, to draft a form of ratification that would include certain reservations as to States rights.

4. 17TH AMENDMENT

The significance of this history is reinforced by the fact that as late as 1912, when the 17th amendment was proposed by Congress, providing for popular election of Senators, language was used identical to that of article I, section 2. This amendment provides:

The Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislatures.

It should be noted that these words were adopted after more than a century of experience with the suffrage provisions contained in the Constitution and also after there had been ample time to observe the institution and application of State literacy tests.

The 17th amendment, of course, follows both the 14th and 15th amendments and is, therefore, the last expression of the Constitution regarding voter qualifications. Furthermore, in language identical to that of article I, section 2 it reserves specifically to the States the power to determine the qualifications of voters—in this case, for senatorial elections.

B. HISTORY OF ARTICLE I, SECTION 4

S. 2750 would have the Congress find that, "under article I, section 4 of the Constitution, Congress has the duty to provide against," what the bill terms, "the abuses which presently exist." On the contrary, Congress has neither a duty nor a constitutional right under this section to limit the power of the States to determine the qualifications of their voters. That is exclusively the right of the States.

Article I, section 4 provides in part:

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 chusing Senators.

Nothing could be more preposterous than the contention that the Constitutional Convention which had reserved determination of the qualifications of voters exclusively to the States in section 2 of article I would in section 4 of the same article surrender this power to the Federal Government. It is a "most fundamental principle of our constitutional jurisprudence" that "all the provisions of the Constitution are equally binding upon the Congress"—"Willoughby on the Constitution of the United States," volume 1, page 493.

1. CONSTITUTIONAL CONVENTION

I have reviewed above the circumstances which led to the adoption of article I, section 2, by the Constitutional Convention in 1787. In view of the compelling arguments advanced in favor of leaving with the States the power to determine the qualifications of voters, it would impeach the intelligence of the delegates at that Convention to say that they modified in section 4 what they had specifically granted in section 2.

Madison's notes on this Convention at page 402, volume 5, of "Elliot's Debates" affirm the limited application of section 4.

In arguing for the adoption of this section, he said:

What danger could there be in giving a controlling power [to determine the times, places, and manner of holding elections] to the National Legislature? Of whom was it to consist? First, of a Senate to be chosen by the State legislatures.

Until the 17th amendment, above, Senators, under article V, section 3, were elected by the legislatures of the several States:

If the latter, therefore, could be trusted, their representatives could not be dangerous.

And this is the part to note:

Secondly, of Representatives elected by the same people who elect the State legislatures.

To what else could this refer but article I, section 2, which provides:

The Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature?

In the above discussion of article I, section 4, Madison clearly confirms that the Federal Government's power to alter the "manner of holding elections" by no means includes the power to determine the qualifications of voters.

2. FEDERALIST INTERPRETATION OF "MANNER"

It is readily apparent in the Federalist Papers that there was no intention to include in the Central Government's final authority to regulate the manner of holding elections the authority to determine the qualifications of voters.

In the Federalist No. 52, Madison says:

The first view to be taken of this part of the Government, relates to the qualifications of the electors and the elected. Those of the former are to be the same with those of the electors of the most numerous branch of the State legislatures. The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the Convention therefore to define and establish this right, in the Constitution. To have left it open for the occasional regulation of the Congress, would have been improper for the reason just mentioned.

Alexander Hamilton, in the Federalist No. 59, justifies article I, section 4, on the ground that a government must be able to insure its self-preservation. He states:

I am greatly mistaken, notwithstanding, if there be any article in the whole plan more completely defensible than this. Its propriety rests upon the evidence of this plain proposition, that every government ought to contain in itself the means of its own preservation.

And continues:

Nothing can be more evident, than that an exclusive power of regulating elections for the National Government, in the hands of the State legislatures, would leave the existence of the Union entirely at their mercy.

However, Hamilton makes it emphatically clear that the preservation of the Federal Government is not dependent upon a Federal power to determine the qualifications of voters. In answering the argument of objectors to the Constitution that the "wealthy and the well born" would achieve some preference, Hamilton had the following to say in No. 60 of the Federalist:

But upon what principle is the discrimination of the places of election to be made in order to answer the purpose of the meditated preference? Are the wealthy and the well born, as they are called, confined to particular spots in the several States? Have they by some miraculous instinct or foresight set apart in each of them a common place of residence? Are they only to be met with in the towns or cities? Or are they, on the contrary, scattered over the face of the country as avarice or chance may have happened to cast their own lot, or that of their predecessors? If the latter is the case (as every intelligent man knows it to be), is it not evident that the policy of confining the places of elections to particular districts would be as subversive of its own aim as it would be exceptionable on every other account? The truth is that there is no method of securing to the rich the preference apprehended, but by prescribing qualifications of property either for those who may elect, or be elected. But this forms no part of the power to be conferred upon the National Government. Its authority would be expressly restricted to the regulation of the times, the places, and the manner of elections. The qualifications of the persons who may choose or be chosen, as has been remarked upon another occasion, are defined and fixed in the Constitution; and are unalterable by the legislature.

3. RATIFYING CONVENTIONS

I have already indicated the State ratifying conventions, beyond any doubt, claimed for the States in article I, section 2 the power to determine the qualifications of electors. The delegates to these conventions, several of whom had represented their States in Philadelphia, did not intend that article I, section 4, which reserved to the Central Government the final authority to determine the times, places, and manner of holding elections, should in any way restrict the power of the States under article I, section 2.

James Wilson, a delegate to the Pennsylvania ratifying convention, in discussing the relationship of article I, section 4 to the preservation of the States, had the following to say:

After all this, could it have been expected that assertions such as have been hazarded on this floor would have been made "that it was the business of their (the delegates to the Philadelphia Convention) deliberations to destroy the State governments; that they employed 4 months to accomplish this object; and that such was their intentions?"

Mr. President, the only proof that is attempted to be drawn from the (Constitution) itself, is that which has been urged from the fourth section of the first article. I will read it: "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 chusing Senators."

And is this a proof that it was intended to carry on this Government after the State governments should be dissolved and abrogated? This clause is not only a proper, but necessary one.

Referring to his remarks on article I, section 2, supra, he continues:

I have already shown what pains have been taken in the Convention to secure the preservation of the State governments. I hope, sir, that it was no crime to sow the seed of self-preservation in the Federal Government; without this clause, it would not possess self-preserving power.

This system, it is said, "unhinges and eradicates the State governments, and was systematically intended so to do."

Now, let us see what this objection amounts to. Who are to have this self-preserving power? The Congress. Who are Congress? It is a body that will consist of a Senate and a House of Representatives. Who compose this Senate? Those who are elected by the legislature of the different States? Who are the electors of the House of Representatives? Those who are qualified to vote for the most numerous branch of the legislature in the separate States. Suppose the State legislatures annihilate; where is the criterion to ascertain the qualification of electors? And unless this be ascertained, they cannot be admitted to vote; if a State legislature is not elected, there can be no Senate, because the Senators are to be chosen by the legislatures only.

James Wilson in his discussion of the relationship between sections 2 and 4 of article I, leaves no doubt that the authority of Congress to determine the times, places, and manner of holding elections included, by no means, the power to determine the qualifications of voters.

The intention to exclude section 2 from the application of section 4 is also apparent in the debates of the Massachusetts ratifying convention.

Mr. Turner, an opponent of the Constitution, admitted the power of the States to determine the qualifications of voters under article I, section 2 when in objecting to section 4 he noted:

I now proceed, sir, to the consideration of an idea, that Congress may alter the place for choosing representatives in the general Congress: they may order that it may be at the extremity of a State, and, by their influence, may there prevail that persons may be chosen, who otherwise would not; by reason that a part of the qualified voters, in part of the State, would be so incommoded thereby, as to be debarred from their right as much as if they were bound at home.

In the Virginia convention Wilson Nicholas had the following to say about article I, section 4:

There is another objection which has been echoed from one end of the continent to the other—that Congress may alter the time, place, and manner of holding elections; that they may direct the place of elections to be where it will be impossible for those who have a right to vote, to attend; for instance, that they may order the freeholders of Albemarle to vote in the county of Princess Anne, or vice versa; or regulate elections, otherwise, in such a manner as totally to defeat their purpose, and lay them entirely under the influence of Congress.

If I understand it right, it must be, that Congress might cause the elections to be held in the most inconvenient places, and at so inconvenient a time and in such a manner, as to give them the most undue influence over the choice, nay, even to prevent the elections from being held at all—in order to perpetuate themselves. But what would be the consequence of this measure? It would be this, sir—that Congress would cease to exist; it would destroy the Congress itself; it would absolutely be an act of suicide; and therefore it can never be expected. This alteration, so much apprehended, must be made by law; that is, with the concurrence of both branches of the legislature.

This discussion of article I, section 4, immediately followed Nicholas' explanation of the States exclusive power to determine the qualifications of voters, supra.

Furthermore, Madison noted during the same debate that:

If the general government were wholly independent of the governments of the particular States, then, indeed, usurpation might be expected to the fullest extent. But, sir, on whom does this general government depend? It derives its authority from these governments, and from the same sources from which their authority is derived. The members of the Federal Government are taken from the same men from whom those of the State legislatures are taken.

Certainly Madison is referring here to article I, section 2, which provides that, "Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." What, I ask, can be more lucid than this?

The foregoing history is convincing evidence that the members of the Constitutional Convention and the Ratifying Conventions intended the Constitution to give to the States—and to the States only—the power to prescribe qualifications for voters. The courts have consistently followed this interpretation.

C. COURT DECISIONS REGARDING ARTICLE I, SECTIONS 2 AND 4

Ex parte Clarke (100 U.S. 399 (1879)), contains an illuminating discussion of the relationship between sections 2 and 4 of article I. This case established the constitutional power of Congress, "to enact a law for punishing a State officer of election for the violation of his duty under a State statute in reference to an election of a Representative to Congress"—page 404. It is to be noted that this case dealt with the power of Congress to regulate the manner of holding an election, not the qualifications of voters.

Although the matter was not at issue in Ex parte Clarke, Justice Field in his dissent reviewed the distinction between the right of the States under article I, section 2, and the right of Congress under article I, section 4—pages 418–419:

The power vested in Congress is to alter the regulations prescribed by the legislatures of the States, or to make new ones, as to the times, places, and manner of holding the elections. Those which relate to the times and places will seldom require any affirmative action beyond their designation. And regulations as to the manner of holding them cannot extend beyond the designation of the mode in which the will of the voters shall be expressed and ascertained. The power does not authorize Congress to determine who shall participate in the election, or what shall be the qualification of voters. These are matters not pertaining to or involved in the manner of holding the election, and their regulation rests exclusively with the States. The only restriction upon them with respect to these matters is found in the provision that the electors or Representatives in Congress shall have the qualifications required for electors of the most numerous branch of the State legislature, and the provision relating to the suffrage of the colored race.

Five years earlier *Minor* v. *Happersett* (21 Wall. 162), had upheld the constitutionality of a voter qualification in the Missouri Constitution limiting suffrage to men.

The decision states in part:

The Constitution does not define the privileges and immunities of citizens. For that definition we must look elsewhere. In this case we need not determine what they are, but only whether suffrage is necessarily one of them.

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 Supreme Court in *Pope* v. *Williams* (193 U.S. 621 (1904)), upheld a provision in the Maryland Constitution which required a new resident to declare his intention to be a citizen before he could register to vote. The opinion includes the following:

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 it may seem proper, provided, of course, no discrimination is made between individ-

uals in violation of the Federal Constitution. * * * The question whether the conditions prescribed by the State might be regarded by others as reasonable or unreasonable is not a Federal one.

In *Ex parte Yarbrough* (110 U.S. 651 (1884)), the Supreme Court said, after quoting article I, section 2:

The States in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election for Members of Congress. Nor can they prescribe the qualification for voters for those eo nomine. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for Members of Congress in that State. It adopts the qualification thus furnished as the qualification of its own electors for Members of Congress.

It is not true, therefore, that electors for Members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively on the law of the State.

Or, to summarize, article I, section 2 of the Constitution empowers the States to set voter qualifications for both Federal and State elections; however, under this section the States are limited by the requirement—and the single requirement—that the qualifications for voters in Federal and State elections be identical.

See also *Swafford* v. *Templeton* (184 U.S. 487 (1902)), following Yarbrough and pointing out once more that it is the Constitution, not Congress that adopts qualifications of State electors; *McPherson* v. *Blacker* (146 U.S. 1, 27, 35 (1892)), reaches the same conclusion.

More recently in *Breedlove* v. *Suttles* (302 U.S. 277 (1937)), a case holding a State poll tax constitutional, the Supreme Court had the following to say regarding the derivation of voting rights:

The 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. (*Minor* v. *Happersett* (21 Wall. 162, 170 et seq.); *Ex parte Yarbrough* (110 U.S. 651, 664–665); *McPherson* v. *Blacker* (146 U.S. 1, 37–38); *Guinn* v. *U.S.* (238 U.S. 347, 362).)

The power of the States to determine the qualifications of voters was again affirmed by the Supreme Court as recently as June 8, 1959. In *Lassiter* v. *Northampton Board of Elections* (360 U.S. 45), upholding a North Carolina literacy test, Mr. Justice Douglas said at page 50:

The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised.

These cases clearly establish that the States—and the States alone—have the power to determine the qualifications of voters. This power is limited only by the requirements of the 14th, 15th, and 19th amendments.

Both the States and the Federal Government, under section 4 of article I, may legislate with regard to the times, places, and manner of holding elections; where there is a conflict, the Federal legislation must govern. However, the courts have affirmed the position of our Founding Fathers that the power to regulate the manner of holding elections does not include the power to determine the qualifications of voters.

This interpretation was verified in *U.S.* v. *Classic* (313 U.S. 299 (1941)). Mr. Justice Stone stated the case as follows:

Two counts of an indictment found in a Federal district court charged that appellees, Commissioners of Elections, conducting a primary election under Louisiana law, to nominate a candidate of the Democratic Party for Representative in Congress, willfully altered and falsely counted and certified the ballots of voters cast in the primary election. The questions for decision are whether the right of qualified voters to vote in the Louisiana primary and to have their ballots counted is a right "secured by the Constitution" within the meaning of sections 19 and 20 of the criminal code, and whether the acts of the appellees charged in the indictment violate those sections.

It is noteworthy that Mr. Justice Stone uses the term "qualified voters." He continues at page 310:

Article I, section 2 of the Constitution, commands that "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."

Mr. Justice Stone concludes that:

Such right as is secured by the Constitution to qualified voters to choose members of the House of Representatives is thus to be exercised in conformity to the requirements of State law subject to the restrictions prescribed by section 2 and to the authority conferred on Congress by section 4, to regulate the times, places and manner of holding elections for representatives.

Although this case has been used as authority for the position that the Federal Government may prescribe the qualifications of voters, the language of Mr. Justice Stone indicates, on the contrary, that the power to determine the "manner of holding elections" does not—and under the Constitution cannot—encompass the power granted specifically to the States under article I, section 2.

D. PRESIDENTIAL ELECTORS

Article II, section 1, of the Constitution provides in part:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.

This language is clear and unequivocal. Nor has it been altered in any way by the 12th amendment. Mr. Justice Fuller said in *McPherson* v. *Blacker* (146 U.S. 1), at page 35:

In short, the appointment and mode of appointment of electors belong exclusively to the States under the Constitution of the United States. * * * Congress is empowered to determine the time of choosing the electors and the day on which they are to give their votes, which is required to be the same day throughout the United States, but otherwise the power and jurisdiction of the State is exclusive.

S. 2750, however, since it is drafted to include elections "for the Office of President, Vice President [or] presidential elector," would invade a field where the power to determine not only the qualifications of voters but also the very manner of a candidate's selection—that is, by election, appointment, or otherwise—remains with the States, and with the States alone.

E. THE 14TH AND 15TH AMENDMENTS

1. INTRODUCTION

I have shown that article I, section 4 of the Constitution does not authorize the Central Government to determine the qualifications of voters as reserved to the States in article I, section 2, and in the 17th amendment.

Since, however, the advocates of S. 2750 rely also upon the 14th and 15th amendments, I intend to show that these amendments—like article I, section 4—give Congress no substantive power to set uniform voter qualifications.

The 14th amendment provides in part:

SECTION 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such States.

* * * * *

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The 15th amendment provides:

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any States or by any State on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

2. HISTORY OF THE 14TH AMENDMENT

Since the obvious is often overlooked, I would like to point out that the 14th and 15th amendments are, of course, amendments and not statutes. The radical Republican Party which controlled Congress during the unfortunate Reconstruction Era passed a number of laws directed toward the enfranchisement of the Negro. For example, acts were passed providing that in all Territories thereafter admitted to the Union and in the District of Columbia, no one could be deprived of the right to vote because of race, color, or previous condition of servitude.

The Reconstruction legislators, however, despite their willingness to pass punitive legislation against the prostrate South, were not prepared to flaunt the Constitution in the process by attempting to extend the franchise to the Negro

through statute rather than constitutional amendment. As their course of action illustrates, it was apparent to these legislators that article I, section 2 of the Constitution reserved to the States complete authority to determine the qualifications of their voters.

There is another significant point: The Reconstruction Congress did not attempt to repeal article I, section 2 of the Constitution and place it with a constitutional amendment which would transfer from the States to the Federal Government the power to determine the qualifications of voters. Clearly if this procedure had been followed, the States would never have ratified the amendment. Instead, Congress determined to amend the Constitution by establishing certain prohibitions on State action.

The significance of the prohibitive nature of these amendments I will discuss later; however, to continue with the history of the 14th amendment, on December 4 and December 12, 1865, the House and the Senate, respectively, approved by resolution the formation of the Joint Committee on Reconstruction. The first constitutional amendment proposed by the Joint Committee provided in part:

Whenever the elective franchise shall be denied or abridged in any State on account of race or color, all persons therein of such race or color shall be excluded from the basis of representation. (The Congressional Globe, 39th Cong., 1st sess., Mar. 9, 1866, pp. 1288–1289.)

Had the 14th amendment been ratified in this severe form, it would have excluded all Negroes in a State from being counted in the basis of representation if a single Negro had been denied the franchise by that State. The proposed amendment passed the House but fortunately failed to receive the required two-thirds Senate majority.

Thaddeus Stevens on April 30, 1866, reported to the House the Joint Committee's second draft of the proposed 14th amendment.

Section 2 provided:

Representatives shall be apportioned among the several States which may be included within this Union according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever in any State the elective franchise shall be denied to any portion of its male citizens not less than twenty-one years of age, or in any way abridged, except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of male citizens shall bear to the whole number of such male citizens not less than twenty-one years of age. (Ibid., Apr. 30, 1866, p. 2286.)

Section 3 of the proposed amendment, incidentally, provided that:

Until the 4th day of July, in the year 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for Representatives in Congress and for electors for President and Vice President of the United States (ibid).

This proposed amendment was denounced in an editorial in the New York Times as "A plan to prolong indefinitely the exclusion of the South from Congress by imposing conditions to which the Southern people will never submit"—The Congressional Globe, 39th Cong., 1st session, May 10, 1866, page 2531.

On May 10, 1866, Congressman Bingham, of Ohio, a member of the Joint Committee on Reconstruction, explained the second section of the proposed amendment as follows:

Allow me, Mr. Speaker, in passing, to say that this amendment takes from no State any right that every pertained to it. No State ever had the right, under the forms of law or otherwise, to deny to any freeman the equal protection of the laws or to abridge the privileges or immunities of any citizen of the Republic. The amendment does not give, as the second section shows, the power to Congress of regulating suffrage in the several States.

The second section excludes the conclusion that by the first section suffrage is subjected to congressional law; save, indeed, with this exception, that as the right in the people of each State to a republican government and to choose their Representatives in Congress is of the guarantees of the Constitution, by this amendment a remedy might be given directly for a case supposed by Madison, where treason might change a State government from a republican to a despotic government, and thereby deny suffrage to the people (ibid., pp. 2542–2543).

Shortly after this lucid explanation by Congressman Bingham, the proposed amendment passed the House by a vote of 128 yeas to 37 nays.

On May 29, 1866, the Senate by unanimous vote moved to adopt the proposal of Senator Johnson, of Maryland, to strike the vindictive third section from the House resolution. Senator Howard, of Michigan, offered a series of amendments to the joint resolution, none of which were related to section 2—Congressional Globe, 39th Congress, 1st session, May 29, 1866, page 2869.

Finally, Senator Williams, of Oregon, on June 8, 1866, proposed a revision of section 2 which—after an amendment by Senator Johnson dealing primarily with the basis for representation—corresponded with section 2 of the 14th amendment as finally ratified—Congressional Globe, 39th Congress, 1st session, June 8, 1866, pages 3026–3029.

During the debate on the Williams proposal, Howard moved to strike the first part of the second sentence of section 2 which reads:

But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or members of the legislature thereof.

And to insert in its place:

But whenever the right to vote at any election held under the constitution and laws of any State for members of the most numerous branch of its legislature.

So that the second section, as amended, would read:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever the right to vote at any election held under the constitution and laws of any State for members of the most numerous branch of its legislature is denied to any of the male inhabitants of such State.

Senator Howard considered section 2 of the 14th amendment to be unenforceable in practice because it lacked a uniform standard such as that in article I, section 2 of the Constitution prescribing the "most numerous branch of—a State's—legislature" as the criterion for Federal electors.

According to Senator Howard:

It appears to me that it (section 2 of the 14th amendment as finally approved) introduces a rule which is so uncertain, so difficult of practical application, as not only greatly to increase the expenses of ascertaining the basis of representation by Congress in procuring the necessary information, but in many cases the returns must be so inaccurate and unreliable as to be next to worthless.

And further:

One class of qualifications may by a State be made necessary in the election of a Governor; another set in the election of the members of the senate in that State; another in the election of members of the most numerous branch of the legislature; another set of qualifications may be required by the State in the election of its several judicial officers; another in the election of electors of President and Vice President of the United States; and so on. * * * It is a system which must * * * necessarily lead to great difficulty in its practical operations and results, and in many cases be almost entirely worthless for want of the necessary exact information which Congress should acquire and use in fixing the basis (ibid., p. 3039).

The argument of Senator Howard for a uniform standard failed to convince his colleagues; however, the Senator's interpretation of section 2 itself—with or without a uniform standard—is an eloquent expression of the 14th amendment's limitations.

In his words:

We know very well that the States retain the power, which they have always possessed, of regulating the right of suffrage in the States. It is the theory of the Constitution itself. That right has never been taken from them; no endeavor has ever been made to take it from them; and the theory of this whole amendment is, to leave the power of regulating the suffrage with the people or legislatures of the States, and not to assume to regulate it by any clause of the Constitution of the United States (Ibid).

Senator Howard, it will be recalled, was a member of the Joint Committee on Reconstruction; in addition, he was the recognized spokesman for the committee's Senate membership—"20 Years of Congress," J. H. Blaine, 1884, page 207. Consequently, his interpretation of the 14th amendment—particularly since it was not challenged or in any way controverted during the debate—carries great authority.

Reemphasizing his position at a later date, Senator Howard said:

As many of the Senators well know, I served on the Joint Committee on Reconstruction, who reported the 14th amendment to the Constitution to the Senate and to the House of Representatives; and I am not unfamiliar with the object of that amendment. It was discussed at great length before the committee, and by the committee, as well as in the Senate; and I feel constrained to say here now that this is the first time it ever occurred to me that the right to vote was to be derived from the 14th article. I think such a construction cannot be maintained. No such thing was contemplated on the part of the committee which reported the amendment; and if I recollect rightly,

nothing to that effect was said in debate in the Senate when it was on its passage.

One word further, the construction which is now sought to be put upon the first section of this 14th article, it seems to me, is plainly and flatly contradicted by what follows in the second section of the same article. After declaring in the first section that "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside," and after declaring that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," the second section goes on to say:

"But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State," etc.

These are plainly and in the clearest possible terms words recognizing the right of each State to regulate the suffrage and to impart or to declare the necessary qualifications of voters for Members of the House of Representatives, electors of President and Vice President, and members of the State legislature. Sir, can anything be clearer? Here is a plain, indubitable recognition and admission on the very face and by the very terms of this 14th amendment of the right and power of each State to regulate the qualifications of voters (the Congressional Globe, 40th Cong., 3d sess., Feb. 8, 1869, p. 1003).

I ask you, Mr. President, could words more clearly refute the absurd proposition that the 14th amendment authorizes Congress—whatever its findings—to set positive voter qualifications?

The 14th amendment passed the Senate on June 8, 1866, by a vote of 33 to 11. The House approved the Senate version 5 days later by a vote of 120 to 32 under the urging of Thaddeus Stevens, "to take what we can get now, and hope for better things in further legislation"—Congressional Globe, 39th Congress, 1st session, June 13, 1866, page 3148.

In summary, the 14th amendment restricted in part what was initially an absolute power of the States under article I, section 2 to determine the qualifications of their voters. Subsequent to this amendment Congress could, by appropriate legislation, reduce the representation in Congress of a State that denied the franchise to any male citizen over 21. Nevertheless, the power of Congress to reduce a State's representation carries with it no inference of a more extensive power to set uniform voting qualifications such as education, property, and so forth, for all States.

3. HISTORY OF THE 15TH AMENDMENT

The "better things" to which the South's archantagonist Thaddeus Stevens had referred were not long in coming.

On February 17, 1869, the Senate refused by an affirmative vote of 31 to 27, less than the required two-thirds majority, to adopt House Joint Resolution 402—the Congressional Globe, 40th Congress, 3d session, February 17, 1869, page 1300.

This resolution would have enacted the 15th amendment in the following form:

SECTION 1. The right of any citizen of the United States to vote shall not be denied or abridged by the United States or any State by reason of race, color, or previous condition of slavery of any citizen or class of citizens of the United States.

SEC. 2. The Congress shall have power to enforce by appropriate legislation the provisions of this article. (Ibid., Feb. 3, 1869, pp. 827–828).

However, immediately after its rejection of the House Joint Resolution, the Senate resolved itself into a Committee of the Whole to consider Senate Joint Resolution 8, introduced by Senator Stewart, of Nevada.

This proposal was almost identical to the House resolution. It provided:

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

The Congress shall have power to enforce this article by appropriate legislation (ibid., Feb. 17, 1869, p. 1300).

Senator Howard objected to the Stewart proposal on the ground that if the United States or any State were specifically prevented from denying a citizen the franchise because of race, color, or previous condition of servitude, the Central Government, by implication of this restrictive amendment, would be empowered to set all remaining voter qualifications. He argued, and I quote:

The implication is perfectly irresistible in the mind of every instructed lawyer * * * that, with the exception of race, color, and previous condition of servitude * * * the United States may impose whatever qualifications Congress may see fit to impose, both upon the voter and holder of office in the States and in the United States, and * * * prescribe a rule which shall exclude in the States from the right of voting and holding office every person who shall not be of a particular religious creed, every person who shall not be of a certain age, every person who shall not have been born in some particular locality (ibid., p. 1301).

And further:

I think we go far enough when we say to the black man, North and South, "You shall have the same right to vote as is possessed by the white man" (ibid., p. 1302).

Senator Howard feared, in particular, that the proposed amendment would repeal by implication article VI, of the Constitution, which provides in part that:

No religious test shall ever be required as a qualification to any office of public trust under the United States.

He continued:

Sir, I would not part with that great security for human liberty, religious freedom, for any consideration that could be addressed to me (ibid.).

And finally:

I say it is an irresistible inference from the very language we use, that in respect to all other qualifications the power is given to Congress to restrict voting and office holding. They may in any test that is not prohibited by this article; Congress may establish a religious test, an educational test, a property test, that shall take effect * * * in any and all of the United States (ibid., p. 1304).

Senator Edmunds, of Vermont, however, in response to Senator Howard argued persuasively that the Congress was being given no power—either direct or implied—to regulate the qualifications of voters. According to Senator Edmunds:

To say that because it is provided that the United States shall not deny to anybody the rights of voting and of being voted for for a particular reason it is implied that they may and shall deny it for all other reasons would be equivalent in criminal law to saying that a statute which forbade murder and said that no man should commit murder implied that every man might commit adultery (ibid., p. 1305).

And further:

Now, if Senators are right in supposing that the right to regulate suffrage and hold office is now with the States, then when we prohibit that regulation being made effective upon certain points named in this amendment we leave all the rest of it just where it was before (ibid.).

The logic of Senator Edmunds clearly represents the intention of the Congress. If the 15th amendment had by implication empowered the Central Government to determine voter qualifications, particularly religious ones, it would never have received the required two-thirds majority of both Houses or three-fourths majority of the States.

On February 17, 1869, the amendment proposed by Senator Stewart passed the Senate by a vote of 35 to 11—ibid., p. 1318. It was first read in the House on February 20, 1869.

Congressman Bingham, of the Joint Committee on Reconstruction, moved to broaden the amendment to include qualifications regarding not only race, color, and previous condition of servitude, but also "nativity, property, and creed."

He argued:

If my amendment shall be adopted you will strike down as well the constitutions of other States, as for example the State of Rhode Island, which wrongfully and unjustly discriminates this day by property qualifications against naturalized citizens of the United States as compared with native-born citizens.

He continued, and note this:

I would have inserted the other word "education," but I know that the general sense of the American people is so much for education, that chief defense of nations, that if they will not take care of that interest they will take care of nothing (ibid., Feb. 20, 1869, p. 1427).

And yet today, Mr. President, we are faced with an attempt to wrest from the States their constitutional power to set educational qualifications for their voters.

The House quickly adopted the Bingham revision of the Stewart amendment by a vote of 140 to 37, and 3 days later Senator Stewart introduced this proposal in the upper body. There it was disagreed to by a vote of 32 to 17—in the same place, February 23, 1869, page 1481.

Conferees were appointed, and a compromise was reached whereby the House agreed to drop the "nativity, property [and] creed" provisions of the Bingham amendment in exchange for the Senate's removal of the phrase "to hold office" from the Stewart proposal—in the same place, February 25, 1869, page 1564.

On February 25 and 26, the 15th amendment passed the House and the Senate, respectively, by votes of 144 to 44

and 39 to 13—in the same place, February 25, 1869, pages 1563–1564; February 26, 1869, page 1641.

This review of the Reconstruction debates verifies my contention that the 14th and 15th amendments gave Congress neither the express nor the implied power to set voter qualifications—particularly educational or religious ones.

The 15th amendment prohibited the States from denying their citizens the right to vote because of race, color, or previous condition of servitude. It did not authorize the Congress to set positive voter qualifications of any kind.

Congress, therefore, has the power to prohibit, for example, literacy tests which on their face or in their administration are used to deny citizens their right to vote because of race, color, or previous condition of servitude. However, Congress cannot draw from this power an implied power to set a sixth-grade standard of education as a uniform voter qualification in all States. This is true regardless of the findings which Congress may choose to make in setting its standard.

The Reconstruction Congress recognized the exclusive power of the States under article I, section 2, to determine voter qualifications. The 15th amendment clearly was intended to limit the power of the States in a single respect: no longer could a State prescribe qualifications which would deny a citizen the franchise because of race, color, or previous condition of servitude. Beyond that restriction, the exclusive power of the States under article I, section 2 remains intact. Since S. 2750 attempts to impose a sixth-grade literacy qualification, the bill is clearly unconstitution. It would not ban literacy tests which violate the 14th and 15th amendments; it would ban the application of all literacy tests to those who have completed the sixth grade.

The courts have adopted an interpretation of the 14th and 15th amendments, which is in accord with the intention of the Reconstruction legislators.

4. COURT DECISIONS RE STATE VOTER QUALIFICATIONS

I mentioned earlier the decision of the Supreme Court in *Minor* v. *Happersett* (21 Wall. 162 (1874)), which established that a State's denial of suffrage to women was not a violation of the 14th amendment. I also noted the Court's refusal to declare unconstitutional various State poll tax requirements—*U.S.* v. *Reese*, 92 U.S. 214 (1875); *McPherson* v. *Blacker*, 146 U.S. 1 (1892); *Breedlove* v. *Suttles*, 302 U.S. 277; *Butler* v. *Thompson*, 341 U.S. 937 (1951).

With regard to literacy tests, the target of S. 2750, the Supreme Court held in *Williams* v. *Mississippi* (170 U.S. 213 (1898)), that a literacy test provision in the constitution of Mississippi does not in itself discriminate between the white and Negro races and does not amount to a denial of the equal protection of the law secured by the 14th amendment.

Quinn v. *U.S.* (238 U.S. 347 (1915)), concluded that a State may establish a literacy test as a prerequisite for voting if it applies alike to all citizens of the State without discrimination as to race, creed, or color. In discussing the relationship of the 15th amendment to the States authority to determine voter qualifications, Chief Justice White said at page 362:

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.

And at page 366:

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

In *U.S.* v. *Reese* (92 U.S. 214 (1875)), which arose from the indictment of two municipal election inspectors in Kentucky for refusing to accept the vote of a Negro citizen, at page 20 observed:

The 15th amendment does not confer the right of suffrage upon any one. It prevents the States, or the United States, however, from giving preference, in this particular, to one citizen of the United States over another on account of race, color, or previous condition of servitude. Before its adoption, this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race, etc., as it was on account of age, property, or education. Now it is not.

Lassiter against Northampton County Board of Elections, supra, reaffirmed as recently as 1959 that the application of a literacy test by a State as a qualification for voting is consistent with State power under the 14th and 15th amendments if it is applied to all voters alike irrespective of race or color, if it is not unfair on its face, and if it shows no intent to effectuate discrimination.

In discussing the Court's position in the Lassiter case, Mr. Justice Douglas said:

We come then to the question whether a State may consistently with the 14th and 17th amendments apply a literacy test to all voters irrespective of race or color. The Court in *Guinn* v. *United States*, supra, at 366, disposed of the question in a few words. "No time need be spent on the question of the validity of the literacy test considered alone since as we have seen its establishment was but the exercise by the State of a lawful power vested in it not subject to our supervision, and indeed, its validity is admitted."

The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised, *Pope* v. *Williams*, 193 U.S. 621, 633; *Mason* v. *Missouri*, 179 U.S. 328, 335, absent of course the discrimination which the Constitution condemns. Article I, section 2, of the Constitution in its provision for the election of Members of the House of Representatives and the 17th amendment in its provision for the election of Senators provide that officials will be chosen "by the people." Each provision goes on to state that "the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature." So while the right of suffrage is established and guaranteed by the Constitution (*Ex parte Yarbrough*, 110 U.S. 651, 663–665; *Smith* v. *Albright*, 321 U.S. 649, 661–662) it is subject to the imposition of State standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed. (See *United States* v. *Classic*, 313 U.S. 299, 315.)

We do not suggest that any standards which a State desires to adopt may be required of voters. But there is wide scope for exercise of its jurisdiction. 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.

Of course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the 15th amendment was designed to uproot. No such influence is charged here. On the other hand, a literacy test may be unconstitutional on its face.

In that connection Mr. Justice Douglas pointed to the literacy test requirement held unconstitutional in *Davis* v. *Schnell*, 81 Fed. Supp. 872, aff'd 336 U.S. 933, saying that:

The legislative setting of that provision and the great discretion it vested in the registrar made clear that a literacy requirement was merely a device to make racial discrimination easy. We cannot make the same inference there. The present requirement, applicable to members of all races, is that the prospective voters "be able to read and write any section of the Constitution of North Carolina in the English language." That seems to us to be one fair way of determining whether a person is literate, not a calculated scheme to lay springes for the citizen.

As recently as March 26 of this year Mr. Justice Douglas stated at page 2 of his concurring opinion in the case of Baker against Carr, the unfortunate reapportionment decision:

That the States may specify the qualifications for voters is implicit in article I, section 2, clause 1, which provides that the House of Representatives shall be chosen by the people and that "the electors (voters) in each State shall have the qualifications requisite for electors (voters) of the most numerous branch of the State legislature." The same provision, contained in the 17th amendment, governs the election of Senators.

Apparently—for Justice Douglas at least—article I, section 2, has lost none of its original and true meaning. He continues:

Within limits those qualifications may be fixed by State law. (See *Lassiter* v. *Northampton Election Board*, 360 U.S. 45, 50–51.) Yet, as stated in *Ex parte Yarbrough*, 110 U.S. 651, 663–664, those who vote for Members of Congress do not "owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively upon the law of the State."

Clearly these "limits" are the restrictions imposed by the 14th, 15th, and 19th amendments, none of which—as I have shown—authorizes Congress to set voter qualifications. The word "exclusively" no more than underlines the constitutional prohibition that States may not deny the franchise to citizens because of race, creed, color, or sex.

Mr. Justice Douglas continues:

The power of Congress to prescribe the qualifications for voters and thus override State law is not in issue here.

I submit that this statement by Justice Douglas does not, as some might assume, show an inclination on his part to accept as constitutional—were it to become law—a bill such as S. 2750. Rather, this jurist appears to be following the customary judicial technique of deferring consideration of an issue not presently a "case or controversy" before the Court until such a time—if ever—as the issue might arise.

The cases to which I have just referred are significant in that they confirm beyond any doubt the power of the States under article I, section 2, to employ literacy tests which on their face or in their administration do not violate the 14th and 15th amendments.

5. "APPROPRIATE LEGISLATION"

The 14th and 15th amendments authorize Congress to enforce these amendments by enacting "appropriate legislation."

The word "appropriate" has an indefinite meaning. What one man may regard as appropriate—that is, suitable, fit, or proper—another may not.

Nevertheless, "appropriate" has certain boundaries of definition and application beyond which it cannot be extended. Congress could not rely upon the 14th and 15th amendments in passing legislation totally unrelated to the purposes of these amendments.

We may go a step further. It would also be unconstitutional for Congress to rely upon its limited power under the 15th amendment in enacting legislation which would have a much broader application.

In *Karem* v. *U.S.*, 121 Fed. Rep. 250 (1903), a decision quashing a conspiracy indictment, the Court said at page 255:

The 15th amendment is therefore a limitation upon the powers of the States in the execution of their otherwise unlimited right to prescribe the qualification of voters in their own elections, and the power of Congress to enforce this limitation is necessarily limited to legislation appropriate to the correction of any discrimination on account of race, color, or condition. The affirmative right to vote in such elections is still dependent upon and secured by the Constitution and laws of the State, the power of the State to prescribe qualification being limited in only one particular. The right of the voter not to be discriminated against at such elections on account of race or color is the only right protected by this amendment, and that right is a very different right from the affirmative right to vote.

There are certain very obvious limitations upon the power of Congress to legislate for the enforcement of this article: First, legislation authorized by the amendment must be addressed to State action in some form, or through some agency; second, it must be limited to dealing with discrimination on account of race, color, or condition.

This case erects certain boundaries within which "appropriate legislation" under the 15th amendment must reside. In particular, we find that, "appropriate legislation is limited to the subject of discrimination on account of race, color, or condition"—page 258. The Court continued at page 259:

Section 5508 has for its object the punishment of all persons who conspire to prevent the free enjoyment of any right or privilege secured by the Constitution or laws of Congress, without regard to whether the persons so conspiring are private individuals or officials exercising the power of the United States or of a State. Neither does it draw any distinction between a conspiracy directed against the exercise of the right of suffrage based upon race or color, and a conspiracy not so grounded. It is therefore not legislation appropriate to the enforcement of the 15th amendment.

The observation of the Court that Congress did not "draw any distinction between a conspiracy directed against the exercise of the right of suffrage based upon race or color, and a conspiracy not so grounded," is very significant. Presumably if Congress did not "draw any distinction between a literacy test directed against the exercise of the right of suffrage based upon race or color, and a literacy test not so grounded," the legislation would also be inappropriate.

The Karem case relies in part on the earlier Supreme Court case of United States against Reese, supra.

In the Reese case the Court held unconstitutional two sections of a Federal statute punishing election officers who should refuse to any person lawfully entitled to do so the right to cast his vote at an election. The Court was of the opinion that Congress could punish such denial at a State election only when it was on account of race, color, or previous condition of servitude.

Here, as in the Karem case, a Federal law was deemed not to be "appropriate legislation." The Court observed at page 218:

This leads us to inquire whether the act now under consideration is "appropriate legislation" for that purpose. The power of Congress to legislate at all upon the subject of voting at State elections rests upon this amendment. The effect of article I, section 4, of the Constitution, in respect to elections for Senators and Representatives, is not now under consideration. It has not been contended, nor can it be, that the amendment confers authority to impose penalties for every wrongful refusal to receive the vote of a qualified elector at State elections. It is only when the wrongful refusal at such an election is because of race, color, or previous condition of servitude, that Congress can interfere, and provide for its punishment. If, therefore, the third and fourth sections of the act are beyond that limit, they are unauthorized.

And at pages 220, 221:

But when we go beyond the third section, and read the fourth, we find there no words of limitation, or reference even, that can be construed as manifesting any intention to confine its provisions to the terms of the 15th amendment. That section has for its object the punishment of all persons, who, by force, bribery, etc., hinder, delay, etc., any person from qualifying or voting. In view of all these facts, we feel compelled to say, that, in our opinion, the language of the third and fourth sections (of the statute) does not confine their operation to unlawful discriminations on account of race, etc. If Congress had the power to provide generally for the punishment of those who unlawfully interfere to prevent the exercise of the elective franchise without regard to such discrimination, the language of these sections (of the statute) would be broad enough for that purpose.

* * * * *

We must, therefore, decide that Congress has not as yet provided by "appropriate legislation" for the punishment of the offenses charged in the indictment.

In *James* v. *Bowman*, 190 U.S. 127 (1903), the Court noted at pages 139, 140 that:

A statute which purports to punish purely individual action cannot be sustained as an appropriate exercise of the power conferred by the 15th amendment upon Congress to prevent action by the State through some one or more of its official representatives, and that an indictment which charges no discrimination on account of race, color or previous condition of servitude is likewise destitute of support by such amendment.

But the contention most earnestly pressed is that Congress has ample power in respect to elections of Representatives in Congress; that the election which was held, and at which this bribery took place, was such an election; and that therefore under such general power this statute and this indictment can be sustained. The difficulty with this contention is that Congress has not by this section acted in the exercise of such power. It is not legislation in respect to elections of Federal officers, but is leveled at all elections, State or Federal, and it does not purport to punish bribery of any voter, but simply of those named in the 15th amendment. On its face it is clearly an attempt to exercise power supposed to be conferred by the 15th amendment in respect to all elections, and not in pursuance of the general control by Congress over particular elections. To change this statute, enacted to punish bribery of persons named in the 15th amendment at all elections, to a statute punishing bribery of any voter at certain elections would be in effect judicial legislation.

And at page 142:

Congress has no power to punish bribery at all elections. The limits of its power are in respect to elections in which the Nation is directly interested, or in which some mandate of the National Constitution is disobeyed, and courts are not at liberty to take a criminal statute, broad and comprehensive in its terms and in these terms beyond the power of Congress, and change it to fix some particular transaction which Congress might have legislated for if it had seen fit.

United States against Reese, supra, was last referred to by the Supreme Court in *U.S.* v. *Raines*, 362 U.S. 17 (1960), an action under the Civil Rights Act of 1957 to enjoin public officials of a State from discriminating against Negro citizens desiring to vote.

In United States against Reese, it will be recalled, the Court declared two sections of a Federal law unconstitutional since they were not confined in their operation to unlawful discrimination on account of race, color, or condition. The defendants in the circuit court were State inspectors in a municipal election who had refused to receive a Negro's vote, creating a factual situation which placed this incident clearly within the authority of Congress to correct by "appropriate legislation" under the 15th amendment.

The Raines case questions not the conclusion of the Reese Court that the Federal law was too broad but rather the advisability of reaching such a conclusion when the circumstances themselves were within the boundaries prescribed by the 15th amendment.

Referring to United States against Reese, the Court said at page 22:

Perhaps cases can be put where their application to a criminal statute would necessitate such a revision of its text as to create a situation in which the statute no longer gave an intelligible warning of the conduct it prohibited.

And at pages 24 and 25:

There are, to be sure, cases where this Court has not applied with perfect consistency these rules for avoiding unnecessary constitutional determinations, and we do not mean to say that every case we have cited for various exceptions to their application was considered to turn on the exception stated, or is perfectly justified by it. The district court relied primarily on *United States* v. *Reese*, supra. As we have indicated, that decision may have drawn support from the assumption that if the court had not passed on the statute's validity in toto it would have left standing a criminal statute incapable of giving fair warning of its prohibitions. But to the extent Reese did depend on an approach inconsistent with what we think the better one and the one established by the weightiest of the subsequent cases, we cannot follow it here.

Accordingly, if the complaint here called for an application of the statute clearly constitutional under the 15th amendment, that should have been an end to the question of constitutionality. And as to the application of the statute called for by the complaint, whatever precisely may be the reach of the 15th amendment, it is enough to say that the conduct charged—discrimination by State officials, within the course of their official duties, against the voting rights of U.S. citizens, on grounds of race or color—is certainly, as "State action" and the clearest form of it, subject to the ban of that amendment, and that legislation designed to deal with such discrimination is "appropriate legislation" under it.

In short, confronted with an opportunity to restrict the "appropriate legislation" determination of the Reese case the Court in United States against Raines chose instead to criticize it merely as having been an "unnecessary constitutional determination."

These cases establish certain limitations upon the power of Congress in its enactment of "appropriate legislation." They show an unwillingness on the Court's behalf to uphold congressional legislation passed under the enforcement clause of the 15th amendment when this legislation is too broad or too remotely related to race, color, or condition.

And what is the relationship between these cases and S. 2750? This bill would prohibit "the denial to any person otherwise qualified by law of the right to vote on account of his performance in any examination, whether for literacy or otherwise, if such other person has completed the sixth primary grade."

In short, State literacy tests administered to students who have completed the sixth grade would be eliminated regardless of their relationship to race, color, or condition; and a uniform sixth-grade standard would be applied across the board in all Federal elections in all States. What could be broader or more unrelated to the 15th amendment?

S. 2750 would not prohibit State literacy tests which on their face or in their application deprive citizens of the right to vote because of race, color, or condition. On the contrary, this bill would prohibit the administration of all literacy tests to all citizens who have completed the sixth grade. I, therefore, submit that this bill cannot stand.

At the very least, it must be shown that the maladministration of literacy tests is so widespread as to constitute the actual standard and that Congress has no available remedy to correct this administrative problem other than by passing a general corrective Federal statute, such as S. 2750.

The maladministration of literacy tests, however, is not widespread. No charge has been made against Virginia. The U.S. Commission on Civil Rights in its 1961 report on voting states that:

In 1961, then, the problem of denials of the right to vote because of race appears to occur in only 8 Southern States * * * Even in these 8 States, however, with a total of 3,737,242 nonwhites of voting age, some 1,014,454 nonwhites are registered to vote. Moreover, discrimination against Negro suffrage does not appear to prevail in every county in any of these States. The Commission has found that in [three of these States], it is limited to only a few isolated counties (1961 U.S. Commission on Civil Rights Report, "Voting," p. 22).

Even if we assume widespread State abuses, I cannot conceive of anyone's seriously arguing that the present 20-odd civil and criminal statutes are inadequate to deal with the problem; however, I will discuss this matter later.

The Attorney General recently in hearings on S. 2750 before the Constitutional Rights Subcommittee of the Judiciary Committee observed:

This legislation does not set the qualifications of these voters. It merely sets the test, the testing of these qualifications. And, in my judgment, that is clearly constitutional.

If we were setting the qualifications for the individuals then, I believe, that it would be unconstitutional and would require a constitutional amendment.

I am gratified that the Attorney General believes the Federal Government's "setting the qualifications for individuals would be unconstitutional."

His position, however, that "this legislation does not set the qualifications of voters" is, I feel, completely unrealistic. I cannot conceive that the establishment of the sixth grade as a conclusive standard of literacy can be anything but a voter qualification. Clearly, S. 2750 extends the franchise to any citizen who, after meeting other State requirements, can submit evidence of having completed the sixth grade. If this is not a voter qualification, what is?

I can only refer the Attorney General to the statement of that able Justice, Oliver Wendell Holmes, who in *U.S.* v. *Johnson*, 221 U.S. 488, remarked at page 496, that, "the meaning of a sentence is to be felt rather than to be proved." Or as we read in Matthew 7: 20: "By their fruits ye shall know them."

6. CONCLUSIVE PRESUMPTIONS

Conclusive presumptions are not generally favored by the courts. They have on several occasions been held to be arbitrary, capricious, unreasonable, and, therefore, unconstitutional under the due process clauses of the 5th and 14th amendments.

I will review briefly three cases in which the Supreme Court has ruled on irrebuttable presumptions.

In *Manley* v. *Georgia*, 279 U.S. 1 (1928), a Georgia statute declared that every insolvency of a bank shall be deemed fraudulent and the president and directors punished by imprisonment. This presumption was held to conflict with the due process clause of the 14th amendment, the Court stating at page 6:

A statute creating a presumption that is arbitrary or that operates to deny a fair opportunity to repel it violates the due process clause of the 14th amendment.

In *Heiner* v. *Donnan*, 285 U.S. 312 (1932), the Court held unconstitutional a provision of the Revenue Act which created a conclusive presumption that gifts made within 2 years prior to the death of the donor were made in contemplation of death and must be included in the donor's estate. Justice Sutherland noted at page 325 that "a statute which imposes a tax upon an assumption of fact which the taxpayer is forbidden to controvert, is so arbitrary and unreasonable that it cannot stand."

An excellent example of the Court's view toward such statutes may be found in *Tot* v. *United States*, 319 U.S. 463 (1943). This case involved a section of the Federal Firearms Act which contained a presumption that from a prisoner's prior conviction of a crime and his present possession of a firearm or ammunition it would be presumed that he received the article in interstate or foreign commerce. Although the presumption was rebuttable, the language of the Court is very pertinent to the instant problem. On page 467 it declared:

The due process clauses of the 5th and 14th amendments set limits upon the power of Congress or that of a State legislature to make the proof of one fact or group of facts evidence of the existence of the ultimate fact on which guilt is predicated.

The Court continues on pages 467 and 468:

Under our decisions, a statutory presumption cannot be sustained if there be no rational connection between the fact proved and the ultimate fact presumed, if the inference of the one from proof of the other is arbitrary because of lack of connection between the two in common experience. This is not to say that a valid presumption may not be created upon a view of relation broader than that a jury might take in a specific case. But where the inference is so strained as not to have a reasonable relation to the circumstances of life as we know them, it is not competent for the legislature to create it as a rule governing the procedure of courts.

The standard set by S. 2750 would, beyond a doubt, be a conclusive presumption of literacy. Consequently, once a voter had submitted his sixth-grade certificate of education to a registrar, the presumption of his literacy would be irrebuttable.

But is it true that everyone with a sixth-grade education is literate? An analysis of the widespread use of "social promotion" programs in the schools illustrates the absence of a causal connection between literacy and completion of the sixth grade.

In this connection I would like to quote several passages from recent material published by the National Education Association of the United States.

In a December 1958 pamphlet entitled "School Marks and Promotions," the association indicates at page 17:

> Some educators believe that the system of fixed grades based on achievement is much too arbitrary and that the means, such as retention, used to enforce the system have definitely detrimental effects on the pupils who do not fit into the administrative pattern. These educators, therefore, recommend the ungraded school, in which the problem of promotion is not a key one as it is in the typical school today.

What of these ungraded schools which, by definition, have no sixth grade? Are there to be standardized Federal tests administered to students of such schools—tests the successful completion of which create a conclusive presumption of literacy? And how long will it be before a passing mark on this Federal literacy test by a prospective voter from any type of school—or perhaps no school—will be irrebuttable evidence of literacy?

One need not be a prophet to foresee a Federal literacy test if Congress takes the first step in this direction by adopting S. 2750.

The pamphlet continues:

> Just as other qualities besides scholarship are now being evaluated and reported to parents, there has been a tendency to consider these other factors in promotion. The all-round development of the individual pupil is considered. Some pupils need to work with those of their own age in order to work to their best ability; for others this consideration is not as important. It has been suggested that within each school system a definite set of factors influencing promotion be agreed upon and that each teacher take these factors into consideration in forming his judgment as to whether or not a particular pupil should be promoted.
>
> Recent studies cast doubt on the wisdom of nonpromotion. Not only may retention have actually harmful effects on the pupil because of his feeling of failure and rejection, but also it may not even accomplish the academic goals toward which it is aimed.

In a NEA research memo dated February 1959 the authors noted at page 5:

> Some schools have maintained that in order to preserve grade standards, they had to fail pupils who did not reach a satisfactory level of achievement. This idea fits in which the concept of education as an obstacle course whose purpose is to eliminate all the intellectually unfit and preserve the last laps of the course for the intellectually elite. Whether or not this view is philosophically sound will not be discussed here, but even for the achievement of this goal, nonpromotion is likely to be unsuccessful.

The memorandum continues at page 7:

> If the effects of failure are likely to be bad, is the answer to be found in the promotion of all pupils? Some schools have attempted a 100-percent promotion plan, and others maintain a chronological age, or 'social promotion' plan. Social promotion does not entirely eliminate nonpromotion, but it attempts to keep the child moving along with his approximate age group, occasionally by setting an arbitrary limit on the number of times he may be retained. Several writers suggest that these plans may also have bad effects although they may not be as unfortunate or as numerous as those that result from continual nonpromotion. The problem, therefore, becomes one of avoiding the bad effects of both nonpromotion and 100-percent, or chronological-age promotion.

And further at page 8:

> All the studies reviewed here have shown that there is no simple solution to the problem of failure. A school that adopts a plan of automatically retaining in a grade all children who do not meet standards, or of promoting all children no matter what their achievement, without considering individual cases, is not fulfilling its responsibility to society. In light of present evidence, however, it seems that nonpromotion should be used only as a last resort and be recognized as the serious measure that it is.

Finally, I would like to refer to another NEA research memo dated December 1960. This report states at page 3:

> Most commonly, school districts reported that promotion is based on an individual study of each pupil and a consideration of all the factors which may be involved in order to serve his best interests. This was the approach taken by almost 80 percent of the respondents. Slightly less than one-fifth still base promotion only on meeting academic standards, with a limitation on the number of years a pupil will be retarded.

I do not presume to be an authority on the merits of "social promotion" in grade schools. Like most people, however, I have my opinions on the matter and these include the view that not only sixth grade graduates but the average high school graduate knows little history and is a poor speller.

Nevertheless, as I have tried to point out, the movement of a student toward the goal of literacy is but one—and apparently a minor—consideration in determining whether he will be promoted. Consequently, the conclusive presumption which S. 2750 would impose with regard to literacy is no more conclusive in fact than the presumption in Heiner against Donnan, supra, regarding gifts made in contemplation of death.

The Health, Education, and Welfare Department observes in its April 1962 pamphlet entitled "Indicators," that:

> Persons with low educational attainment have great difficulty in meeting the economic and social needs of modern society. They have limited adaptability to changing requirements for employment, and they frequently are rejected for military service. Those who lack an education extending beyond elementary school are deprived of many opportunities for personal development and participation in community affairs. Often they cannot avoid unemployment and dependency.

This, of persons whose education has extended, no doubt in some instances, beyond the seventh grade. I read further:

> Persons who have less than 5 years of formal schooling thus lack, by and large, the background for effective performance as employees and as citizens. For these reasons they are frequently called functional illiterates.

Clearly there is little difference between a person with 5 years or less of schooling and one whose education has extended through the sixth grade. The standard set by S. 2750 is, therefore, but one grade above functional illiteracy.

The resulting situation—were S. 2750 constitutional—magnifies the flaws in this bill; for presumably if the Federal Government could under the 14th and 15th amendments set one positive voter qualification, it could under the same authority set them all. For example, if Congress were to find that requirements as to residence, age, property, lack of criminal conviction, and so forth, were being used by States to disfranchise voters on account of race, color, or condition, it, under this thinking, would have the constitutional authority to set uniform, positive voter requirements thereby controlling the entire electoral process. This was never anticipated by the framers of the Constitution or by the legislators who considered the 14th and 15th amendments.

Over the years that I have had the privilege and honor of representing the State of Virginia in the Congress, I have objected on numerous occasions to encroachments of the Central Government on States rights. I have repeatedly cited as authority for my position the 10th amendment which provides:

> 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.

Today, we are faced with proposed legislation under which Congress not only would exercise powers never specifically delegated to it, but also would enter a field specifically reserved to the States. Clearly, S. 2750 cannot be justified under the 14th and 15th amendments; it would be a reprehensible invasion of the States power under article I, section 2, to determine the qualifications of their voters.

PUBLIC POLICY OBJECTIONS TO S. 2750

A. LITERACY TESTS AND NATURALIZATION REQUIREMENTS

It has been argued that many States set too high a standard for their voters. In my opinion, higher standards would give us better government.

To my knowledge, no State requires more of its voters than does the United States itself of those who would become naturalized citizens.

I refer to a pamphlet issued in 1959 by the Department of Justice entitled "United States Naturalization Requirements, a Brief Summary of General Provisions."

Under "Petition for Naturalization," beginning on page 6, the pamphlet states that an applicant must understand English and be able to read, write, and speak words in ordinary usage in that language. He must know how to sign his name in English. By any interpretation this is a literacy test.

In addition, he is required to have resided continuously in the United States for at least 5 years. He must be a person of good moral character. Furthermore, he must be attached to the principles of the Constitution of the United States and well disposed to the good

order and happiness of the United States. He must be able to demonstrate a knowledge and understanding of the history, and of the principles and form of government, of the United States.

I would be the last person to consider these naturalization requirements excessive. To protect the Nation's security and to preserve the high standard of its electorate, the United States must discharge its obligation to its present and future citizens by naturalizing only those who meet requirements of the type set forth in the pamphlet.

Must a State, which is equally sovereign in its sphere and which has a similar obligation to its citizens, be denied the right to prescribe requirements for its electorate? If it is in the Nation's best interests for the Federal Government to require that a naturalized citizen be able to read, write, and understand the Constitution, can it be detrimental for a State to require that its citizens meet similar standards before they are given the franchise?

B. "ARBITRARY DENIALS" AND "INADEQUATE STATUTES"

Section 1(c) of S. 2750 states:

Congress further finds that many persons have been subjected to arbitrary and unreasonable voting restrictions on account of their race or color; that literacy tests and other performance examinations have been used extensively to effect arbitrary and unreasonable denials of the right to vote; and that existing statutes are inadequate to assure that all qualified persons shall enjoy the right to vote.

As authority for such sweeping findings, the sponsors of S. 2750 presumably are relying on part I of the 1961 U.S. Commission on Civil Rights Report. The Commission at page 137 of the report offers its own interpretation of the Constitution regarding the power of the States to determine voter qualifications:

The U.S. Constitution leaves to the States the power to set the qualifications for voters in Federal, as well as State, elections. This power is not, however, unlimited. The 15th amendment prohibits the States from denying the right to vote to any citizen on grounds of race or color, and empowers the Congress to enforce this prohibition by appropriate legislation.

With this, no constitutional authority would argue; however, it is here that the Commission leaves the realm of fact and begins to speculate. The report continues:

Therefore, if Congress found that particular voter qualifications were applied by States in a manner that denied the right to vote on grounds of race, it would appear to have the power under the 15th amendment to enact legislation prohibiting use of such qualifications.

How can a mere finding by Congress that a particular set of circumstances exist give it the power to legislate regarding these circumstances? If the Congress were to "find" that a State court had in a particular case denied to a citizen his rights under these amendments, could Congress "legislate" the State courts out of existence?

Article III, section 1, of the Constitution provides:

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

It is for the courts to decide through their interpretation of State voter qualification provisions—and not for the Congress to find—whether "persons have been subjected to arbitrary and unreasonable voting restrictions on account of their race or color."

Congress cannot by any finding grant itself power, as the Commission's report would suggest. If Congress does not possess the constitutional power to enact legislation, it cannot bestow this power upon itself by making certain findings.

Continuing its indictment of the States, section 1(c) of the bill would have Congress find, as I have noted, "that existing statutes are inadequate to assure that all qualified persons shall enjoy the right to vote."

When the so-called civil rights legislation of 1957 and 1960 was under consideration, I discussed my objections to it both in general and in particular. My position has not changed. However, I find it inconceivable that the legislation, especially title VI of the 1960 act, authorizing the unconstitutional appointment of Federal "voting referees," could by any interpretation be considered "inadequate."

The U.S. Commission on Civil Rights declares in part I of its 1961 report at page 78:

Title VI, then, does not become a weapon against discriminatory denials of the vote until a suit filed in the "affected area" has resulted in a finding that such discrimination has actually occurred, and a further finding that such discrimination "was or is pursuant to a pattern or practice."

In other words, why bother with proof of discrimination when it is so easy to amend the Constitution by an act of Congress that abolishes State literacy tests.

What added humiliation must the States endure? The constitutional structure of our Government has already been severely dislocated by Federal intrusion in the field of civil rights.

Nor has the Justice Department been what one might call slothful or hesitant in its enforcement of the acts of 1957 and 1960. The 1961 report of the Civil Rights Commission, to which I referred earlier, notes in part I on page 136:

The U.S. Department of Justice has acted with vigor to apply the Civil Rights Acts of 1957 and 1960 to prevent racial discrimination in the franchise. As of August 4, 1961, it had brought suits to protect the right to vote in 15 counties in 5 States. Three of the cases had been successfully concluded, one case had been partially determined, and a fifth had been tried but was awaiting decision. The remainder were awaiting trial. In addition, as of August 1, 1961, the Department of Justice had made demands for the inspection of records under title III of the 1960 Civil Rights Act in 26 counties in 6 States.

I cannot comprehend how existing legislation could be considered, of all adjectives, "inadequate," particularly in light of the Justice Department's crash program of enforcement.

C. "SIX PRIMARY GRADES"

S. 2750 continues at section 1(d):

Congress further finds that education in the United States is such that persons who have completed six primary grades in a public school or accredited private school cannot reasonably be denied the franchise on grounds of illiteracy or lack of sufficient education or intelligence to exercise the prerogatives of citizenship.

It is important to note that S. 2750 would set an arbitrary standard for literacy. By this I mean that if a citizen of a State has completed the sixth grade, he is "literate" at law whether or not he is literate in fact. His inability to read, write, or show some understanding of the Constitution would cease to be material.

Although certainly most people who have completed the sixth grade are literate, there are some, nevertheless, who unfortunately remain unable to read, write, or understand the Constitution. Extending the franchise to this group could do representative democracy in this country no possible good.

Furthermore, it should be noted that the power to set the requirement at 6 primary grades includes the power to reduce the 6 to 1 or to raise it to 12, perhaps higher. Inherent in the power to increase the electorate is the power to restrict it. Those who today favor S. 2750 because they consider six primary grades to be a reasonable literacy standard may tomorrow find a majority in Congress establishing standards which appear unreasonable. The acceptance of any Federal literacy standard would open a Pandora's box of evils.

D. "SPANISH LANGUAGE"

S. 2750 continues at section 1(e):

Congress further finds that large numbers of American citizens who are also citizens of the several States are deprived of the right to vote by virtue of their birth and education in a part of the United States in which the Spanish language is commonly used; that these citizens are well qualified to exercise the franchise; that such information as is necessary for the intelligent exercise of the franchise is available through Spanish-language news sources; that lack of proficiency in the English language provides no reasonable basis for excluding these citizens from participating in the democratic process.

It is worth noting, first of all, that the citizens to which subsection (e) would automatically and arbitrarily extend the voting franchise have not been deprived of the right to vote because of their race, creed, or color. Consequently, since the 14th and 15th amendments are not involved and since the constitutional power of the Federal Government is limited under article I, section 4, to legislation involving the times, places, and manner of holding elections, the Congress, if it approved this legislation, would unquestionably be usurping the constitutional rights of the States.

Furthermore, the citizens to which subsection (e) refers have not likely been denied the privilege of voting "by virtue of their birth and education in a part of the United States in which the Spanish language is commonly used."

On the contrary, any withholding of the franchise most likely resulted, in all probability, from the fact that the citizens concerned were unable to read and write English.

Let us be candid; subsection (e) of S. 2750 is directed in large measure toward New York, a State which, more than any

other, has experienced the difficulties and problems that arise in meeting the needs, desires, and best interests of many residents who are not proficient in the native language of our country. Without question millions of Americans who were not born in the continental United States have been prepared for full, contributing lives as citizens by New York.

Consequently is there any State which presumably would have a better understanding of these difficulties and problems? I doubt it; and I cannot but wonder if the Congress realizes that New York in its wisdom and with its vast experience has seen fit to provide as one of its voter qualifications in article II, section 1, of the State constitution:

> No person shall be entitled to vote * * * unless such person is also able, except for physical disability, to read and write English.

Incidentally, of the 21 States with literacy tests, but 7 are Southern States—*Lassiter* v. *Taylor*, 152 F. Supp. 295. Furthermore, Alaska and Hawaii—who presumably have benefited from a long-term observance of the wisdom and folly of their 48 sisters—have adopted literacy tests as qualifications for their voters.

Even if this proposed legislation were constitutional, I cannot but consider it unwise to foster the presumption that the Congress is better qualified than the State of New York, or any other State, to determine what voting qualifications are in the best interest of its citizens and of those residents who are not at present proficient in English.

Indeed, the absence of a qualification that voters be able to read and write English would remove an incentive for those who had not acquired this capability to become familiar with our native tongue. The standards which a naturalized citizen must meet take cognizance of this.

It is not my intention to presume to speak for the State of New York—or for the States of Montana and Illinois. However, I am convinced that if a resident of San Juan, P.R., for example, moved to the city of Richmond, Va., and had to rely on "Spanish-language news sources" to acquire a knowledge of current political events, he would have no small amount of difficulty becoming informed. In fact, the assertion of subsection (e), "that such information as is necessary for the intelligent exercise of the franchise is available through Spanish-language news sources," is valid, if at all, in but a few areas of the Nation.

It is indeed unfortunate that the lure of potential votes has influenced the supporters of this bill to attempt to impose on all States a set of standards which obviously are designed for limited areas. This is particularly objectionable, in view of the fact that New York, perhaps the major target of section 1(e), has rejected such an approach.

In summary, not only would S. 2750 impair the sovereignty of the States, it would also lower the standards of our national electorate. In the age of space exploration when one cannot read a newspaper without learning of some significant achievement in science, medicine, or the arts, I am astounded by the regressive attempt of S. 2750 to reduce voting standards when apparently all other standards are being increased.

The bill is unconstitutional and unwise. I am unqualifiedly opposed to it.

Mr. ELLENDER. Mr. President, I have served in the Senate for over 25 years now, and in my judgment the issue before the Senate today presents one of the most blatant attempts I have ever witnessed to openly do violence to our Federal Constitution.

Minority groups seek to do this through the guise of so-called civil rights. But that is not what they want. What they really desire is complete control over the election machinery of the 50 sovereign States.

The matter now pending before the Senate is not a civil rights measure. This is merely a catchall phrase that these persons employ to disguise their true intentions.

During the past 25 years, I have seen the same smokescreen used time and time again. Only a few weeks ago this body considered a constitutional amendment which would put an end to poll taxes as a requisite to voting.

I said at that time that although I myself had sponsored such legislation in the past, I was then opposed to it. It was my hope that should the poll tax issue be settled in that manner it would mean the end of the fight on Federal legislation on voting rights. But since more and further efforts were attempted in the field of regulating elections by Federal legislation I would oppose all efforts, including the constitutional amendment just mentioned.

As has been forcefully presented to the Senate by many Senators who preceded me, there is no doubt in my mind that if Congress should make the mistake of passing this bill, and should the issue then be submitted to the Supreme Court, and the Supreme Court hold the law constitutional, the entire system of voter qualifications would be transferred from the States, where it rightfully belongs, to the Federal Government. I believe there is no doubt about that. Let us not make any mistake about it. All of that is in face of the fact that we might not have a Constitution today unless the States were assured that they retained, in the Federal Constitution, the right to decide for themselves the qualifications of all voters within their respective jurisdictions.

Mr. President, I say that these misled minority groups will never rest until this country is absolutely ruled by a small group of militant, well-organized fanatics, who do not see that as they chip away at the Constitution, they run the risk of having the entire structure fall upon them and destroy them, as they destroy the Nation.

Our country has grown strong and wealthy over the years under the rights and privileges guaranteed to us under the Constitution. As has been often stated in debate, our great Constitution may have never been adopted had the right to prescribe voting qualifications not been left to the States.

This proposal is a brazen attempt to remove a constitutional right that has been retained by the States. Should this first step be taken, then other attempts would follow that would chip away still more of the rights of the States in determining who should and should not vote. I predict that if the bill is enacted, and should the Supreme Court hold it constitutional, then the rights of the States to legislate on qualifications of voters would be wiped out.

I say we must not allow this to happen. The historic right of the States to set forth their own voting rights must be maintained. As I said earlier, it is through this system of local self-government that the Nation has prospered, and I honestly believe that should the right of self-rule—which is inherent in setting forth voting qualifications—be abrogated by the Federal Government, then the Nation will have started on the decline.

The debates of the constitutional drafting period show very clearly that if the right to determine voter qualifications had not been left in the hands of the individual sovereign States, the Constitution would never have been ratified.

Two sections of article I of the Constitution very clearly point this out.

Section 2 of article I of the Constitution provides that—

> 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.

Section 4 of article I proclaims that—

> The Names, 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 chusing Senators.

There are also the two amendments which have to some extent contracted the otherwise unqualified right of the States, as guaranteed in section 2 of article I, to establish the qualifications of voters. I refer to the 15th amendment, which provides that a citizen of the United States may not be denied the right to vote on account of race, color or previous condition of servitude; and to the 19th amendment, which establishes the same protection against discrimination based on sex. Then, of course, there is the 17th amendment, adopted in 1913, whereby the right of the States to establish the qualifications of electors was again reaffirmed, this time with respect to the choosing of U.S. Senators.

Mr. President, the Nation has profited greatly from the rich heritage of learning left to us by the great constitutional lawyers of years gone by. One of the greatest of those illustrious pioneers of American constitutional history was George Ticknor Curtis. Mr. Curtis' name will live forever in the annals of American history for many reasons; first and foremost, of course, because he was the author of two monumental works; the first, which was to become a standard authority, ranking alongside Justice Storey's "Commentaries on the Constitution," was published in 1854 in two

volumes and entitled "History of the Constitution of the United States." The second of this great constitutional lawyer's legal compositions was entitled "Constitutional History of the United States," published in 1896, 2 years after his death. Mr. Curtis also will be remembered by students of American history for his able and successful defense of President Andrew Johnson in the impeachment proceedings instituted against the American Chief Executive in 1867; George Ticknor Curtis is remembered, too, for the brilliant and cogent argument he presented to the U.S. Supreme Court on December 18, 1856, in the famed Dred Scott case.

During the course of his presentation to the Supreme Court, in the Dred Scott case, Mr. Curtis made this significant statement as a preface to his analysis and interpretation of the constitutional provisions in issue in the Dred Scott case—that is, the provisions of our Constitution relating to the status and government of American territories:

I wish, in the next place, to say, may it please your honors, what indeed is obvious to everyone—that this is eminently a historical question. But I shall press that consideration somewhat further than it is generally carried on this subject, and much further than it has been carried by the counsel for the defendant in error; for I believe it to be true of this, as it is of almost all questions of power arising under the Constitution, that when you have once ascertained the historical facts out of which the particular provision arose, and have placed those facts in their true historical relations, you have gone far toward deciding the whole controversy. So true is it that every power and function of this Government had its origin in some previously existing facts of the national history, or in some then existing state of things, that it is impossible to approach one of these questions as one of mere theory, or to solve it by the aid of any merely speculative reasoning. Hence it is eminently necessary on all occasions to ascertain the history of the subject supposed to be involved in a controverted power of Congress, and, above all, to approach it with the single purpose of drawing that deduction which the constitutional history of the country clearly warrants ("Constitutional History of the United States," George Ticknor Curtis, p. 502).

Mr. President, keeping these words of George Ticknor Curtis in mind, I shall ask the indulgence of the Senate while I embark upon the task of reviewing the circumstances surrounding the genesis of the constitutional provisions at issue in the right-to-vote legislation now before the Senate. It is with the utmost humility that I undertake the enormous assignment of refreshing the memories of Members of the U.S. Congress, and the public at large, with the historical backdrop against which the language of article I, sections 2 and 4, of our Constitution was framed.

It was no easy job, I can assure Senators, to research and assemble the vast amount of data that I am about to present to the Senate. It was a monumental task, but it will be well worth the effort if it helps to awaken in Senators a better understanding and awareness of the precarious, perilous ground we are about to tread upon—to point up the misguided, imprudent, unwise course that is being urged upon us.

It is sheer folly, Mr. President, for the Congress of the United States to seek to enact laws aimed at undermining and destroying our one great constitutional bulwark against despotism—our time-tested system of local elections controlled and operated by the 50 sovereign State governments, free from coercion or subversion from a Federal bureaucracy. Heaven help us if this precious birthright is lost forever to us and to our posterity because we here today are unable to distinguish between political expediency and commonsense.

Mr. President, a study of colonial history reveals that regulation of suffrage was one of the first tasks to concern the American pioneers. From their inception the colonies maintained qualifications of voters. As I shall point out during the course of these remarks, when the colonies formed the Original Thirteen States of our Union, they still jealously and zealously guarded their right to prescribe qualifications for voting. Even a cursory reading of the discussions that took place during the Constitutional Convention at Philadelphia, and of the debates in the Thirteen States while the proposed Constitution was up for ratification, leads to the inescapable conclusion that a majority of the Thirteen States would never have formed a union and bound themselves under the Federal Constitution if clear and unmistakable language had not been included to guarantee to the respective States the right to establish qualifications of electors. Nor is there any doubt, Mr. President, that the Thirteen Colonies did not intend to surrender to the Federal Government their primary right to control the time, manner and places of holding elections; all evidence points to the unmistakable conclusion that they intended to vest in the Central Government only secondary authority to regulate elections, limited to those situations where extraordinary circumstances prevailed or where the States refused to conduct elections for Members of the House of Representatives and thereby threatened the very existence of the Federal legislative branch.

Later during these remarks I shall discuss more fully the meaning given to section 4 of article I by the framers of our Constitution. Right now I want to direct the attention of the Senators to the interpretation placed by our Founding Fathers on the language found in section 2 of article I—the requirement that "the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

As early as 1750 there were different qualifications for voting in the different Colonies. I quote from "Formation of the Union," 1750–1829, by Hart, page 15:

In each there was an elective legislature; in each the suffrage was very limited; everywhere the ownership of land in free-hold or other property, or the occupancy of a house was a requisite, just as it was in England for the country suffrage. In many cases there was an additional provision that the voter must possess a specified large quantity of land or must pay specified taxes. In some Colonies there was a religious requirement.

Mind you, Mr. President, all these requirements I have just mentioned were prerequisites for the exercise of the voting privilege.

While there were few specific provisions concerning suffrage in the charters of the Colonies, popular elections existed in each of the Colonies from the earliest date down to the Revolution. Popularly elected assemblies carried on local government. Virginia had a House of Burgesses as early as July 30, 1619.

And what was the first consideration of these colonial groups who were fiercely protective of their rights?

One of the first tasks of these colonial assemblies was to regulate the elective franchise. See McCulloch, "Suffrage and Its Problems," at page 18.

While the qualifications were vague and indefinite, there were many requirements, each a proof of the local regulation of voting qualifications. Even the Crown and the English Parliament made no serious attempt to modify or harmonize the various suffrage regulations. I quote from the same volume, page 19:

This left each colony practically free to pass its own laws providing for the franchise. By the time of the Revolution this practice became thoroughly established, thus allowing each Commonwealth to make suffrage laws to fit its peculiar electorial problem.

Down to 1776 there were seven qualifications for the elective franchise. The outstanding one was the landed-property qualification, which probably arose because of the business corporation-like nature of the early colonies. A piece of land was considered as giving a person the freedom of the company, as provided by Massachusetts in 1621, just as a block of stock entitles its holder to vote in a corporation.

Porter, in his "History of Suffrage in the United States," stated at pages 3 and 4:

But this very simple test of property-holding could not long hold out alone, although it was the first and the dominating consideration for almost 200 years following. The population became so complex, the interests of colonists expanded so far beyond mere commercial enterprise that other standards of fitness for participation in the affairs of the community were sought out and established. Strict limitations had been put upon the right to joint the company, and after the companies ceased to exist and the colonies became exclusively political institutions, the same limitations were carried over for the suffrage with some elaboration. They dealt with all the various things which are supposed to determine capacity to take intelligent interest in community affairs. Race, color, sex, age, religion, and residence were now investigated before the applicant was admitted to the suffrage. The theory was that only those who clearly had an interest in the colony—measured in terms of tried standards—should exercise the right of suffrage.

There we find a yardstick or a method of providing qualifications for voters during colonial days.

Virginia had varying requirements. In 1655 a voter had to be a habitant and a householder; in 1699 he had to be 21 years of age, a male habitant and freeholder, papists barred. By 1762 this had

been further refined by the freeholder being particularly required to own 50 acres, or 25 acres and house 12 by 12.

Massachusetts first required religious standards, Puritan and Orthodox, in 1631. By 1691 Massachusetts required a voter to be English and to own 40 shillings' freehold or 40 pounds of property.

Connecticut in 1638 required a voter to be a habitant, a Puritan, and a freeman, and varied this by 1702 to specify that he had to have 40 shillings' freehold or 40 pounds of property.

Rhode Island, as early as 1665 required a competent estate and barred Christian papists. By 1767 Rhode Island added to this the requirement of living in a town, plus owning 40 shillings' freehold or 40 pounds of property.

New Hampshire in 1680 required that a voter be 24 years of age, English, Protestant, and have an estate of 20 pounds. By 1728 the last requirement was increased to 50 pounds' realty.

North Carolina in 1669 required a voter to be a deist and to have a 50-acre freehold. By 1760 this had varied. The qualifications were 21 years of age, 1½ years' residence, British nationality, and a 50-acre freehold.

South Carolina in 1669 required a person to be a deist and to have 50 acres freehold. By 1759 a South Carolina voter had to be white and 21 years of age, Protestant, and have a settled freehold.

Georgia demanded a man to be 21 years of age and to have 50 acres of land, papists barred. In 1775 the land requirement took on a subtle change. It was replaced by the word "taxpayer," plus one-half year's residence required, and papists barred.

Pennsylvania in 1683 required a voter to own 100 acres, 10 cultivated, or 50 acres, 20 cultivated, or pay taxes. In 1700 Pennsylvania required a man to be 21 years of age, a 2-year resident, English, and own 50 acres, 12 cultivated, or £50 in property.

Delaware, in 1701, had a 2-year residence requirement, 21-year age requirement, and landownership of 50 acres, 12 cultivated or £50 in property. By 1733 British citizenship had been added to the list.

Maryland's only requisite in 1637 was that voters be freemen. In 1718 Maryland had barred Catholics and required 50 acres or £40 worth of property.

New York in 1683 accepted a vote from any freeholder. In 1701 21-year age requisite and £40 worth of realty was necessary, and—listen to this—papists and Jews were barred. That was in New York.

New Jersey in 1668 allowed any freeholder to vote. In 1725 that freeholder had to be a 1-year resident, and had to own 100 acres or £50 worth of property.

It is interesting to regard some of the varying reasons for the above requirements, keeping in mind that the very fact they have varied in each State, with the particular conditions of growth and the existing population, adds undeniable power to the case I am presenting for each State in the Union, for their own continued right to judge their own needs and provide therefor.

I read from Porter, "History of Suffrage in the United States," pages 4 and 5:

Standards of character and fitness varied from one part of the country to another. In Massachusetts, the Puritans believed that only by restricting suffrage to men in their churches could the future well-being of the colony be insured. The problem of the right to vote became distinctly subordinate. They restricted the suffrage for the good of the community. The fact that their standard of good character (church membership) was narrow is not at all surprising. The character of the man's employment was often considered a criterion of his ability to vote intelligently, and thus college men and clerical officers were presumed to be especially fit for the suffrage.

The philosophy of suffrage has always been more or less opportunistic, if the word is permissible. Suffrage qualifications are determined for decidedly materialistic considerations, and then a theory is evolved to suit the situation. In the early days riot and disorder might accompany an election. The authorities would thereupon fix the qualifications so that the disorderly people could not vote next time. Then would come the theory to justify it—only those owning a certain number of acres would be considered fit to vote, only those of a certain religious faith, et cetera.

Unquestionably, this has happened in times of stress, for theory did not come to be the preliminary determining factor until complete peace and order prevailed, and even then theory was not uncolored by materialistic considerations. Suffrage limitations were bound to adapt themselves to social and economic conditions. In rural Virginia the freehold requirement of 50 acres excluded very few of the best type of men. But such a requirement in an urban community would have been intolerable. Obviously, an absolute criterion could not obtain. It became necessary to adopt whatever criterion was calculated to embrace the best men.

Moral qualifications were restricted almost exclusively to New England. It was sometimes necessary for the voter to show proof of his good character. At other times if one were accused of improper conduct it would cost him his vote, although the particular offense was not mentioned in the law. In the South there were restrictions against men of certain race—foreigners and Negroes were excluded.

I read further from Porter, "History of Suffrage," bottom of page 5 and all of page 6:

All of the restrictions and qualifications can be seen to support one of two fundamental principles: One may be called the theory of right and the other the theory of the good of the state. Every qualification imposed had one of these two principles in view. Either it was established in order to fulfill the right which certain people were supposed to have, or else it was established simply in order to serve the best interest of the state. It might have been said that a man had a right to vote because he owned property, or because he was a resident, or because he paid taxes, or simply because the right to vote was a natural right. And this would be the guiding consideration without regard to the effect it might have on the well-being of the community. Thus in some places nonconformists were allowed to vote because their property right was recognized. Nonresidents were permitted to vote where they owned property solely because they were supposed to have a right to vote on account of their holdings. This theory of right was the first to appear and has always persisted. Each generation would seek to add a new subhead to the title, as it were, and base a right to vote on some new ground.

The other great principle or theory had to do with the good of the state. It developed as soon as the narrow business-corporation concept was abandoned, and it was most emphasized by the Puritans. It continues to the present day but has never been entirely divorced from the theory of right. Under this theory of the good of the State men were excluded because they were not church members, because they were criminals, because they had not been residents a long enough time. It is not always possible to classify every restriction definitely, but it may be said that one of these two theories controls every modification of the suffrage.

In the North, there were no race qualifications, because the few free Negroes scattered through the northern Colonies seemed to have caused little alarm along suffrage lines. North Carolina, Georgia, South Carolina, and Virginia were the only Colonies which disfranchised Negroes before the time of the Revolution, showing that either very few of them tried to vote or there was little aversion to it, the former probably being correct. At any rate, there was no race issue injected generally into the suffrage regulations. Another generation saw a marked change.

There was in none of the Colonies except Pennsylvania the rigid residence requirement of 2 years. And why the particular need there, true locally, yet not present elsewhere? Probably because of the conservative proprietor's desire to limit the influence of the many recent immigrants.

The property test was the most frequent and weightiest qualification. The cheapness of land led to the requirement above stated, in some instances, that the land be worth a certain sum in money or produce a certain income. Again we see the ever-present variations in the different Colonies. In Georgia there could not be the same money value requirement as in more thickly populated New England, and conversely, a voter in crowded New England could not have been required to own the same quantity of land as the voter in sparsely settled Georgia. In Virginia the varying standard of 50 acres of land, or 25 acres of land being worked and occupied by a house 12 feet square, or a town lot with a house of similar dimensions, was the answer to the rural versus urban problem. The city dwellers could not acquire land to a broad extent, and the rural dwellers resented a value fixation being set on the land to be held.

Five of the Colonies allowed the substitution of personal property for real estate.

This indicates a distinct concession of the urban communities, and it is significant that four of these States are in the small New England group, where the supply of real estate was limited. This adaptation of the suffrage qualification to the particular economic situation illustrates the willingness of men to adjust their ideal of what is fundamentally right to the needs of the dominant group—(Porter, "History of Suffrage in the United States," p. 9).

The next breakdown in this type requirement is from personal property to taxpaying. As conditions change, a trend emerges, the picture alters, and the statutory machinery with which we are equipped permits each State to shift or vary its position with the times.

Religious tests were decisive in New England, and common everywhere except in Pennsylvania. In the South papists were usually specifically barred. New York barred Jews. Maryland also barred Catholics.

Massachusetts supplemented the religious tests by moral character qualifications. Later a property qualification was inserted as an alternative. Later the *religious test* disappeared. South Carolina, with her requirement that a voter acknowledge the being of God, was the last State to have the statutory religious standards for suffrage and religion as a qualification for voting pass out with the colonial period.

Citizenship and residence were of comparatively little importance in a new country, predominantly British.

Before turning to the Articles of Confederation and our Constitution, the following words concerning voting qualifications in the Colonies seem particularly appropriate:

It is of moment to note that there were no efforts at uniformity in the regulation of suffrage. In each colony by charter, or more often by acts of the assembly, the elective franchise was controlled independently. This Commonwealth treatment of suffrage was the natural result of colonial history. So thoroughly grounded was this policy that when the Colonies seized sovereignty and organized a Federal Government the suffrage program was undisturbed. It continued as the basic foundation on which all Federal elections must rest. (See McCulloch, "Suffrage and Its Problems," p. 29.)

The truth of the proposition that each State best knows its own conditions and is best equipped to handle them, is shown by the direction of the Continental Congress, on May 10, 1776, following the outbreak of the Revolution, to each of the Colonies to "adopt such governments as shall best conduce to the happiness and safety of their constituents in particular, and America in general"—Hart, "Formation of the Union," 1750–1829, at page 29.

Following these instructions, the Colonies had already begun, before July 4, 1776, to draw up written instruments of government. I now desire to read a few paragraphs from McCulloch on "Suffrage and Its Problems." I read from page 30, the first paragraph:

With the separation from the the Mother Country came very little change for the Colonies severally. The Union took the place of the Crown, while the various Commonwealth governments went on very much as before. Therefore, suffrage regulations were not disturbed at all; each Commonwealth continued to regulate the elective franchise independently. The several States sought directions of the Continental Congress as to framing constitutions to replace the old charters which had been granted by the King.

But after this had been done, the two sets of governments moved along independently. The Central Government under the Articles of Confederation interfered with the States as little as possible, and they do not seem to have looked to it even for advice.

The only point at which the two governments could touch even indirectly on suffrage matters was article V, which provided that the delegates to the Confederation Congress should be "appointed in such manner as the legislatures of each State should direct."

Also, quoting directly from the Articles of Confederation, and to demonstrate the doctrines that remained ever uppermost in the minds of the founders of our country, I quote article II:

Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled.

I now read from the Federalist Articles of Confederation, article V, the first paragraph:

For the more convenient management of the general interest of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

Also:

In determining questions in the United States in Congress assembled, each State shall have one vote.

The above provisions show clearly that matters of voting qualifications were to be left strictly to each State. The Articles of Confederation were inadequate and hurried, and later proved insufficient to cope with the changing United States and its manifold problems. A new and farsighted instrument was needed, a considered and well-debated structure built on a framework with a future. But, it is noteworthy, before we turn from the Articles of Confederation, that even though the country was in the midst of revolution, torn by varying doctrines and lacking in all organization at the time they were written, there was one thing that was not left out.

Many important things were left out, much was left a blank, but even in a time of crisis these men who were struggling for a workable governing organ to suit their needs and their hopes kept one thing before them, the inviolable right of each State to determine the qualification of its voters and to control its own elections. They did not fail to preserve this right in the articles they drafted.

When the Articles of Confederation, which were adopted in time of stress without full cognizance of the problems to be solved and with the States themselves ill defined geographically and politically, proved unsatisfactory and insufficient, it was suggested by Hamilton in 1780, and later by Tom Paine, that a convention be called to revise the Articles of Confederation, and to draft a Constitution of the United States of America.

Let us go back to that convention. There is drama in the air. Vital provisions for the constitutional structure of a new country are in the making. Each delegate has his own theories, his own pet beliefs to advance. All are filled with a desire for the best in government for their new country.

Maj. William Pierce, of Georgia, made some notes of the membership of the convention. Among those historically well known to us today who were prominent in drafting provisions affecting voting qualifications was Rufus King, about whom Major Pierce said:

Mr. King is a man much distinguished for his eloquence and great parliamentary talents. He was educated in Massachusetts, and is said to have good classical as well as legal knowledge. He has served for 3 years in the Congress of the United States with great and deserved applause, and is at this time high in the confidence and approbation of his countrymen. This gentleman is about 33 years of age, about 5 feet 10 inches high, well formed, a handsome face, with a strong expressive eye, and a sweet high-toned voice. In his public speaking there is something peculiarly strong and rich in his expression, clear, and convincing in his arguments, rapid and irresistible at times in his eloquence but he is not always equal. His action is natural, swimming, and graceful, but there is a rudeness of manner sometimes accompanying it. But take him tout en semble, he may with propriety be ranked among the luminaries of the present age. ("United States, Formation of the Union, Documents," p. 96.)

There was Nat Gorham, about whom it is said:

Mr. Gorham is a merchant in Boston, high in reputation, and much in the esteem of his countrymen. He is a man of very good sense, but not much improved in his education. He is eloquent and easy in public debate, but has nothing fashionable or elegant in his style; all he aims at is to convince, and where he fails it never is from his auditory not understanding him, for no man is more perspicuous and full. He has been President of Congress, and 3 years a Member of that body. Mr. Gorham is about 46 years of age, rather lusty, and has an agreeable and pleasing manner. ("United States, Formation of the Union, Documents," p. 96.)

One of the highlights was Alexander Hamilton.

Colonel Hamilton is deservedly celebrated for his talents. He is a practitioner of the law, and reputed to be a finished scholar. To a clear and strong judgment he unites the ornaments of fancy, and whilst he is able, convincing, and engaging in his eloquence the heart and head sympathize in approving him. Yet there is something too feeble in his voice to be equal to the strains of oratory; it is my opinion that he is rather a convincing speaker, than a blazing orator. Colonel Hamilton requires time to think, he inquires into every part of his subject with the searchings of philosophy, and when he comes forward he comes highly charged with interesting matter, there is no skimming over the surface of a subject with him, he must sink to the bottom to see what foundation it rests on. His language is not always equal, sometimes didactic like Bolingbroke's, at others light and tripping like Stern's. His eloquence is not so defusive as to trifle with the senses, but he rambles just enough to strike and keep up the attention. He is about 33 years old, of small stature, and lean. His manners are tinctured with stiffness, and sometimes with a degree of vanity that is highly disagreeable. ("United States Formation of the Union, Documents," p. 98.)

From Connecticut came Oliver W. Ellsworth, who was on the Committee of Detail charged with forcing the provisions affecting elections:

Mr. Ellsworth is a judge of the supreme court in Connecticut; he is a gentleman of a clear, deep, and copious understanding; eloquent, and connected in public debate, and always attentive to his duty. He is very happy in a reply, and choice in selecting such parts of his adversary's arguments as he finds make the strongest impressions, in order to take off the force of them, so as to admit the power of his own. Mr. Ellsworth is about 37 years of age, a man much respected for his integrity, and venerated for his abilities. ("United States Formation," supra, p. 98.)

From Pennsylvania, on this committee, came Mr. James Wilson:

Mr. Wilson ranks among the foremost in legal and political knowledge. He has joined to a fine genius all that can set him off and show him to advantage. He is well acquainted with man, and understands all the passions that influence him. Government seems to have been his peculiar study, all the political institutions of the world he knows in detail, and can trace the causes and effects of every revolution from the earliest stages of the Grecian Commonwealth down to the present time. No man is more clear, copious, and comprehensive than Mr. Wilson, yet he is no great orator. He draws the attention not by the charm of his eloquence, but by the force of his reasoning. He is about 45 years old. ("United States Formation," supra, p. 101.)

From Virginia came James Madison and Edmund Randolph:

Mr. Madison is a character who has long been in public life; and what is very remarkable, every person seems to acknowledge his greatness. He blends together the profound politician with the scholar. In the management of every great question he evidently took the lead in the convention, and though he cannot be called an orator, he is a most agreeable, eloquent, and convincing speaker. From a spirit of industry and application which he possesses in a most eminent degree, he always comes forward the best informed man of any point in debate. The affairs of the United States, he perhaps, has the most correct knowledge of, of any man in the Union.

He has been twice a Member of Congress, and was always thought one of the ablest Members that ever sat in that council. Mr. Madison is about 37 years of age, a gentleman of great modesty, with a remarkable sweet temper. He is easy and unreserved among his acquaintance, and has a most agreeable style of conversation. ("United States Formation," supra, p. 104.)

Mr. Randolph is Governor of Virginia, a young gentleman in whom unite all the accomplishments of a scholar and a statesman. He came forward with the postulate, or first principles, on which the convention acted, and he supported them with a force of eloquence and reasoning that did him great honor. He has a most harmonious voice, a fine person, and striking manners. Mr. Randolph is about 32 years of age. ("United States Formation," supra, p. 105.)

Robert Morris, with James Wilson, Benjamin Franklin, Gouverneur Morris, and others, represented Pennsylvania:

Robert Morris is a merchant of great eminence and wealth; and able financier, and a worthy patriot.

He has an understanding equal to any public object, and possesses an energy of mind that few men can boast of. Although he is not learned, yet he is as great as those who are. I am told that when he speaks in the Assembly of Pennsylvania, that he bears down all before him. What could have been his reason for not speaking in the convention I know not, but he never once spoke on any point. This gentleman is about 50 years old. ("United States Formation," supra p. 101.)

On May 29, 1787, Edmund Randolph presented the following resolution:

Resolved therefore, That the rights of suffrage in the National Legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.

Resolved, That the National Legislature ought to consist of two branches.

Resolved, That the Members of the first branch of the National Legislature ought to be elected by the people of the several States every (———) for the term of (———). ("United States Formation," supra, p. 116.)

Then Mr. Charles Pickney laid before the House the draft of a Federal Government which he had prepared, to be agreed between the free and independent States of America. (U.S. Formation of the Union, p. 119.)

By all these statesmen the United States was referred to as a Union of free and independent States, a group of varying entities with varying problems, soils, industries, populations, having in mind future additions of more States, united for the common good of all.

Article III of Mr. Pickney's draft reads: "The Members of the House of Delegates shall be chosen every (blank) year by the people of the several States; and the qualifications of the electors shall be the same as those of the electors in the several States for their legislatures." (Elliott, Constitutional Debates, vol. 1 (first edition) p. 145.)

Pickney also provided in article 5 of his plan:

Each State shall prescribe the time and manner of holding elections by the people for the House of Delegates.

(See III Records of the Federal Convention, p. 597—Appendix D.)

Alexander Hamilton's suggested provision was a general one:

III. The Assembly to consist of persons elected by the people to serve for 3 years. (U.S. Formation of the Union, p. 979.)

When Mr. Randolph's plan was considered, what was the feeling concerning the provision for election of Members of the first branch of the National Legislature by the people of the several States? The discussion is illuminating in showing the angles considered, which make clear the meaning of the provisions ultimately adopted.

Mr. Sherman opposed the election by the people, insisting that it ought to be by the State legislature. The people, he said, immediately should have as little to do as may be about the Government. They want information and are constantly liable to be misled.

Mr. GERRY. The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots.

In Massachusetts it had been fully confirmed by experience that they are daily misled into the most baneful measures and opinions by the false reports circulated by designing men, and which no one on the spot can refute. One principal evil arises from the want of due provision for those employed in the administration of Government. It would seem to be a maxim of democracy to starve the public servants. He mentioned the popular clamor in Massachusetts for the reduction of salaries and the attack made on that of the Government though secured by the spirit of the Constitution itself. He had, he said, been too republican heretofore: He was still, however, republican, but had been taught by experience the danger of the leveling spirit.

Mr. President, I may say the word "republican" as there used was spelled with a small "r," not with a capital "R".

Mr. Mason argued strongly for an election of the larger branch by the people. It was to be the grand depository of the democratic principle of government. It was, so to speak, to be our House of Commons—It ought to know and sympathize with every part of the community; and ought therefore to be taken not only from different parts of the whole Republic, but also from different districts of the larger members of it, which had in several instances, particularly in Virginia, different interests and views arising from difference of produce, of habits, and so forth. He admitted that we had been too democratic but was afraid we should incautiously run into the opposite extreme. We ought to attend to the rights of every class of people. He had often wondered at the indifference of the superior classes of society to this dictate of humanity and policy; considering that however affluent their circumstances, or elevated their situations might be, the course of a few years, not only might but certainly would distribute their posterity throughout the lowest classes of society. Every selfish motive therefore, every family attachment, ought to recommend such a system of policy as would provide no less carefully for the rights and happiness of the lowest than of the highest orders of citizens.

Mr. Wilson contended strenuously for drawing the most numerous branch of the legislature immediately from the people.

He was for raising the Federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican government this confidence was peculiarly essential. He also thought it wrong to increase the weight of the State legislatures by making them the electors of the National Legislature. All interference between the general and local government should be obviated as much as possible. On examination it would be found that the opposition of States to Federal measures had proceeded much more from the officers of the States, than from the people at large.

Mr. Madison considered the popular election of one branch of the National Legislature as essential to every plan of free Government. He observed that in some of the States one branch of the legislature was composed of men already removed from the people by an intervening body of electors. That if the first branch of the general legislature should be elected by the State legislatures, the second branch elected by the first—the Executive by the second together with the first, and other appointments again made for subordinate purposes by the Executive, the people would be lost sight of altogether; and the necessary sympathy between them and their rulers and officers, too little felt. He was an advocate for the policy of refining the popular appointments by successive filtrations, but thought it might be pushed too far. He wished the expedient to be resorted to only in the appointment of the second branch of the legislature, and in the executive and judiciary branches of the Government. He thought too that the great fabric to be raised would be more stable and durable if it should rest on the solid foundation of the people themselves, than if it should stand merely on the pillars of the legislatures.

Mr. Gerry did not like the election by the people. The maxims taken from the British Constitution were often fallacious when applied to our situation which was extremely different. Experience he said had shown that the State legislatures drawn immediately from the people did not always possess their confidence. He had no objection however to an election by the people if it were so qualified that men of honor and character might not be unwilling to be joined in the appointments.

He seemed to think the people might nominate a certain number out of which the State legislatures should be bound to choose.

Mr. Butler thought an election by the people an impracticable mode.

On the question for an election of the first branch of the National Legislature by the people:

Massachusetts, aye; Connecticut, divided; New York, aye; New Jersey, no; Pennsylvania, aye; Delaware, divided; Virginia, aye;

North Carolina, aye; South Carolina, no; Georgia, aye. ("Formation of the United States," p. 125.)

In the final report on Mr. Randolph's plan the Committee of the Whole merely said:

3. Resolved, That the Members of the first branch of the National Legislature ought to be elected by the people of the several States for the term of 3 years. ("United States Formation of the Union," at p. 201.)

And nothing about voting qualifications, leaving this for specific provision in the States.

On Monday, August 6, the Committee of Detail reported finally the following provision:

(Art. IV, sec. 1) The Members of the House of Representatives shall be chosen every second year by the people of the several States comprehended within the Union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several States of the most numerous branch of their own legislature. (See "United States Formation of the Union" at p. 472.)

It is particularly interesting to turn to the reports of the work of the Committee of Detail to see through what stages article IV, section 1—which is article I, section 2, of our Constitution today—progressed. The very regulations being proposed at this time in this body were suggested in 1787 at the Constitutional Convention and rejected at that time. On June 19 one draft was set forth. It provided:

That the Members of the second Branch of the Legislature of the United States ought to be chosen by the individual legislatures—to be of the age of 30 years at least; to hold their offices for the term of 6 years, one-third to go out biennially; to receive a compensation for the devotion of their time to the public service; to be ineligible to and incapable of holding any office under the authority of the United States (except those peculiarly belonging to the functions of the second Branch) during the term for which they are elected, and for 1 year thereafter." (II Ferrand, "Records of Federal Convention," pp. 129 and 130.)

The next step was as follows:

The qualification of electors shall be the same (throughout the States, viz) with that in the particular States unless the legislature shall hereafter direct some uniform qualification to prevail through the States. (II Farrand, Records of Federal Convention, p. 139.)

(Citizenship; manhood; sanity of mind; previous residence for 1 year, or possession of real property within the State for the whole of 1 year, or enrollment in the militia for the whole of a year.)

Next:

The Members of the House of Representatives shall be chosen biennially by the people of the United States in the following manner. Every freeman of the age of 21 years—having a freehold estate within the United States—who has—having—resided in the United States for the space of 1 whole year immediately preceding the day of election, and has a freehold estate in at least 50 acres of land. ("II Farrand," supra, p. 15.)

Then:

The Members of the House of Representatives shall be chosen every second year—in the manner following—by the people of the several States comprehended within this Union—the time and place and the manner of holding the election and the rules. The qualifications of the electors shall be (appointed) prescribed by the legislatures of the several States; but their provisions—which they shall make concerning them shall be subject to the control of—concerning them may at any time be altered and superseded by the Legislature of the United States. ("II Farrand," supra, p. 153.)

Mr. President, that was a proposal which was made at one time, and I am citing all these various proposals to show how the members of that Convention finally drifted to the provision of the Constitution which is now in that sacred document.

In other words, every form of proposal was presented to the Convention. The one I read last was one in which the National Legislature would have the right to prescribe qualifications, but it was turned down. It was considered by the Convention and the Convention finally drafted that part of article I which is now in the Constitution.

In my mind, any Senator who will take the time to read these excerpts, to read the history of the present article of the Constitution which gives to the States the right to prescribe qualifications of voters, will come unequivocally to the conclusion that this was to be done by the States and not by the Congress. Again, see the next report:

The Members of the House of Representatives shall be chosen every second year, by the people of the several States comprehended within this Union. The qualifications of the electors shall be prescribed by the legislatures of the several States but these provisions concerning them may, at any time, be altered and superseded by the Legislature of the United States—the same from time to time as those of the electors, in the several States, of the most numerous branch of their own legislatures.

That proposition was submitted in debate, and I cite it to show the varying views of the members of the Convention and the manner and method proposed by each of them. I cite it merely to show that I do not believe anyone overlooked any argument. In other words, there was free debate on the entire subject, and everyone knew what it was all about. After long debate the present amendment to the Constitution was finally adopted by the Convention, and later ratified by three-fourths of the 13 States.

Every one of these suggestions was thought of long ago. They were discussed and wisely rejected by the framers of our Constitution, when they finally agreed on the form above set out; that is:

The Members of the House of Representatives shall be chosen every second year by the people of the several States comprehended within this Union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several States, of the most numerous branch of their own legislatures. (See Farrand, p. 178, art. IV, sec. 1.)

This point, as all others in the much-debated text, was discussed fully. It is interesting to note what such well-informed and brilliant men as Gouverneur Morris; James Wilson, who was a Justice of the United States; Oliver Ellsworth, who was later Chief Justice of the Supreme Court; Colonel Mason; Benjamin Franklin; John Rutledge, who was also a Chief Justice of the United States; and James Madison, thought of the proposed resolution.

I now quote from "Formation of the Union," pages 487, 488, 489, 490, 491, and 492:

Mr. Gouverneur Morris moved to strike out the last member of the section beginning with the words "qualifications of electors," in order that some other provision might be substituted which would restrain the right of suffrage to freeholders.

Mr. Fitzimmons seconded the motion.

Mr. Williamson was opposed to it.

Mr. WILSON. This part of the report was well considered by the committee, and he did not think it would be changed for the better. It was difficult to form any uniform rule of qualifications for all the States. Unnecessary innovations he thought too should be avoided. It would be very hard and disagreeable for the same persons at the same time, to vote for representatives in the State legislature and to be excluded from a vote for those in the National Legislature.

Mr. GOUVERNEUR MORRIS. Such a hardship would be neither great nor novel. The people are accustomed to it and not dissatisfied with it, in several of the States. In some the qualifications are different for the choice of the Governor and the Representatives; in others for different houses of the legislature. Another objection against the clause as it stands is that it makes the qualifications of the National Legislature depend on the will of the States, which he thought not proper.

Mr. Ellsworth thought the qualifications of the electors stood on the most proper footing. The right of suffrage was a tender point, and strongly guarded by most of the State constitutions. The people will not readily subscribe to the National Constitution if it should subject them to the disfranchised. The States are the best judges of the circumstances and temper of their own people.

Colonel MASON. The force of habit is certainly not attended to by those gentlemen who wish for innovations on this point. Eight or nine States have extended the right of suffrage beyond the freeholders, what will the people there say, if they should be disfranchised? A power to alter the qualifications would be a dangerous power in the hands of the legislature.

Mr. BUTLER. There is no right of which the people are more jealous than that of suffrage. Abridgment of it tend to the same revolution as in Holland where they have at length thrown all power into the hands of the senates, who fill up vacancies themselves, and form a rank aristocracy.

Mr. Dickinson had a very different idea of the tendency of vesting the right of suffrage in the freeholders of the country. He considered them as the best guardians of liberty; and the restriction of the right to them as a necessary defense against the dangerous influence of those multitudes without property and without unpopularity of the innovation it was in his opinion chimerical. The great mass of our citizens is composed at the time of freeholders, and will be pleased with it.

Mr. ELLSWORTH. How shall the freehold be defined? Ought not every man who pays a tax to vote for the representative who is to levy and dispose of his money? Shall the wealthy merchants and manufacturers, who will bear the full share of the public burdens be not allowed a voice in the imposition of them—taxation and representation ought to go together.

Mr. GOUVERNEUR MORRIS. He had long learned not to be the dupe of words. The sound of aristocracy therefore had no effect upon him. It was the thing, not the name, to which he was opposed, and one of his principal objections to the Constitution as it is now before us, is that it threatens the

country with an aristocracy. The aristocracy will grow out of the House of Representatives. Give the votes to people who have no property, and they will sell them to the rich who will be able to buy them. We should not confine our attention to the present moment. The time is not distant when this country will abound with mechanics and manufacturers who will receive their bread from their employers. Will such men be the secure and faithful guardians of liberty? Will they be the impregnable barrier against aristocracy? He was as little duped by the association of the words taxation and representation. The man who does not give his vote freely is not represented. It is the man who dictates the vote. Children do not vote. Why? Because they want prudence, because they have no will of their own. The ignorant and the dependent can be as little trusted with the public interest. He did not conceive the difficulty of defining freeholders to be insuperable. Still less that the restriction could be unpopular. Nine-tenths of the people are at present freeholders and these will certainly be pleased with it. As to merchants, and so forth, if they have wealth and value the right they can acquire it. If not they don't deserve it.

Colonel MASON. We all feel too strongly the remains of ancient prejudices, and view things too much through a British medium. A freehold is the qualification in England, and hence it is imagined to be the only proper one. The true idea in his opinion was that every man having evidence of attachment to and permanent common interest with the society ought to share in all its rights and privileges. Was this qualification restrained to freeholders? Does no other kind of property but land evidence a common interest in the proprietor? Does nothing besides property mark a permanent attachment. Ought the merchant, the monied man, the parent of a number of children whose fortunes are to be pursued in his own country, to be viewed as suspicious characters, and unworthy to be trusted with the common rights of their fellow citizens?

Mr. MADISON. The right to suffrage is certainly one of the fundamental articles of republican government, and ought not to be left to be regulated by the legislature—

When he spoke of the legislature he meant Congress—

A gradual abridgment of this right has been the mode in which aristocracies have been built on the ruins of popular forms. Whether the constitutional qualification ought to be a freehold, would with him depend much on the probable reception such a change would meet within the States where the right was now exercised by every description of people. In several of the States a freehold was now the qualification. Viewing the subject in its merits alone, the freeholders of the country would be the safest depositories of republican liberty. In future times a great majority of the people will not only be without land, but any other sort of property. These will either combine under the influence of their common situation; in which case, the rights of property and the public liberty, will not be secure in their hands; or what is more probable, they will become the tools of opulence and ambition, in which case there will be equal danger on another side.

The example of England had been misconceived (by Colonel Mason). A very small proportion of the representatives are there chosen by freeholders.

The greatest part are chosen by the cities and boroughs, in many of which the qualification of suffrage is as low as it is in any one of the United States, and it is in the boroughs and cities rather than the counties that bribery most prevailed, and the influence of the Crown on elections was most dangerously exerted.

Dr. FRANKLIN. It is of great consequence that we should not depress the virtue and public spirit of our common people, of which they displayed a great deal during the war, and which contributed principally to the favorable issue of it. He related the honorable refusal of the American seamen who were carried in great numbers into the British prisons during the war, to redeem themselves from misery or to seek their fortunes, by entering on board the ships of the enemies to their country, contrasting their patriotism with a contemporary instance in which the British seamen made prisoners by the Americans, readily entered on the ships of the latter on being promised a share of the prizes that might be made out of their own country.

This proceeded, he said, from the different manner in which the common people were treated in America and Great Britain. He did not think that the elected had any right in any case to narrow the privileges of the electors. He quoted as arbitrary the British statute setting forth the danger of tumultuous meetings, and under that pretext narrowing the right of suffrage to persons having freeholds of a certain value; observing that this statute was soon followed by another under the succeeding Parliament, subjecting the people who had no votes to peculiar labors and hardships. He was persuaded also that such a restriction as was proposed would give great uneasiness in the populous States. The sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised, and there are a great many persons of that description.

Mr. MERCER. The Constitution is objectionable in many points, but in none more than the present. He objected to the footing on which the qualification was put, but particularly to the mode of election by the people.

The people cannot know and judge the characters of candidates. The worst possible choice will be made. He quoted the case of the senate in Virginia as an example in point. The people in towns can unite their votes in favor of one favorite, and by that means always prevail over the people of the country, who being dispersed, will scatter their votes among a variety of candidates.

Mr. Rutledge thought the idea of restraining the right of suffrage to the freeholders a very unadvised one. It would create division among the people and make enemies of all those who should be excluded.

On the question for striking out as moved by Gouverneur Morris, from the word qualifications to the end of the article III:

New Hampshire, no; Massachusetts, no; Connecticut, no; Pennsylvania, no; Delaware, aye; Maryland, divided; Virginia, no; North Carolina, no; South Carolina, no; Georgia, not present.

WEDNESDAY, AUGUST 8, IN CONVENTION

Article IV, section 1 being under consideration—Mr. Mercer expressed his dislike of the whole plan, and his opinion that it never could succeed.

Mr GORHAM. He had never seen any inconvenience from allowing such as were not freeholders to vote, though it had long been tried. The elections in Philadelphia, New York, and Boston where merchants and mechanics vote are at least as good as those made by freeholders only. The case in England was not accurately stated yesterday (by Mr. Madison). The cities and large towns are not the seat of Crown influence and corruption. These prevail in the boroughs, and not on account of the right which those who are not freeholders have to vote, but of the smallness of the number who vote. The people have been long accustomed to this right in various parts of America, and will never allow it to be abridged. We must consult their rooted prejudices if we expect their concurrence in our propositions.

Mr. Mercer did not object so much to an election by the people at large including such as were not freeholders, as to their being left to make their choice without any guidance. He hinted that candidates ought to be nominated by the State legislatures.

On the question of agreeing to article IV, section 1, it passed nem. con. (Quoted from "U.S. Formation of the Union," p. 487.)

How timely this discussion is today. How true and to the point. I have no need to search for reasons or to manufacture a logician's arguments. I need only take the very words of men whom history has stamped with greatness and foresight to prove my position.

I repeat some of these well-considered words, in fact, I delight to dwell upon their wisdom.

The right of suffrage was a tender point, and strongly guarded by most of the State constitutions.

The States are the best judges of the circumstances and temper of their own people.

A power to alter the qualifications would be a dangerous power in the hands of the legislature (referring to the National Legislature).

Particularly note what Benjamin Franklin, noted for his practical, earthy, commonsense, said:

He did not think that the elected had any right in any case to narrow the privileges of the electors.

Turning now from the remarkable document of James Madison, recording the activities of the Constitutional Convention, to the notes of Rufus King, a delegate from Massachusetts to the Constitutional Convention, corroborating the Madison papers, here is King's record of the debate over the clause, "electors to be the same as those of the most numerous branch of the State legislature."

Morris proposed to strike out the clause and to leave it to the State legislatures to establish the qualification of the electors and elected, or to add a clause giving to the National Legislature powers to alter the qualifications.

Mr. ELLSWORTH. If the legislature can alter the qualifications, they may disqualify three-fourths, or a greater portion of the electors—this would go far to create aristocracy. The clause is safe as it stands—the States have staked their liberties on the qualifications which we have proposed to confirm.

Mr. DICKINSON. It is urged that to confine the right of suffrage to the freeholders is a step toward the creation of an aristocracy. This cannot be true. We are all safe by trusting the owners of the soil; and it will not be unpopular to do so, for the freeholders are the more numerous class. Not from freeholders, but from those who are not freeholders, free governments have been endangered. Freeholds are by our laws of inheritance divided among the children of the deceased, and will be parceled out among

all the worthy men of the State; the merchants and mechanics may become freeholders; and without being so, they are electors of the State legislatures, who appoint the Senators of the United States.

Mr. ELLSWORTH. Why confine the right of suffrage to freeholders? The rule should be that he who pays and is governed, should be an elector. Virtue and talents are not confined to the freeholders, and we ought not to exclude them.

Mr. MORRIS. I disregard sounds and am not alarmed with the word "aristocracy," but I dread the thing and will oppose it, and for this reason I think that I shall oppose this Constitution because it will establish an aristocracy. There cannot be an aristocracy of freeholders if they all are electors. But there will be, when a great and rich man can bring his poor dependents to vote in our elections—unless you establish a qualification of property, we shall have an aristocracy. Limit the right of suffrage to freeholders, and it will not be unpopular, because nine-tenths of the inhabitants are freeholders.

Mr. MASON. Everyone who is of full age and can give evidence of his common interest in the community should be an elector. By this rule, freeholders alone have not his common interest. The father of a family, who has no freehold, has this interest. When he is dead his children will remain. This is a natural interest or bond which binds men to their country—lands are but an artificial tie. The idea of counting freeholders as the true and only persons to whom the right of suffrage should be confided is an English prejudice. In England, a Twig and Turf are the electors.

Mr. MADISON. I am in favor of entrusting the right of suffrage to freeholders only. It is a mistake that we are governed by English attachments. The Knights of the Shires are chosen by freeholders, but the members of the cities and boroughs are elected by freemen without freeholds, and who have as small property as the electors of any other country. Where is the crown influence seen, where is corruption in the elections practiced—not in the countries but in the cities and boroughs.

Mr. FRANKLIN. I am afraid that by depositing the right of suffrage in the freeholders exclusively we shall injure the lower class of freeman. This class possess hardy virtues and great integrity. The Revolutionary War is a glorious testimony in favor of Plebeian virtue—our military and naval men are sensible of this truth. I myself know that our seamen who were prisoners in England refused all the allurements that were made use of, to draw them from their allegiance to their country—threatened with ignominious halters, they still refused.

This was not the case with the English seamen, who on being made prisoners entered into the American service and pointed out where other prisoners could be made—and this arose from a plain cause. The Americans were all free and equal to any of their fellow citizens—the English seamen were not so. In ancient times every freeman was an elector, but afterward England made a law which required that every elector should be a freeholder. This law related to the county elections—the consequence was that the residue of the inhabitants felt themselves disgraced, and in the next Parliament a law was made, authorizing the justice of the peace to fix the price of labor and to compel persons who were not freeholders to labor for those who were, at a stated rate, or to be put in prison as idle vagabonds. From this period the common people of England lost a great portion of attachment to their country.

WEDNESDAY, AUGUST 8—QUALIFICATIONS OF ELECTORS OF REPRESENTATIVES

Mr. GORHAM. The qualifications (being such as the several States prescribe for electors of their most numerous branch of the legislature) stand well.

Gentlemen are in error, who suppose the electors of cities may not be trusted. In England the members chosen in London, Bristol, and Liverpool are as independent as the members of the counties of England. The Crown has little or no influence in city election, but has great influence in boroughs, where the votes of freeholders are bought and sold. There is no risk in allowing the merchants and mechanics to be electors; they have been so time immemorial in this country and in England. We must not disregard the habits, usages and prejudices of the people (pp. 873, 874, 875, to top p. 876).

This debate, with the resulting provisions duly considered, was again recorded by Dr. James McHenry, delegate from Maryland. See "United States Formation of the Union," pages 934 and 935.

When all the views were aired, and the pros and cons of leaving the qualifications of voters for the National Legislature to be decided by the several States had been debated, the considered result was article I, section 2, of the Constitution of the United States, adopted September 17, 1787:

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.

Every word of that provision had been torn apart in open discussion, until there can be no possible doubt that it was the intention of the framers of the Constitution to leave to State control the field of voting qualifications.

In submitting the Constitution, Dr. Samuel Johnson, the Delegate from Connecticut, added to it the following letter:

The friends of our country have long seen and desired that the power of making war, peace, and treaties, that of levying money and regulating commerce, and the correspondent executive and judicial authorities should be fully and effectually vested in the General Government of the Union; but the impropriety of delegating such extensive trust to one body of men is evident—thence results the necessity of a different organization.

It is obviously impracticable in the Federal Government of these States to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered and those which may be reserved; and on the present occasion this difficulty was increased by a difference among the several States as to their situation, extent, habits, and particular interest.

In all our deliberations on this subject we kept steadily in our view that which appeared to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the Convention to be less rigid in points of inferior magnitude than might have been otherwise expected, and thus the Constitution, which we now present, is the result of a spirit of amity and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable. That it will meet the full and entire approbation of every State is not perhaps to be expected, but each will doubtless consider that had her interest alone been consulted the consequences might have been particularly disagreeable and injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish. (P. 713, "Formation of the United States.")

Thus we see that at a time when all rights of independent sovereignty could not be secured to each State, when the interest of each State alone could not be considered, when the greatest interest of every American was the consolidation of the Union, even then, when the line was drawn between the rights which had to be surrendered and those which would be reserved, the right to determine the qualification of voters was reserved to each State.

A comment on this is found in McCulloch. "Suffrage and Its Problems," at page 30:

When the more perfect union was formed under the Constitution of the United States, each State had the right to frame its own laws respecting suffrage. Hence article V was carried over into the new Constitution and became article I, section 2: The franchise for the election of the Members of the House of Representatives shall in every State be the same as for the "most numerous branch of the State legislature." The Constitution did not disturb the diversities of suffrage regulations existing in the several Commonwealths: It adopted them. For the Constitution to have been anything but silent on the regulations of suffrage would have been an innovation, and, as Viscount Bryce observed, the members of the Constitutional Convention were too sound political scientists to ignore precedents. Only in three amendments (and only directly in the 15th and 19th) has the Constitution trenched on the Commonwealth right to regulate suffrage—and even then under extraordinary circumstances (McCulloch, p. 30, par. beginning "When," through 1st par. on p. 31).

These amendments I shall discuss later, when I have fully covered the formative period.

McCulloch, further commenting, says:

While there has been a revolution in the conception of citizenship, there was no such change in the regulation of suffrage, the determining and regulating power continued to rest with the States. However, much as publicists and reformers may desire a uniform national suffrage law, it is unattainable; expediency and constitutionality are both adverse. In fact such a plan was considered by the Constitutional Convention itself, but it received the vote of only one Commonwealth—Delaware. "The provision made by the convention appears to be the best that lay within their option." The "fathers" were satisfied for the States to continue to make their own suffrage tests, rather than to further prolong the convention and so further endanger the rather slim chances of ratification by the several Com-

monwealths. The prospect in the convention itself was anything but promising. Even Franklin moved to call in a person that they might invoke the "assistance of Heaven."

The Constitution conferred the franchise on no one. Likewise citizenship does not bestow suffrage, either upon the natural born or the naturalized alien. The several States have the unqualified right to impose qualifications and regulate suffrage subject only to the limitations in the amendments referred to above. In handing down the decision in the case of *Corfield* v. *Coryell*, Judge Washington in enumerating the privileges and immunities that are usually associated with citizenship, said: "To which is to be added the elective franchise, as regulated and established by the laws or constitutions of the State in which it is exercised." (McCulloch, "Suffrage and Its Problems," p. 32, paragraph starting "while" to end of paragraph on p. 33, starting with line 6, word "The Const." through word "exercised" line 18, p. 33.)

Also note what Hart says in his "Formation of the Union," at pages 136–137:

The real boldness of the Constitution is the novelty of the Federal system which it set up.

This was the best of the few elaborate written constitutions ever applied to a federation; and the details were so skillfully arranged that the instrument framed for 13 little agricultural communities works well today for 48 large and populous States. * * * The Convention knew how to select institutions that would stand together; it also knew how to reject what would have weakened the structure.

It was a long time before a compromise between the discordant elements could be reached. To declare the country a centralized nation would destroy the traditions of a century and a half; to leave it an assemblage of States, each claiming independence and sovereignty, would throw away the results of the Revolution. The Convention finally agreed that while the Union should be endowed with adequate powers, the States should retain all powers not specifically granted, and particularly the right to regulate their own internal affairs. ("Formation of Union," p. 137, paragraph beginning "it was" through paragraph word "affairs.")

Mr. President, for over 2½ hours I have been citing The Federalist and other works pertaining to the U.S. Constitution. As I have pointed out during the course of this discussion, every conceivable argument was advanced as to the best method of determining who should or should not declare or define the qualifications of voters when our Constitution was being considered. Every method that could be conceived was suggested and discussed at the Convention.

As I have pointed out, some effort was even made to leave to Congress the right to decide who shall or shall not vote. Specific provisions were submitted to the Convention so as to make that possible.

But what did the Convention finally do? It adopted the language now in the Constitution which leaves it to the individual States to determine voter qualification. That concept was confirmed in 1913, when the constitutional amendment providing for the election of U.S. Senators by popular vote rather than by the State legislatures—was adopted. This makes it abundantly clear that the right of voter qualification remains with the individual States.

So, Mr. President, if Members of the Senate desire to sustain their oath of office, I hope they will vote against this measure. What is more I certainly hope they will not vote in favor of invoking cloture.

(At this point Mr. METCALF assumed the Chair as Presiding Officer.)

TAX DELINQUENCIES

Mr. WILLIAMS of Delaware. Mr. President, today I present the eighth annual report on delinquent Federal taxes. This report is rendered as of December 31, 1961, and as in preceding years is broken down; first, to show the delinquencies in employment taxes, and second, to show the total of all delinquent Federal taxes, including employment.

Under the term employment taxes are included withheld income taxes, social security taxes, unemployment taxes, railroad retirement, etc.

The total of all types of tax delinquencies for the United States as of December 31, 1961, was $1,063,248,000 as compared to $1,072,440,000 on December 31, 1960. This compares with a total of $1,614,494,000 in 1954—the first year in which these statistics were assembled.

While this is less than a 1-percent drop over last year, nevertheless it does represent another alltime low in total tax delinquencies since these statistics were first compiled in 1954.

On the other hand I am greatly concerned by the lack of progress which has been made in reducing the amount of delinquent employment taxes. Employment taxes represent cash which is withheld by the employer from the pay envelopes of his employees to cover their income and social security tax liabilities, etc. This money, withheld by employers from their employees, does not belong to the employers, and there can be no justification for any employer's diverting these funds to his own use or to the use of his business. These are in effect trust funds and should be so treated; therefore, it is a matter of concern to find that the amount of delinquent employment taxes as of December 31, 1961, had risen to $268,465,000, representing an increase of 13 percent of last year's total of $236,843,000.

When these employment tax delinquencies are broken down by districts some of them show an alarming increase over last year's report. For example, on December 31, 1961, seven offices reported an increase in excess of 50 percent in their delinquent employment taxes. Sixteen offices reported increases of between 25 percent and 50 percent in employment tax delinquencies, while 19 other offices showed increases of between 10 percent and 25 percent in the dollar volume of delinquent employment taxes. Only two offices reported reductions in employment tax delinquencies for 1961 in excess of 25 percent.

I am proud to state that Wilmington, Del., reduced its employment tax delinquencies during the past year by 40 percent and its total tax delinquencies by 4 percent. Springfield, Ill., reduced its delinquent employment tax accounts by 25 percent, but its total tax delinquencies rose 5 percent. Five other offices last year showed reductions of between 10 percent and 25 percent in the dollar volume of their employment tax delinquencies.

First, I shall list the seven offices which reported an increase in excess of 50 percent in their employment tax delinquencies for 1961.

Pittsburgh, Pa.: In this office 7,179 employers were reported as delinquent in forwarding their employment taxes in the amount of $6,091,000. This represented a 59 percent increase over last year's report, and it established a new 8-year high in delinquent employment taxes for that office.

Indianapolis, Ind.: This office reported an 83 percent increase in its delinquent employment taxes, bringing total dollar delinquencies to $5,643,000. Not only does this represent a new high in delinquent employment taxes for Indianapolis, but it is more than double the delinquencies for that office 8 years ago. Also, total tax delinquencies in this office during the last year rose 40 percent.

Jackson, Miss.: Jackson, Miss., reported an increase of 58 percent in delinquent employment taxes for 1961, bringing its delinquent employment tax accounts to $1,267,000. This again is an all-time high and nearly double its preceding record. During 1961 total tax delinquencies in Jackson jumped 40 percent.

Nashville, Tenn.: Delinquent employment taxes in Nashville jumped 74 percent last year or from $1,142,000 on December 31, 1960, to $1,993,000 on December 31, 1961, again establishing a new high.

Omaha, Nebr.: Delinquent employment taxes in Omaha, Nebr., established a new high in 1961, rising 74 percent over the preceding year.

Little Rock, Ark.: Little Rock, Ark., joined the parade of those establishing all-time highs in delinquent taxes in both categories by reporting an increase of 72 percent over 1960 in employment tax delinquencies and an increase of 6 percent in total tax delinquencies.

Honolulu, Hawaii: Delinquent employment taxes in Honolulu, likewise established a new high in 1961, showing a jump of 50 percent over last year's report. What is equally alarming is that total tax delinquencies for this same office jumped a shocking 179 percent last year.

Sixteen offices reported increases of between 25 and 50 percent in the dollar amount of their employment tax delinquencies. They are as follows:

Boston, Mass.: Boston, on December 31, 1961, reported delinquent employment taxes in the amount of $13,455,000, or an increase of 41 percent over the preceding year. This established a new high in delinquent employment taxes for that office. During the same period total tax delinquencies rose 9 percent.

Providence, R.I.: Providence likewise reported a new high in delinquent employment tax accounts, or an increase of 46 percent over the preceding year. Total tax delinquencies in Providence last year jumped 163 percent over the preceding year.

Albany, N.Y.: Albany reported a 43-percent increase in its employment tax

delinquencies as compared with the preceding year.

Baltimore, Md.: Baltimore reported a 44-percent increase in the dollar volume of delinquent employment taxes for last year.

Philadelphia, Pa.: Employment tax delinquencies on December 31, 1961, showed an increase of 38 percent over delinquencies reported on December 31, 1960.

Cincinnati, Ohio: Cincinnati is another office which established an 8-year high in employment tax delinquencies, showing a rise of 36 percent over the report for 1960. In the previous year—1960—delinquent employment taxes in Cincinnati had risen 58 percent. Total tax delinquencies in Cincinnati did show a drop of 7 percent in 1961.

Richmond, Va.: Richmond reports a new high in delinquent employment taxes, showing a jump of 49 percent last year. This brings the total employment tax delinquencies for that office on December 31, 1961, to $3,693,000.

Greensboro, N.C.: Delinquent employment taxes for the Greensboro office rose 30 percent last year over the preceding year's report, thus establishing an 8-year high, but during the same period total tax delinquencies dropped 22 percent, establishing a new low.

St. Louis, Mo.: Delinquent employment taxes in St. Louis on December 31, 1961, were reported at $1,247,000, or a 30-percent increase over the preceding year.

Dallas, Tex.: Delinquent employment taxes in 1961 in Dallas rose to a new high, with a 48 percent increase over the preceding years. This brings the total employment tax delinquencies for that office to $5,918,000 on December 31, 1961. In the same period total tax delinquencies rose 13 percent.

New Orleans, La.: Employment tax delinquencies in the New Orleans office established a new high, showing an increase of 45 percent in 1961 over the preceding year, thus bringing its employment tax delinquencies on December 31, 1961, to $3,041,000. Total tax delinquencies for New Orleans in 1961 rose 19 percent over the preceding year.

Helena, Mont.: In Helena, Mont., delinquent employment taxes rose 37 percent in 1961 on top of an 86-percent increase for the year 1960, thus bringing its total delinquent employment taxes on December 31, 1961, to $1,022,000, or more than double the delinquent employment taxes reported 8 years ago—when these reports were first assembled. Total tax delinquencies in Helena rose 12 percent in 1961.

Los Angeles, Calif.: The Los Angeles office likewise reported an alarming increase in employment tax delinquencies by showing on December 31, 1961, an increase of 40 percent over the preceding year's report. This brings the employment tax delinquencies for Los Angeles to $28,692,000. During 1961 its total tax delinquencies rose to 17 percent to an 8-year high, or to a total of $92,954,000.

Portland, Oreg.: Portland was another office establishing a new high in delinquent employment taxes, rising from $2,248,000 on December 31, 1960, to $2,879,000 on December 31, 1961, or an increase of 28 percent over 1960. Total tax delinquencies for Portland, however, dropped 13 percent last year.

International operations—includes accounts for those living abroad, the military, resident, and nonresident aliens, foreign corporations, et cetera: Under this classification there is another alarming increase reported for the year 1961. It shows a 40-percent rise in delinquent employment taxes for last year on top of an increase of 180 percent in 1960, an increase of 45 percent in 1959, and an increase of 73 percent in 1958. This means that delinquent employment taxes under the classification "International operations" have increased over 400 percent in the last 6 years in which its report has been separated.

Puerto Rico: Delinquent employment tax accounts in Puerto Rico likewise need attention. They have jumped 32 percent last year on top of an increase of 64 percent in 1960. On December 31, 1961, this office showed an increase of nearly 400 percent in its employment tax delinquencies as compared to its report 8 years ago.

Nineteen other offices showed increases of between 10 percent and 25 percent in their delinquent employment taxes on December 31, 1961, as compared with the preceding year, while only seven offices reported reductions in excess of 10 percent in the dollar volume of their delinquent employment taxes.

I cannot emphasize too strongly the importance of keeping these delinquent employment taxes at a minimum. We must not lose sight of the point that they represent money withheld from the pay envelopes of the employees. They in effect are trust funds, and under no circumstances does an employer have a right to divert these funds for his own personal use.

At this point I ask unanimous consent to have printed in the RECORD a letter dated March 8, 1962, signed by Mr. Bertrand M. Harding, in which he explains some of these increases, followed by a detailed breakdown of delinquent accounts of each of the district offices for the past 8 years.

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

U.S. TREASURY DEPARTMENT,
INTERNAL REVENUE SERVICE,
Washington, D.C., March 8, 1962.

Hon. JOHN J. WILLIAMS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR WILLIAMS: This will give you the annual report on our taxpayer delinquent account inventories requested in your letter of February 1, 1962.

I think it is significant to note that the trend is again down in the matter of total dollars outstanding. In fact, our gain this year was sufficient to more than offset the modest loss in ground of a year ago, with the result that the dollar inventory is now lower than it has been in any recent year. We feel that this is particularly noteworthy since it was brought about in a year when our issuance figures were particularly high. Actually, in the trust fund area, the year-end figures are inflated.

The latter statement, of course, needs some explanation. Here I would like to point out that shortly after the first of the year, we instituted a program aimed at accelerating contact with those employers who file their employment tax returns unaccompanied by required payments. The issuance of taxpayer delinquent accounts has now been stepped up by about a month in the case of those who do not respond to our initial demand for payment. As a result, some 36,000 employment tax accounts normally issued in January were actually issued in December and appear as an abnormal increase in our 1961 yearend inventory. Except for this program, we would have increased our employment tax inventories of a year ago only slightly. As a matter of interest, our current inventory for all classes of tax is lower both in number and amount than at the same time last year.

The vigor of our collection enforcement program is evidenced by increases in closures of delinquent accounts—up 323,000 or 11.8 percent over 1960, as well as in the money represented by these closures—up $124.3 million or 8.8 percent over 1960.

The table which follows is a summary as of December 31, 1960 and 1961 of the taxpayer delinquent account inventory broken down as to those in an active and an inactive status. As we have previously advised you, inactive accounts are those on which collection action has been deferred pending the outcome of court decisions, audit examinations or other contingent actions:

Amount

[Thousands]

	Active	Inactive	Total
Dec. 31, 1960	$649,243	$423,197	$1,072,440
Dec. 31, 1961	637,328	425,920	1,063,248
Change from Dec. 31, 1960 to 1961	−11,915	+2,723	−9,192
Percent of change	−1.8	+0.6	−0.9

Number

	Active	Inactive	Total
Dec. 31, 1960	934,994	88,776	1,023,770
Dec. 31, 1961	972,400	99,260	1,071,660
Change from Dec. 31, 1960 to 1961	+37,406	+10,484	+47,890
Percent of change	+4.0	+11.8	+4.7

The inactive accounts are shown in the columns to the right in the attached tabulation. As in previous years, however, the figures reported in the columns under the various tax groups include those in the inactive category. All offices were current in their issuances as of December 31, with the result that the table includes all accounts that were in a delinquent status as of that date.

In closing, we would like to assure you that the delinquent account situation will receive our continuing attention. We believe it is already beginning to respond to the measures we have adopted. Although issuances of delinquent accounts have been so heavy that we have had to concentrate most of our collection enforcement manpower on delinquent account collections during the past year, we hope soon to be able to put more of our manpower on returns compliance activity. We are committed to a balanced, well-rounded program aimed at bringing about maximum voluntary compliance with both the filing and paying requirements as well as with all other provisions of the internal revenue laws.

With kind regards,

Sincerely,

BERTRAND M. HARDING,
Acting Commissioner.

Delinquent taxes

District	Year	Employment tax		Percent change over previous year	Total taxes		Percent change over previous year
		Number	Amount		Number	Amount	
			Thousands			*Thousands*	
Augusta, Maine	1954	1,145	$665		3,478	$2,582	
	1955	1,119	489	−26.4	3,018	1,915	−25.8
	1956	1,138	543	+11.0	3,582	1,489	−22.2
	1957	1,185	543		4,027	2,032	+36.4
	1958	1,176	588	+8.2	3,986	1,569	−22.7
	1959	889	815	+38.6	2,992	3,842	+144.8
	1960	1,003	851	+4.4	3,242	3,565	−7.2
	1961	1,715	977	+14.7	4,361	3,857	+8.1
Boston, Mass	1954	15,058	11,226		57,082	41,306	
	1955	11,122	10,000	−10.9	39,723	37,835	−8.4
	1956	9,477	9,632	−3.6	36,337	36,896	−2.4
	1957	8,826	8,597	−10.7	36,239	30,255	−17.9
	1958	9,372	8,456	−1.6	34,992	34,107	+12.7
	1959	8,837	8,586	+1.5	30,952	31,601	−7.3
	1960	9,595	9,531	+11.0	31,389	33,512	+6.0
	1961	12,411	13,455	+41.1	35,486	36,658	+9.3
Burlington, Vt	1954	619	241		1,424	644	
	1955	441	145	−39.8	1,245	409	−36.4
	1956	421	201	+38.6	1,714	685	+67.4
	1957	510	236	+17.4	1,936	604	−11.8
	1958	762	322	+36.4	2,514	1,009	+67.0
	1959	373	200	−37.8	1,601	722	−28.4
	1960	658	396	+98.0	1,807	876	+21.3
	1961	769	370	−6.5	2,054	937	+6.9
Hartford, Conn	1954	4,232	2,831		22,554	15,271	
	1955	5,079	3,298	+16.4	21,219	15,348	+.5
	1956	4,079	3,202	−2.9	21,783	11,445	−25.4
	1957	5,156	4,317	+34.8	23,188	14,572	+27.3
	1958	4,836	4,370	+1.2	22,122	14,402	−1.1
	1959	3,885	3,413	−21.8	16,149	13,077	−9.2
	1960	5,610	4,973	+45.7	18,172	13,380	+2.3
	1961	6,771	5,313	+6.8	20,977	13,920	+4.0
Portsmouth, N.H	1954	1,017	460		2,854	3,252	
	1955	840	310	−32.6	2,347	2,179	−32.9
	1956	829	315	+1.6	3,144	1,948	−10.6
	1957	718	347	+10.1	2,556	1,018	−47.7
	1958	779	307	−11.5	2,785	911	−10.5
	1959	511	266	−13.3	2,006	744	−18.3
	1960	538	357	+34.2	2,628	979	+31.5
	1961	547	314	−12.0	2,107	905	−7.5
Providence, R.I	1954	1,847	1,204		8,060	7,389	
	1955	1,259	894	−25.7	5,985	7,173	−2.9
	1956	1,874	1,254	+40.2	7,329	6,041	−15.7
	1957	2,447	1,358	+8.2	7,169	3,331	−44.8
	1958	2,234	1,383	+1.8	6,828	3,421	+2.7
	1959	1,960	1,243	−10.1	5,551	2,864	−16.2
	1960	1,935	1,303	+4.8	5,381	2,760	−3.6
	1961	2,693	1,907	+46.3	5,922	7,275	+163.5
Albany, N.Y	1954	4,679	3,559		13,822	15,061	
	1955	4,770	3,454	−2.9	14,246	11,274	−25.1
	1956	3,818	3,368	−2.4	14,296	11,142	−1.1
	1957	3,960	3,366		15,598	12,223	+9.7
	1958	4,177	3,200	−4.9	13,413	8,988	−26.4
	1959	3,014	2,074	−35.1	9,233	8,397	−6.5
	1960	2,698	2,044	−1.4	9,384	6,912	−17.6
	1961	3,666	2,925	+43.1	10,663	7,338	+6.1
Brooklyn, N.Y	1954	28,903	18,534		88,274	106,522	
	1955	37,482	24,523	+32.3	100,932	133,339	+25.1
	1956	33,648	23,624	−3.6	105,604	129,428	−2.9
	1957	35,112	24,882	+5.3	108,819	125,382	−3.1
	1958	28,275	21,773	−12.4	83,173	90,776	−27.6
	1959	22,196	18,637	−14.4	62,176	75,461	−16.8
	1960	13,658	14,431	−22.5	41,091	60,670	−19.6
	1961	11,743	13,588	−5.8	38,621	58,504	−3.5
Buffalo, N.Y	1954	4,664	2,351		21,869	12,368	
	1955	4,756	2,916	+24.0	18,203	12,058	−2.5
	1956	4,141	2,778	−4.7	20,172	12,309	+2.0
	1957	4,836	3,436	+23.6	19,184	12,869	+4.5
	1958	4,031	2,969	−13.5	17,021	10,174	−20.9
	1959	3,128	2,508	−15.5	10,655	7,961	−21.7
	1960	3,395	2,666	+6.2	9,089	6,786	−14.7
	1961	3,255	2,218	−16.8	10,727	5,772	−14.9
Lower Manhattan (2 New York).	1954	22,636	17,622		48,155	171,309	
	1955	25,952	20,573	+16.7	53,341	169,476	−1.0
	1956	19,669	21,087	+2.4	44,725	153,697	−9.3
	1957	17,600	18,495	−12.2	36,963	124,178	−19.2
	1958	13,497	13,689	−25.9	30,560	117,290	−5.5
	1959	10,081	13,867	+1.3	20,980	73,946	−36.9
	1960	(1)	(1)	(1)	(1)	(1)	(1)
Upper Manhattan (3 New York).	1954	24,420	26,447		67,328	158,538	
	1955	31,922	32,691	+23.6	109,567	195,098	+23.0
	1956	33,586	31,514	−3.6	124,641	202,676	+3.8
	1957	32,259	32,466	+3.0	121,388	176,094	−13.1
	1958	30,135	32,199	−.8	116,608	182,180	+3.4
	1959	19,616	21,505	−33.2	78,620	120,370	−33.9
	1960	(2)	(2)	(2)	(2)	(2)	(2)
Manhattan (New York)	1960	24,325	32,750	−7.4	81,025	149,762	−22.9
	1961	22,607	28,346	−13.4	68,863	115,918	−22.5
Syracuse, N.Y	1954	3,046	1,552		12,486	5,650	
	1955	2,565	1,664	+7.2	9,308	5,395	−4.5
	1956	3,341	2,019	+21.3	13,955	6,443	+19.4
	1957	4,593	2,411	+19.4	16,618	5,921	−8.1
	1958	2,974	2,044	−15.2	11,859	5,415	−8.5
	1959	2,185	1,841	−9.9	7,287	5,550	+2.4
	1960	2,584	1,917	+4.1	8,555	5,226	−5.8
	1961	3,270	2,146	+11.9	9,649	5,338	+2.1
Baltimore (Maryland and District of Columbia).	1954	12,249	$6,296		120,870	$68,663	
	1955	9,577	5,733	−8.9	95,861	62,497	−8.9
	1956	6,963	4,402	−23.2	60,642	42,778	−31.5
	1957	7,246	5,100	+15.8	44,982	36,069	−15.6
	1958	5,965	4,010	−21.3	32,469	25,705	−28.7
	1959	3,560	2,739	−31.6	29,066	17,133	−33.3
	1960	4,662	3,014	+10.0	32,941	23,106	+34.8
	1961	6,485	4,341	+44.0	37,783	23,390	+1.2
Camden, N.J	1954	3,526	2,090		16,986	10,638	
	1955	3,684	2,657	+27.1	16,958	16,896	+58.8
	1956	4,709	2,950	+11.0	19,659	14,015	−17.0
	1957	4,876	3,590	+21.6	19,376	14,881	+6.1
	1958	4,379	4,194	+16.8	16,187	15,040	+1.0
	1959	2,700	1,984	−52.6	10,848	8,580	−42.9
	1960	3,445	2,852	+43.7	11,952	10,745	+25.2
	1961	4,070	3,308	+15.9	14,654	11,883	+10.5
Newark, N.J	1954	37,438	24,083		122,953	92,962	
	1955	23,673	22,244	−7.6	84,883	79,793	−14.1
	1956	17,240	18,193	−18.2	71,578	79,913	+.1
	1957	14,575	17,170	−5.6	55,722	55,667	−30.3
	1958	10,929	13,291	−22.5	36,048	44,825	−19.4
	1959	8,169	10,160	−23.5	30,459	38,527	−14.0
	1960	9,432	11,998	+18.0	39,146	37,731	−2.0
	1961	10,347	12,441	+3.6	37,028	37,905	+.4
Philadelphia, Pa	1954	18,014	15,700		95,824	63,450	
	1955	17,918	17,060	+8.6	87,594	74,744	+17.7
	1956	11,923	12,342	−27.6	55,994	66,115	−11.5
	1957	7,564	10,317	−16.4	42,254	48,455	−26.7
	1958	5,816	8,944	−13.3	29,852	42,563	−12 1
	1959	4,387	6,274	−29.8	21,134	34,203	−19.6
	1960	5,222	7,515	+19.7	26,953	36,874	+7.8
	1961	9,095	10,393	+38.2	29,948	34,577	−6.2
Pittsburgh, Pa	1954	4,880	3,800		40,973	28,955	
	1955	6,651	5,079	+33.6	34,891	30,144	+4.1
	1956	5,251	4,858	−4.3	28,534	23,103	−23.3
	1957	4,592	3,583	−26.2	21,759	15,683	−32.1
	1958	5,976	4,569	+27.5	27,821	17,374	+10.7
	1959	3,998	3,206	−29.8	20,494	12,386	−28.7
	1960	4,301	3,823	+19.2	19,233	16,849	+36.0
	1961	7,179	6,091	+59.3	26,104	19,934	+18.3
Scranton, Pa	1954	2,134	2,345		9,414	7,948	
	1955	1,743	2,324	−.8	6,659	7,233	−8.9
	1956	1,397	2,220	−4.4	4,975	6,516	−9.8
	1957	1,547	2,127	−4.1	5,096	8,075	+23.9
	1958	1,598	1,655	−22.1	5,393	6,196	−23.2
	1959	1,563	1,421	−14.1	4,897	5,931	−4.2
	1960	1,585	1,679	+18.1	4,841	3,900	−34.2
	1961	2,016	1,907	+13.5	5,439	5,192	+33.1
Wilmington, Del	1954	571	303		5,460	22,009	
	1955	683	327	+7.5	4,586	3,639	−83.4
	1956	621	301	−7.9	5,522	3,722	+2.2
	1957	522	272	−9.6	4,817	3,811	+2.3
	1958	331	347	+27.5	3,706	3,296	−13.5
	1959	325	184	−46.9	3,435	2,043	−38.0
	1960	695	415	+125.5	3,743	2,701	+32.2
	1961	516	248	−40.2	3,717	2,591	−4.0
Columbus, Ohio	1954	1,207	594		13,054	6,652	
	1955	1,290	657	+10.6	11,010	6,624	−.4
	1956	1,517	845	+28.6	12,340	9,972	+50.5
	1957	1,625	878	+3.9	13,217	9,079	−8.9
	1958	1,714	1,087	+23.8	12,916	10,244	+12.6
	1959	904	681	−37.3	6,917	6,433	−37.2
	1960	(3)	(3)	(3)	(3)	(3)	(3)
Cincinnati, Ohio	1954	3,431	1,784		26,545	15,128	
	1955	3,630	1,947	+9.0	24,423	12,685	−16.1
	1956	3,060	1,801	−7.4	22,534	11,410	−10.0
	1957	3,349	1,980	+9.9	24,995	10,228	−10.3
	1958	2,764	1,529	−22.7	16,539	9,681	−5.3
	1959	1,886	1,273	−16.7	8,652	6,916	−28.5
	1960	5,015	3,102	+58.7	23,794	16,245	+21.6
	1961	5,212	4,243	+36.7	21,184	15,038	−7.4
Toledo, Ohio	1954	929	392		6,072	3,317	
	1955	785	393	+.2	4,855	2,896	−12.6
	1956	1,078	617	+56.9	6,277	2,471	−14.6
	1957	980	633	+2.5	6,328	3,180	+28.6
	1958	981	500	−21.0	6,449	2,373	−25.3
	1959	1,396	772	+54.4	5,426	4,495	+89.4
	1960	(4)	(4)	(4)	(4)	(4)	(4)
Cleveland, Ohio	1954	7,958	5,272		49,841	42,963	
	1955	8,720	5,523	+4.7	46,546	35,547	−17.2
	1956	8,219	5,924	+7.2	39,521	42,590	+19.8
	1957	7,431	5,788	−2.2	37,631	36,371	−14.6
	1958	5,951	3,794	−34.4	26,206	29,076	−20.0
	1959	4,777	3,021	−20.3	16,291	21,195	−27.1
	1960	6,444	4,351	+14.7	26,993	24,311	−5.3
	1961	6,579	4,899	+12.5	26,165	27,511	+13.1
Indianapolis, Ind	1954	3,420	2,477		23,475	19,133	
	1955	4,767	2,953	+19.2	22,273	20,760	+8.5
	1956	3,959	3,120	+5.6	20,007	20,574	−.8
	1957	4,667	3,386	+8.5	19,952	21,993	+6.8
	1958	3,594	2,907	−14.1	15,511	16,397	−25.4
	1959	2,889	2,376	−18.2	10,164	13,072	−20.2
	1960	4,278	3,070	+29.2	14,577	13,992	+7.0
	1961	5,337	5,643	+83.8	15,290	19,682	+40.6
Louisville, Ky	1954	2,019	1,035		12,161	11,834	
	1955	2,934	1,228	+18.6	12,963	13,172	+11.3
	1956	2,457	1,343	+9.3	12,331	12,930	−1.2

[1] Merged with Upper Manhattan as "Manhattan."
[2] Merged with Lower Manhattan as "Manhattan."
[3] Merged with Cincinnati.
[4] Merged with Cleveland.

Delinquent taxes—Continued

District	Year	Employment tax		Percent change over previous year	Total taxes		Percent change over previous year
		Number	Amount		Number	Amount	
			Thousands			*Thousands*	
Louisville, Ky.—Con.	1957	2,468	$1,380	+2.7	11,367	$10,876	−15.8
	1958	1,696	1,117	−19.0	8,725	8,378	−22.9
	1959	1,981	1,034	−7.4	7,463	8,682	+3.6
	1960	2,940	1,630	+57.6	11,289	9,609	+10.6
	1961	3,050	1,839	+12.8	11,954	8,807	−8.3
Parkersburg, W. Va.	1954	3,221	1,952		15,917	12,931	
	1955	2,257	1,376	−29.5	11,094	10,627	−17.8
	1956	1,533	1,064	−22.6	8,357	9,032	−15.0
	1957	1,574	1,117	+4.9	6,877	6,860	−24.0
	1958	1,769	1,077	−3.5	7,794	5,372	−21.6
	1959	1,518	997	−7.4	5,243	4,299	−19.9
	1960	1,807	1,055	+5.8	6,446	4,492	+4.4
	1961	2,114	1,188	+12.6	6,674	3,581	−20.2
Richmond, Va.	1954	4,692	2,239		32,611	20,986	
	1955	5,147	2,663	+18.9	29,332	21,881	+4.2
	1956	4,118	2,420	−9.1	26,199	23,932	+9.3
	1957	3,988	2,263	−6.4	19,830	15,687	−34.4
	1958	3,502	1,929	−14.7	15,574	12,333	−21.3
	1959	3,339	2,235	+15.8	14,553	11,927	−3.2
	1960	3,920	2,471	+10.5	18,203	12,781	+7.1
	1961	5,607	3,693	+49.4	21,895	13,762	+7.6
Atlanta, Ga.	1954	4,963	2,947		26,021	20,972	
	1955	5,889	3,572	+21.2	24,979	18,809	−10.3
	1956	5,540	3,432	−3.9	24,713	17,080	−9.1
	1957	5,864	3,829	+11.5	25,328	18,972	+11.0
	1958	5,981	3,948	+3.1	23,875	15,388	−18.8
	1959	4,506	2,101	−46.7	16,554	10,763	−30.0
	1960	5,610	2,362	+12.4	22,928	10,996	+2.1
	1961	5,410	2,539	+7.4	18,469	11,386	+3.5
Birmingham, Ala.	1954	4,874	2,299		19,506	19,488	
	1955	3,655	1,965	−14.5	16,003	17,636	−9.5
	1956	3,658	1,880	−4.3	16,780	21,969	+24.5
	1957	3,826	1,772	−5.7	15,986	18,889	−14.0
	1958	3,653	1,735	−2.0	14,130	17,066	−9.6
	1959	2,489	1,461	−15.7	12,188	14,954	−12.3
	1960	2,796	1,753	+19.9	12,516	11,930	−20.2
	1961	3,604	2,183	+24.5	15,121	13,156	+10.2
Columbia, S.C.	1954	3,727	1,078		14,246	7,201	
	1955	3,318	822	−23.7	12,972	6,511	−9.5
	1956	3,311	850	+3.4	13,202	5,413	−16.8
	1957	2,938	948	+11.5	13,339	4,462	−17.5
	1958	2,773	1,064	+12.2	11,573	4,471	+.2
	1959	1,697	1,011	−4.9	7,141	3,082	−31.0
	1960	2,595	1,159	+14.6	10,681	3,882	+25.9
	1961	3,362	1,308	+12.8	10,621	3,843	−1.0
Greensboro, N.C.	1954	5,332	2,016		22,459	26,395	
	1955	4,318	1,998	−.8	15,687	21,018	−20.3
	1956	4,336	1,957	−2.0	17,696	22,222	+5.7
	1957	4,922	2,023	+3.3	17,598	14,872	−33.0
	1958	4,186	1,359	−32.8	15,706	12,716	−14.4
	1959	4,078	1,441	+6.0	15,763	10,381	−18.3
	1960	3,682	1,597	+10.8	18,321	9,917	−4.4
	1961	4,834	2,079	+30.1	20,255	7,661	−22.7
Jackson, Miss.	1954	1,500	636		5,563	4,717	
	1955	1,526	596	−6.2	5,231	2,957	−37.3
	1956	1,321	656	+10.0	5,371	2,744	−7.2
	1957	1,634	684	+4.2	7,229	2,975	+8.4
	1958	1,774	852	+24.5	5,999	2,411	−18.9
	1959	1,505	614	−27.9	5,165	2,903	+20.4
	1960	1,891	797	+29.8	7,190	2,674	−7.8
	1961	2,725	1,267	+58.9	7,800	3,750	+40.2
Jacksonville, Fla.	1954	8,451	4,686		31,020	47,883	
	1955	8,239	4,996	+6.6	30,918	49,361	+3.0
	1956	10,203	6,562	+31.3	36,962	41,546	−15.8
	1957	11,447	8,519	+29.8	36,770	39,272	−5.4
	1958	10,375	8,029	−5.7	33,938	39,915	+1.6
	1959	9,947	8,608	+7.2	27,780	34,367	−13.8
	1960	10,813	9,407	+9.2	33,299	31,131	−9.4
	1961	14,095	10,436	+10.9	38,359	34,787	+11.7
Nashville, Tenn.	1954	3,721	1,775		15,763	12,463	
	1955	3,181	1,601	−9.8	12,971	13,220	+6.0
	1956	3,100	1,587	−.8	13,320	11,457	−13.3
	1957	3,214	1,679	+5.7	13,248	12,115	+5.7
	1958	2,522	1,287	−23.3	10,667	9,053	−25.2
	1959	1,910	870	−32.4	8,943	7,166	−20.8
	1960	2,411	1,142	+31.2	13,616	10,353	+44.4
	1961	4,065	1,993	+74.5	16,756	11,043	+6.6
Chicago, Ill.	1954	21,439	12,802		136,532	81,659	
	1955	22,891	15,915	+24.3	119,822	87,843	+7.5
	1956	24,597	20,829	+30.8	143,457	120,971	+37.7
	1957	35,678	32,698	+56.9	180,796	154,085	+27.3
	1958	25,352	22,996	−29.7	122,072	120,323	−21.9
	1959	20,410	17,580	−23.5	76,597	83,625	−30.4
	1960	16,550	15,445	−12.1	59,022	63,051	−24.6
	1961	15,062	12,682	−17.8	62,488	60,273	−4.4
Detroit, Mich.	1954	11,891	7,782		68,809	44,787	
	1955	16,325	10,808	+38.8	81,569	68,904	+53.8
	1956	16,871	13,328	+23.3	93,782	70,964	+2.9
	1957	20,538	15,168	+13.8	95,549	68,369	−3.6
	1958	18,337	14,121	−6.9	75,443	62,288	−8.8
	1959	14,465	13,259	−6.1	45,933	46,530	−25.2
	1960	14,326	12,437	−6.1	43,908	44,154	−5.1
	1961	16,816	13,830	+11.2	43,712	38,163	−13.5
Milwaukee, Wis.	1954	3,759	1,704		16,962	16,592	
	1955	3,781	2,087	+22.4	14,322	16,279	−1.8
	1956	4,534	2,314	+10.8	14,936	13,455	−17.3
	1957	4,529	2,551	+10.2	18,403	14,964	+11.2
	1958	4,608	3,033	+18.9	12,065	13,418	−10.3
	1959	3,090	2,180	−28.1	9,139	10,893	−18.8
	1960	4,015	3,176	+45.6	10,827	12,047	+10.5
	1961	3,933	2,992	−5.7	10,489	9,929	−17.5
Springfield, Ill.	1954	4,563	$1,903		19,192	$9,101	
	1955	3,381	1,627	−14.5	12,885	8,723	−4.1
	1956	3,374	2,171	+33.4	15,117	8,526	−2.2
	1957	3,255	2,007	−7.5	15,829	9,442	+10.7
	1958	2,027	1,378	−31.3	8,070	7,126	−24.5
	1959	1,432	885	−35.7	5,478	5,759	−19.1
	1960	1,995	1,474	+66.5	6,338	5,289	−8.1
	1961	1,837	1,092	−25.9	5,333	5,597	+5.8
Aberdeen, S. Dak.	1954	734	282		3,092	1,255	
	1955	604	248	−12.0	2,488	1,613	+28.5
	1956	823	248		2,948	1,441	−10.6
	1957	788	264	+6.4	2,844	1,391	−3.4
	1958	515	209	−20.8	1,865	971	−30.1
	1959	439	137	−34.4	1,476	676	−30.3
	1960	559	242	+76.6	1,763	1,003	+48.3
	1961	665	277	+14.4	2,006	1,420	+41.5
Cheyenne, Wyo.	1954	688	248		2,445	1,629	
	1955	727	256	+3.2	2,215	1,344	−17.4
	1956	639	264	+3.1	2,126	1,077	−19.8
	1957	490	205	−22.3	2,013	1,266	+17.5
	1958	616	264	+28.7	2,305	1,326	+4.7
	1959	354	182	−31.0	1,480	1,053	−20.5
	1960	667	380	+108.7	2,405	1,513	+43.6
	1961	946	448	+17.8	3,275	1,244	−17.7
Denver, Colo.	1954	2,754	1,319		9,888	7,552	
	1955	3,056	1,642	+24.4	9,748	7,960	+5.4
	1956	2,483	1,402	−14.6	10,236	8,142	+2.2
	1957	2,346	1,475	+5.2	10,336	7,163	−12.0
	1958	2,917	1,586	+7.5	10,946	7,938	+10.8
	1959	1,806	1,042	−34.3	7,339	4,795	−39.5
	1960	2,674	1,818	+74.4	10,078	8,056	+68.0
	1961	3,420	1,983	+9.0	11,772	8,605	+6.8
Des Moines, Iowa	1954	1,781	770		5,810	9,737	
	1955	1,596	749	−2.7	5,207	8,200	−15.7
	1956	1,989	989	+32.0	6,729	9,118	+11.1
	1957	2,069	947	−4.2	6,351	7,480	−17.9
	1958	1,730	850	−10.2	5,101	4,564	−38.9
	1959	1,217	683	−19.6	3,995	4,965	+8.7
	1960	1,987	1,138	+66.6	6,236	5,289	+6.5
	1961	2,310	1,056	−7.2	6,945	4,566	−13.6
Fargo, N. Dak.	1954	843	310		2,352	1,353	
	1955	578	217	−30.0	1,607	1,011	−25.2
	1956	563	228	+5.0	2,199	1,336	+32.1
	1957	628	236	+3.5	2,135	1,414	+5.8
	1958	729	307	+30.0	2,320	1,342	−5.0
	1959	397	255	−16.9	1,430	1,001	−25.4
	1960	682	391	+53.3	2,038	1,073	+7.1
	1961	962	463	+18.4	2,558	1,248	+16.3
Kansas City, Mo.	1954	1,783	884		8,155	9,021	
	1955	2,030	1,146	+29.6	7,615	9,433	+4.5
	1956	2,522	1,466	+27.9	8,650	8,673	−8.0
	1957	2,591	1,497	+2.1	10,168	7,887	−9.0
	1958	2,882	1,454	−2.8	9,889	8,820	+11.8
	1959	1,754	1,414	−2.7	5,902	8,298	−5.9
	1960	2,324	1,539	+8.8	8,005	23,454	+182.6
	1961	2,875	1,514	−1.6	9,574	22,990	−1.9
Omaha, Nebr.	1954	810	548		3,932	4,180	
	1955	638	480	−12.4	2,697	3,364	−19.5
	1956	770	528	+10.0	3,441	3,544	+5.3
	1957	834	585	+10.7	2,884	2,729	−22.9
	1958	601	267	−54.3	2,234	2,770	+1.5
	1959	512	267		1,764	1,684	−39.2
	1960	585	366	+37.0	2,456	2,052	+21.8
	1961	919	640	+74.7	2,721	2,071	+.9
St. Louis, Mo.	1954	1,958	974		11,539	12,267	
	1955	2,686	1,323	+35.8	9,999	10,085	−17.7
	1956	2,001	1,119	−15.4	8,997	9,606	−4.7
	1957	2,202	1,308	+16.8	10,578	10,031	+4.4
	1958	2,665	1,302	−.4	12,875	9,447	−5.8
	1959	1,824	846	−35.0	7,876	6,167	−34.7
	1960	1,699	956	+13.0	8,147	6,138	−.4
	1961	2,483	1,247	+30.4	10,745	6,096	−.6
St. Paul, Minn.	1954	3,096	1,929		10,916	9,725	
	1955	3,110	2,093	+8.5	9,616	9,270	−4.6
	1956	3,590	2,546	+21.1	12,035	11,203	+20.8
	1957	3,830	2,711	+6.4	12,512	13,600	+21.3
	1958	3,969	2,494	−8.0	11,474	12,139	−10.7
	1959	2,376	1,951	−21.7	7,481	10,644	−12.3
	1960	2,735	2,176	+11.5	9,271	11,012	+3.4
	1961	3,287	2,384	+9.5	9,708	12,702	+15.3
Wichita, Kans.	1954	2,405	939		10,542	7,316	
	1955	2,912	1,018	+8.4	10,279	6,757	−7.6
	1956	2,300	1,269	+24.6	9,038	8,047	+19.0
	1957	2,294	1,299	+2.3	7,703	7,084	−11.9
	1958	2,298	1,104	−15.0	7,044	7,621	−6.5
	1959	1,815	1,094	−.9	5,612	6,323	−5.8
	1960	2,138	1,224	+11.8	7,121	5,203	−16.5
	1961	2,570	1,438	+17.4	8,147	5,359	+2.9
Albuquerque, N. Mex.	1954	1,911	741		5,491	2,824	
	1955	1,994	853	+15.1	5,078	2,960	+4.8
	1956	1,957	1,062	+24.3	5,888	3,926	+32.6
	1957	2,378	1,192	+12.2	6,777	3,935	+.2
	1958	2,077	1,075	−9.8	6,085	3,233	−17.8
	1959	1,717	1,095	+1.8	4,576	2,915	−9.7
	1960	1,947	1,345	+22.8	5,391	3,930	+34.8
	1961	1,954	1,434	+6.6	5,104	3,671	−6.5
Austin, Tex.	1954	5,609	3,021		22,355	20,202	
	1955	6,580	2,702	−10.5	18,391	12,754	−36.8
	1956	5,283	3,080	+13.9	19,534	15,230	+19.4
	1957	5,664	3,336	+8.3	23,351	14,386	−5.5
	1958	4,445	2,797	−16.1	19,437	12,246	−14.8

Delinquent taxes—Continued

District	Year	Employment tax		Percent change over previous year	Total taxes		Percent change over previous year
		Number	Amount		Number	Amount	
			Thousands			*Thousands*	
Austin, Tex.—Con.	1959	3,700	$2,439	−12.7	18,126	$14,070	+14.8
	1960	3,306	5,271	+116.1	24,407	17,744	+26.1
	1961	5,798	5,486	+4.0	25,329	17,874	+.7
Dallas, Tex.	1954	9,311	5,077	-------	31,244	23,748	-------
	1955	6,816	3,608	−28.9	22,420	16,337	−31.2
	1956	6,158	3,642	+.9	25,793	20,822	+27.4
	1957	8,225	4,750	+30.4	30,526	22,022	+5.7
	1958	5,530	3,225	−32.1	23,620	18,221	−17.2
	1959	5,515	3,658	+13.4	20,481	18,037	−1.0
	1960	5,187	3,976	+8.6	26,676	20,660	+14.5
	1961	7,678	5,918	+48.8	25,741	23,377	+13.1
Little Rock, Ark.	1954	1,801	462	-------	5,431	2,315	-------
	1955	1,259	319	−30.9	4,182	2,108	−8.9
	1956	1,179	453	+41.5	4,781	2,355	+11.7
	1957	1,209	489	+7.9	5,338	2,465	+4.6
	1958	975	374	−23.5	4,115	6,930	+181.1
	1959	1,511	437	+16.8	4,481	8,849	+27.5
	1960	1,179	465	+6.4	4,256	8,844	-------
	1961	2,377	800	+72.0	5,636	9,435	+6.6
New Orleans, La.	1954	4,566	1,948	-------	19,566	17,472	-------
	1955	4,261	2,260	+16.0	14,225	13,613	−22.0
	1956	4,097	2,214	−2.0	15,298	11,536	−15.2
	1957	4,300	2,489	+12.4	15,851	10,182	−11.7
	1958	4,342	2,420	−2.7	14,751	9,249	−9.1
	1959	3,638	1,920	−20.6	12,920	6,977	−24.5
	1960	3,569	2,093	+9.0	13,962	7,968	+14.2
	1961	5,140	3,041	+45.2	15,077	9,534	+19.6
Oklahoma City, Okla.	1954	3,311	1,790	-------	9,994	9,043	-------
	1955	3,123	1,825	+1.9	9,455	9,421	+4.1
	1956	3,764	2,167	+18.6	12,886	8,737	−7.2
	1957	4,998	2,239	+3.3	15,637	7,629	−12.6
	1958	3,975	2,189	−2.2	11,580	8,452	+10.7
	1959	3,425	1,965	−10.2	9,482	11,017	+30.3
	1960	3,176	1,973	+.4	9,448	6,125	−44.4
	1961	3,255	2,177	+10.3	10,052	5,976	−2.4
Anchorage, Alaska [5]	1961	851	996	-------	2,314	2,079	-------
Boise, Idaho	1954	1,050	470	-------	3,115	2,083	-------
	1955	1,099	472	+.5	2,949	1,988	−4.5
	1956	860	411	−13.1	3,211	2,155	+8.4
	1957	842	513	+24.8	3,559	2,280	+5.8
	1958	760	395	−23.0	2,812	2,213	−2.9
	1959	791	509	+28.8	2,382	2,106	−4.8
	1960	1,068	656	+28.8	3,241	1,381	−34.4
	1961	1,066	659	+.4	3,059	1,546	+11.9
Helena, Mont.	1954	1,064	436	-------	3,214	2,863	-------
	1955	831	333	−23.6	2,912	2,575	−10.0
	1956	1,035	527	+58.2	3,299	1,799	−30.1
	1957	1,122	624	+18.4	4,136	2,047	+13.7
	1958	1,040	550	−11.8	3,572	2,024	−1.1
	1959	802	398	−27.6	2,857	1,510	−25.3
	1960	1,231	742	+86.4	3,912	2,098	+38.9
	1961	1,835	1,022	+37.7	5,031	2,368	+12.8
Honolulu, Hawaii	1954	1,338	898	-------	4,682	4,620	-------
	1955	1,196	876	−2.4	3,835	4,345	−5.9
	1956	1,047	668	−23.7	3,800	3,929	−9.5
	1957	1,095	772	+15.5	4,101	3,297	−16.0
	1958	989	606	−21.5	3,448	2,887	−12.4
	1959	738	543	−10.3	2,092	1,606	−44.3
	1960	770	631	+16.2	2,064	1,828	+13.8
	1961	873	950	+50.5	2,565	5,102	+179.1
Los Angeles (6th California).	1954	16,989	13,396	-------	86,733	88,047	-------
	1955	22,429	19,706	+47.1	105,039	83,679	−4.9
	1956	17,151	16,600	−15.7	92,176	68,937	−17.6
	1957	19,853	20,762	+25.0	89,014	76,679	+11.2
	1958	19,895	18,723	−9.8	81,683	83,911	+9.4
	1959	15,736	16,199	−13.4	58,231	60,562	−27.8
	1960	20,005	20,468	+26.3	71,305	79,326	+30.9
	1961	25,123	28,692	+40.1	79,080	92,954	+17.1
Phoenix, Ariz.	1954	2,158	1,384	-------	8,957	5,510	-------
	1955	2,059	1,327	−4.1	7,023	5,057	−8.2
	1956	1,533	1,169	−11.9	5,871	4,095	−19.0
	1957	2,039	1,396	+19.4	6,760	4,452	+8.7
	1958	1,961	1,288	−7.7	6,218	4,276	−3.9
	1959	1,881	1,560	+21.1	5,162	4,265	−.2
	1960	2,674	2,019	+29.4	7,463	6,169	+44.6
	1961	2,823	2,218	+9.8	8,263	7,076	+14.7
Portland, Oreg.	1954	4,059	2,053	-------	14,799	15,351	-------
	1955	3,950	2,281	+11.1	11,636	12,429	−19.0
	1956	2,767	1,934	−15.2	10,300	13,215	+6.3
Portland, Oreg.—Con.	1957	2,554	$2,073	+7.1	10,295	$13,139	−0.5
	1958	2,410	1,766	−14.8	9,496	12,879	−1.9
	1959	2,659	1,857	+5.1	9,471	10,798	−16.1
	1960	3,140	2,248	+21.0	13,638	15,107	+39.9
	1961	3,366	2,879	+28.0	13,732	13,138	−13.0
Reno, Nev.	1954	1,455	1,480	-------	4,576	6,043	-------
	1955	1,195	1,470	−.6	3,782	6,697	+10.8
	1956	1,038	1,574	+7.0	3,545	5,995	−10.4
	1957	928	1,393	−11.4	3,739	6,324	+5.4
	1958	717	1,174	−15.7	3,152	6,804	+7.5
	1959	715	1,143	−2.6	2,665	4,965	−27.0
	1960	1,088	1,977	+72.9	4,140	5,984	+20.5
	1961	1,170	2,194	+10.9	4,095	4,628	−22.6
Salt Lake City, Utah.	1954	1,671	925	-------	5,554	4,649	-------
	1955	1,491	809	−12.5	4,668	3,560	−23.4
	1956	1,374	778	−3.8	4,505	3,771	+5.9
	1957	1,527	861	+10.6	4,878	3,906	+3.5
	1958	1,344	807	−6.2	4,572	4,084	+4.5
	1959	1,137	741	−8.1	3,929	3,605	−11.7
	1960	1,517	968	+30.6	4,102	3,160	−12.3
	1961	1,849	1,122	+15.9	5,022	3,334	+5.5
San Francisco (1st California).	1954	17,616	10,597	-------	85,750	66,858	-------
	1955	17,509	11,951	+12.7	73,245	88,983	+33.0
	1956	11,473	9,214	−22.9	61,138	77,550	−12.8
	1957	12,797	10,119	+9.8	60,441	74,781	−3.5
	1958	12,169	9,562	−5.5	50,947	63,834	−14.6
	1959	8,360	7,103	−25.7	37,997	56,626	−11.2
	1960	8,972	7,909	+11.3	43,648	59,661	+5.3
	1961	11,763	9,480	+19.4	43,675	57,977	−2.8
Seattle, Wash.	1954	5,932	4,324	-------	27,707	19,804	-------
	1955	6,417	5,409	+25.0	22,634	18,285	−7.6
	1956	5,937	5,687	+5.1	20,852	16,441	−10.0
	1957	5,715	4,786	−15.8	20,940	15,890	−3.3
	1958	5,238	3,935	−17.7	18,424	13,462	−15.2
	1959	4,315	3,246	−17.5	14,446	10,886	−19.1
	1960	4,997	4,011	+23.5	15,166	13,294	+22.1
	[5]1961	4,095	2,500	−12.8	11,493	11,779	+4.2
International Operations (exclusive of Puerto Rico).	1956	197	146	-------	11,812	16,704	-------
	1957	129	69	−52.7	11,372	16,722	+.1
	[6]1958	255	120	+73.9	7,637	41,230	+146.5
	1959	428	175	+45.8	19,886	35,532	−13.8
	1960	475	490	+180.0	20,166	50,492	+42.1
	1961	512	689	+40.6	19,651	44,280	−12.3
Puerto Rico	1954	1,530	147	-------	2,020	273	-------
	1955	1,853	252	+71.4	3,249	622	+127.8
	1956	1,307	296	+17.4	2,509	624	+.3
	1957	1,755	375	+26.6	2,674	721	+15.5
	1958	1,612	290	−22.6	2,451	593	−17.7
	1959	1,129	260	−10.3	1,682	393	−33.7
	1960	1,616	428	+64.6	2,205	686	+74.5
	1961	1,850	565	+32.0	2,622	951	+38.6

TOTALS

Year	Employment tax		Percent increase or decrease over preceding year	Total taxes		Percent increase or decrease over preceding year
	Number	Amount		Number	Amount	
		Thousands			*Thousands*	
1954	390,398	$254,062	----------	1,725,474	$1,614,494	----------
1955	399,269	284,803	+12.0	1,596,615	1,646,383	+1.9
1956	356,748	279,183	−1.9	1,560,685	1,619,629	−1.6
1957	377,253	300,678	+7.6	1,554,876	1,504,709	−7.0
1958	329,457	263,186	−12.4	1,280,642	1,375,737	−8.5
1959	256,287	216,439	−17.7	949,146	1,071,016	−22.1
1960	268,396	236,843	+9.4	1,023,770	1,072,440	+.1
1961	316,612	268,465	+13.3	1,071,660	1,063,248	−.8

[5] Alaska included in Seattle prior to 1962. Percentage change for Seattle for 1962 adjusted to reflect separation of Alaska from that office.

[6] Result of district offices' transferring to this division delinquent accounts of taxpayers known to be abroad and out of reach.

ACCESS ROUTES TO BERLIN

Mr. SCOTT. Mr. President, the matter upon which I wish to speak cannot be delayed because of the fact that Secretary of State Rusk is meeting in Athens at about this time, and I wish to say certain things regarding our commitments on West Berlin.

Mr. President, there is a memorial in front of Tempelhof Airport in Berlin that is dedicated to those who gave their lives to sustain the Berlin airlift in 1948. There are three fork-like prongs symbolizing the three air corridors used by the free world as access routes into Berlin. I would wonder, Mr. President, if those who gave their lives to sustain our rights and those 161,000 who died in the European theater in World War II to win those rights would endorse any proposal by our Government to mitigate them.

I hardly feel it necessary, Mr. President, to argue that the United States has an undeniable right not only to the occupation of Berlin but free access thereto.

Every Secretary of State and every President since the cessation of hostilities with Nazi Germany has, without equivocation, taken that position. Thus, from our standpoint, there is no disagreement as to our hardwon rights.

Recently, Mr. Rusk, the Secretary of State, met with Soviet Ambassador Anatoly F. Dobrynin and reached an agreement that formal negotiations on the Berlin question would be conducted in Washington. Although no formal proposal was made by Mr. Rusk, it is my

understanding that the latest version of the U.S. proposal on Berlin calls for the creation of a 13-member international authority to control access to that city. It has been reported by Murray Marder, in the Washington Post of April 21, 1962, that such an authority which would control all traffic to Berlin might supervise such access. The countries reported to be included in this proposal are the United States, Britain, France, West Germany, the Soviet Union, Poland, Czechoslovakia, East Germany, Switzerland, Sweden, and Austria, and East Berlin and West Berlin would also be represented on the Council.

Again, only in proposal form, it is contemplated that a majority of these countries voting would determine traffic and access rights.

Understandably our Government as well as our allies are anxious to reach a peaceful settlement of the Berlin question. But such a settlement must be not only peaceful but honorably in keeping with our obligations to free peoples.

For the life of me, I cannot understand how a country dedicated to the principles of individual and national freedom can negotiate or propose to negotiate on the basis of new limitations upon the people of West Berlin and indeed upon the rights of the Western World.

I cannot help recalling what two of our Presidents have said about Berlin: First, President Eisenhower:

> We have no intention of forgetting our rights or of deserting a free people.

Second, President Kennedy:

> We cannot and will not permit the Communists to drive us out of Berlin either gradually or by force.

Mr. President, those statements reflect the views of a nation that is now alleged to be proposing a mitigation of our rights.

We have the right of free access, we have fought to sustain that right and it would be a step in the wrong direction to bargain away a part, or perhaps ultimately, all of that right.

It is my feeling that this provision or proposal to internationalize the access routes to Berlin will dilute the American commitment to Berlin on the key issue of access.

It is reported that Secretary Rusk will present this proposal to the British, French, and West German foreign ministers during the ministerial conference of the North Atlantic Treaty Organization in Athens this week. It is a pity that Congress has no knowledge of whether we are, or are not, about to make costly concessions to the Soviet and to East Germany.

I might add that I was happy to read that both the United States and Britain are reported to be strongly against any de facto recognition of Communist East Germany.

But, Mr. President, not the willingness to negotiate but the tendency to negotiate away one's rights is alarming.

Because of my desire not unnecessarily to delay the Senate at this time, I purposely have not gone into great detail, although this problem deserves serious consideration.

Such a proposal merits close study by the Senate, which has also the duty of advising the Executive on such matters.

Because of my belief that this reported proposal would seriously dilute a right won with the blood of our Nation's youth, I have written to both the chairman of the Committee on Foreign Relations and the chairman of the Committee on Armed Services, asking that they promptly consider the feasibility of calling before them—in executive session, if necessary—General Clay, the retiring personal representative of the President to Berlin. General Clay's intimate knowledge of Berlin and its relation to our foreign policy and our military posture in Europe and the free world ought to be made available to the relevant committees of Congress before, not after, the making of such commitments as might result in de facto recognition of East Germany or the dilution of American rights by submission to a possibly hostile multinational commission.

Mr. President, I shall read the text of my letter to both chairmen:

> DEAR SENATOR: Because I am concerned about the steps the United States may take in the near future in relation to our access rights to Berlin, I feel it imperative to write this letter. The proposal to internationalize our right of access to this citadel of freedom could not only jeopardize our position in Berlin, in Europe, but in the world.
>
> It is for this reason that, although I am not a member of the Senate Armed Services Committee or the Senate Foreign Relations Committee, I respectfully request your committee to consider the feasibility of shortly calling before you Gen. Lucius D. Clay for the purpose of getting the benefits of his views on this proposal.
>
> Because of your intimate knowledge on General Clay's background and his association with Berlin and its problems since World War II, it is unnecessary for me to spell out his qualifications as an expert on this matter.
>
> I would earnestly hope for your immediate and favorable consideration of this suggestion.

Mr. President, it is my understanding, although I may not be correct, that General Clay has not, as of now, had occasion to testify before either of these committees. While there is so much curiosity about General Clay's recall, and some persons have said, perhaps without warrant, that his recall may signify the end of the tough policy in West Berlin; because of the fear that the recall of General Clay may be misapprehended at home and abroad; and because of the concern which we all have that our attitude toward West Berlin as an integral part of the free world shall in no wise be mitigated or minimized, I hope that General Clay's testimony will be made available. I do not ask that it be made public; there may be many reasons why it is not desirable that such information be made available to general public consideration, possible controversy, or clash of opinion. However, it seems to me that the proper bodies of Congress ought to have and ought to embrace this opportunity, so that they may be able to reassure the rest of us in Congress that the United States does, indeed, intend to continue its strong, firm, unyielding policy in West Berlin.

Today the United Press International reports as follows:

> ATHENS.—The Western Big Four Foreign Ministers will meet tomorrow to work out new allied peace terms on Berlin, reliable sources reported today.
>
> The sources said Secretary Rusk, Britain's Lord Home, France's Maurice Couve de Murville, and West Germany's Gerhart Schroeder have agreed to meet privately to seek accord on the next in the Berlin probe with the Soviet Union.
>
> Rusk and Schroeder will meet separately before the Big Four session in an effort to iron out differences which have arisen from German fears that the projected American Berlin plan may imply recognition of the Communist East German regime.

Mr. President, if this report is correct, then it must be believed that West Germany holds what it believes to be valid fears that there may be some derogation from the hitherto strong stand which we have taken.

Also, the UPI today reports as follows from Washington:

> Senator JACOB K. JAVITS, Republican, of New York, cautioned the administration today against making concessions in Berlin that could compromise principles for which the United States has risked war in the past.

The distinguished senior Senator from New York is now in the Chamber. Without reading the rest of the news report, I may say that what he has said in his expression of concern is very much in accord with what I have just said. If he wishes to comment at this time on what I have said, I shall appreciate it.

Mr. JAVITS. Mr. President, I am most grateful to the Senator from Pennsylvania for making so gracious a comment on what I said about Berlin.

This is a subject in which, as the Senator from Pennsylvania knows, I have been interested and concerned for many years. In 1949 and 1950, I was a member of a special committee of the other body which investigated the situation, and actually held hearings the length of West Germany—from Hamburg to Munich—on this and other subjects; and as Chairman of the Economic Committee of the NATO Parliamentarians' Conference, I have also been deeply immersed in these problems.

What struck me so forcibly—and I am very much pleased that the thinking of the Senator from Pennsylvania coincides with my own—is the seeming lash on our backs in an attempt to force us to make an agreement on Berlin with the Russians. This could have very unfortunate repercussions insofar as the German people themselves are concerned, because their fidelity to the effort to make a community of Europe is one of the most essential guarantees of the peace of Europe and the peace of the world; and if they were to lose confidence in the capability of that movement, and were to feel that they had to take some other road, we would indeed be in trouble.

I should like to say to the Senator from Pennsylvania—and I should also like to have him express his view of the matter, if he will do so—that, in my opinion, if we ever let Khrushchev get any real influence in West Germany, Germany would be unified so quickly that it would

make our heads swim. That is all that Khrushchev wants—to unify Germany, but on his own terms.

Therefore, it is most important that we make an agreement, if that is at all possible, to improve the situation there, so as not to be upset constantly by Khrushchev's ultimatums.

But if we have to pay the price of compromising the fundamental position of West Germany, either by recognizing East Germany, or by jeopardizing the status of the central European countries now enslaved by the Communists, or by accepting some technique which would implicitly recognize East Germany or would in any way interfere with access to Berlin, based on what the neutral countries do or do not wish to allow, then we would be greatly weakened.

Mr. SCOTT. Mr. President, the Senator from New York has expressed my concern, too, particularly as to dealing with a multinationality committee. One may ask who would be the chairman of such a committee. Does anyone think the Russian member of the committee would agree to have the United States member be the chairman—or vice versa; or would we and our allies agree to have the East German member be the chairman; or, contrarywise, would the East German member agree to have the West German member be the chairman? In that event, would the chairmanship be given to the representative of one of the neutral countries or to the representative of one of the satellite countries? In that event, the chairman, with all the power he would have, would not necessarily operate in the interest of the United States and in the interest of the protection of Berlin and of the right of access to West Berlin.

Must we again throw the fate and the foreign policy of the United States into the hands of those whose interest in the United States is surely not paramount to their own national interest—those who perhaps might decide some questions favorably to us, but who would almost certainly decide other questions unfavorably to us—in other words, against us. Whenever the committee first decided against us, we would then be confronted with the possibility of violation of our commitment never to yield an inch and never to give up, as President Kennedy says, either directly or gradually, if I may paraphrase what he said—our rights to be in West Berlin.

I thank the distinguished Senator from New York for his comments.

Mr. KEATING. Mr. President, I commend the distinguished Senator from Pennsylvania on the eloquent and persuasive address he has just made. Mr. President, to enter into negotiations in which the East German Government may have some say over access rights to West Berlin would be a bitter renunciation of the position which we have upheld in the past. No matter what cloak of plausibility may be pulled over this maneuver, it is in essence catastrophic. Our experience with international authorities in cold war situations has been frightening. The situation in Laos and Vietnam today, for instance, is the immediate result of the failure of the International Control Commission to provide the surveillance and protection against outside aggression which was its principal reason for existence.

Mr. President, we have been severely handicapped in Berlin under present conditions because every American action has to be cleared with NATO. Differences between the United States, Britain, France, and Germany have to be argued down to the last letter. What will be the case if we have to get the approval of a 13-member Commission before we can enforce our rights, before we can enforce rights which exist not only in theory but also in the determination and practice of nearly 20 years? Furthermore, Mr. President, the United States appears to be entering these negotiations from the weakest conceivable point. Since last August 13, when the East Germans built their infamous wall, the Communists have learned that bit by bit they can chip away at Western rights. Bit by bit they can erode our position and we will not oppose it. From the very time that the wall was built—and, incidentally, it was built by East Germans who have no legal rights whatsoever to block anybody's access to anything—we have been retreating. Originally were many entry points that could be used. Today there is only one principal entrance. Originally West Berliners were permitted to travel freely in East Berlin. Now they are barred.

Originally American civilians could travel freely in East Berlin. Now they must show identification cards.

Originally the Western air corridors were reserved for Western flights. Now they are threatened by Soviet military flights, many of which are unannounced.

Mr. President, 90 percent of the American rights in Berlin today exist only on paper because we have failed to enforce them. Our whole position has been lost in a legalistic muddle. Before we react to any Soviet step, we must find a document giving us permission. If we do not find the document fast enough, we do not resist. Needless to say, the State Department does not call this losing rights. They merely say that we possess rights which we have not recently tried to exercise. Verbalisms and legalisms are the disguise for what, in fact, amounts to a complete lack of policy with regard to Berlin.

Mr. President, I am deeply concerned over this, for I fear we are entering negotiations with our feet on quicksand. Virtually all Soviet demands and pressures have been acceded to in practice, if not in theory. What demands have we put forward?

Mr. President, as far as I am aware there is not a single area of the entire Berlin situation where the United States has put forth a claim for a right which we did not previously possess. There is not a single instance where the United States has advanced its cause in Berlin, where our rights have been expanded in any way, whether so acknowldeged by the Soviets or not.

Mr. President, we have already retreated so far that in some ways it is hardly a surprise that our Government is planning now to permit a degree of East German control of access routes. Had this proposal been put forth last year when the President's brave words at the meeting with Khrushchev still rang in American ears, the reaction would have been astonishment and shock. Yet in one short year we have come to this position.

Mr. President, before entering any kind of serious negotiations, our own position must, where possible, be strengthened. The Soviets have still not dared question our rights to send uniformed soldiers on patrol through East Berlin. (We now send about two small patrols through East Berlin.) This is an important point. It is one of the basic strengths of our position that Allied forces have the right to patrol in any part of Berlin. It is one area in which we can take an initiative. American patrols through East Berlin should be increased and stepped up. The American flag should be shown on these patrols at frequent intervals; perhaps every 3 or 4 hours. Tanks, jeeps, and American soldiers, not just one or two, but many should patrol the dark and gloomy streets of the Soviet city steadily and thereby keep alive the recognition that, despite the wall, no Soviet or German force can keep American soldiers out of an area to which they have an inviolable right.

Mr. President, there are some who would say this action was provocative. But in the cold war in which we are today engaged, let me be perfectly honest, every step can be considered provocative unless it is a step backwards. Mr. President, the biggest step backwards we could possibly take would be to give the East Germans any kind of say whatsoever over access to West Berlin. One of the most important steps which we can take forward is to move right now to increase the American patrols, and thereby the American presence in East Berlin. This is one step we should take right now before entering into any kind of negotiations over Berlin.

PUBLIC WORKS EMPLOYMENT ACT OF 1962

Mr. PROUTY. Mr. President, unemployment is still a very serious problem.

The upturn in business has not spread to all sectors of the economy; and our recovery—the slowest recovery from any recession since the end of World War II—has done very little to help put groceries on the shelf of the distressed worker, or to improve the profit situation of the small business.

During the 11-month period after the economy began its upturn, the Federal Reserve Board industrial production index rose 11 percent. That is far below the 19-percent jump attained in the comparable period of the 1958–59 recovery, as well as the 14-percent rise achieved in the same period of the 1954–55 recovery.

Although there were rosy predictions by spokesmen for the administration in the first quarter of 1962, the actual outlay by industry for new plant-equipment spending fell at least half a billion dollars below official estimates.

The poor progress in industry has cast its shadow on the unemployed worker.

Today there are 4,400,000 Americans without jobs. One and a half million

men and women have been unemployed for 15 weeks, or longer. Of perhaps even greater concern is the fact that more than 700,000 human beings have been out of work for over 6 months.

Unskilled workers are among the hardest hit in this economy of ours which has not yet started to really move.

Although the unskilled make up only 5 percent of the Nation's labor force, they constitute 15 percent of the long-term unemployed.

Construction workers as a group have a very serious unemployment problem. One out of every eight of these workers is pounding the pavements looking for a job.

The President has brought into his administration a large number of bright young men who are full of sound and theory; thus far, their notions, seemingly directed toward a completely federally planned and managed economy, have been signifying nothing.

I hope that in the months ahead the White House will look to those with a more practical turn of mind and a broader background of experience.

We are badly in need of policies designed to spur private investment. Private investment means jobs. Jobs mean a healthy economy, and a healthy economy will be a growing economy.

It is time to discard the discredited and outworn creed that public spending is a good, long-range substitute for private investment.

The countries in which a high percentage of private income is plowed back into their economies are the ones with full employment and a good growth rate.

I have before me a table which lists a dozen nations; the average ratio of their total fixed investment to gross national product and their average annual increase in gross national product. This is a very interesting document, and I ask unanimous consent that it be inserted at this point in the RECORD.

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

[In percent]

	Average ratio of total fixed investment to gross national product, 1950–60	Average annual increase in gross national product at constant prices, 1950–60
Japan [1]	23.1	8.5
Germany	21.4	7.5
Austria	21.4	5.9
Italy	20.2	5.8
Netherlands	22.8	4.7
France	17.3	4.6
Switzerland [2]	23.5	4.3
Canada	23.3	3.7
Sweden	20.3	3.5
Belgium	16.3	3.1
United States	17.6	3.0
United Kingdom	14.5	2.6

[1] Data for 1953–60.
[2] Data for 1954–60.

Source: All data from "Capital Investment and Economic Progress in Leading Industrial Countries, 1950–60," George Terborgh, Machinery & Allied Products Institute.

Mr. PROUTY. Mr. President, the table indicates that the United States stands 11th in the average ratio of total fixed investment to gross national product, from 1950 to 1960, and stands 11th in the average annual increase in gross national product at constant prices, for the same period.

It is no coincidence that the nations, such as Japan, Germany, and Austria, which have a high ratio of fixed investment, also show the greatest increase in gross national product.

I firmly believe that tax cuts and increased unemployment compensation are the quickest and most direct means of stimulating a lagging economy. Another method of increasing employment is through the construction of public works projects which can be initiated and completed in a short period of time.

I cannot be persuaded, however, that in order to have a public works program, it is necessary for Congress to hand over to 1600 Pennsylvania Avenue every vestige of its discretion, power, and authority. This, Mr. President, is what would be done if the Senate approved the committee-reported bill, S. 2965.

The administration did not get everything it wanted. The administration asked for authority to spend $600 million now on public works, and $2 billion on public works every time in the future when there is a serious dip in employment.

It was decided that such a proposal would be laughed down in the Senate; and the committee reported, instead, a bill which will permit the executive branch to spend $1,850 million on projects which never have won a stamp of approval by Congress.

The committee bill would give the White House permission to spend $600 million now and raid the Treasury to the extent of $2 billion the next time the economy slides backward.

The President could snatch this $2 billion out of the funds of the Housing and Home Finance Agency, the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, and other agency funds never intended for public works.

Both the press and the public are aware that the committee measure puts a tremendous political blackjack in the hands of the President. He may spend immense sums within a few States of his own choosing. He could, also, pump money into marginal districts which could go either way in a congressional race. This Federal largess would come, of course, at key times in key campaigns.

Power of this kind should not rest in the hands of any man, however respected and capable he may be.

Aside from the political overtones of the committee bill, there are other evils in this legislation which must be corrected.

I announced in the committee report that I would have a constructive alternative to offer in place of the administration program. I, therefore, introduce at this time a bill which will assist in the reduction of unemployment through the acceleration of public works programs of the Federal Government and State and local public bodies.

I send the bill to the desk and ask that it be appropriately referred.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 3236) to assist in the reduction of unemployment through the acceleration of public works programs of the Federal Government and State and local public bodies, introduced by Mr. PROUTY, was received, read twice by its title, and referred to the Committee on Public Works.

Mr. PROUTY. Mr. President, the provisions of my bill bear witness to the fact that we can aid our unemployed without subordinating their needs to political expediency and opportunism.

I think most reasonable men would agree that a program of public works, to be of maximum benefit, must foster employment not only during actual construction, but after completion as well.

Mending a sidewalk in an alley might provide a few temporary jobs, but constructing a hospital would make a lasting contribution to the employment of the jobless and the welfare of the community.

The only projects that would be eligible under my bill would be projects that help reduce unemployment permanently.

Virtually every project imaginable would be eligible under the committee measure, even though the project might bring only a very few pay checks to a very few people for a very short time.

It should be noted, also, that the committee bill would hold out false hope to millions of people in many of the 958 localities which are theoretically eligible for projects under the $600 million immediate program. Eligibility is one thing, but getting money is quite another.

There is another provision in the committee reported bill which would allow a single State to get as much as 12½ percent of the $600 million. This means that the President could spend the entire bundle in a handful of States of his own choosing.

As one Senator suggested, this calls to mind the "Now you see it, now you don't" shell game.

My bill requires that not more than 6 percent of the grant funds be spent in any one State.

During the depression—when unemployment never ran below 14 percent in any one year—the Roosevelt administration found it possible to conduct a public works program with a 30-percent Federal and 70-percent State and local matching requirement.

While it is true that the old PWA was permitted to lend money to States to put up their matching funds, nevertheless, the ultimate cost to the Government was only 30 percent.

How times have changed.

The committee reported bill would permit a 90-percent Federal and 10-percent State and local ratio. In my judgment, this provision is far too extreme.

A Governor of one of our great States suggested that the proportion of costs to be met by the Federal Government

should vary directly with the proportion of the local labor force that is unemployed. He recommended a scale which would provide in some instances for a Federal contribution as low as 10 percent. I think his approach, which takes into account the ability of the local community to participate in a public works program, is far more realistic than the provisions in the committee bill.

My proposal contains a section that allows a 40- to 50-percent Federal contribution for project construction in the average labor surplus area.

However, I recognize that there are some labor surplus areas in which there is extraordinary economic distress. In those areas, and in those areas alone, the President could make a 75-percent contribution to the cost of a public works program.

My bill authorizes the expenditure of $600 million and up to 50 percent of this sum may be used in areas of extraordinary economic distress.

The bill would, also, establish a $75 million loan fund which might be utilized by the Federal Government to aid the hardest hit States and local communities in their cost sharing.

Mr. President, I think few Senators are aware of the fact that there is a tremendous backlog of Federal projects, which have been specifically authorized by Congress. They represent a potential expenditure of $12.8 billion on nondefense construction.

States and local communities also have a project backlog, the potential cost of which is calculated to be nearly $22 billion.

Should we not ask ourselves then this very important question: Why should Congress give the President authority to spend $600 million immediately on projects never approved by the House and Senate when we have on the statute books billions of dollars worth of projects already authorized?

I am pleased to say that not one single dollar authorized by my bill could be expended for a public works program, unless that program has been previously specifically sanctioned by the Congress.

Mr. President, the committee reported bill is frequently referred to as one which will be of help during recessions. This tends to be very misleading.

Under the terms of the bill, if the unemployment rate should drop down to 2 percent and then within a year rise to 3 percent, the President would have the privilege of triggering a $2 billion construction program.

My bill would not permit anything of this kind to happen. It specifically provides that no funds may be obligated for the acceleration of public works projects when the national unemployment rate dips below 4 percent.

In summary, then, Mr. President, I am presenting to the Senate a bill which gives the unemployment problem priority over political considerations. The bill would cost $600 million contrasted with the $2,600 million administration proposal.

It is my hope that this measure will receive the thoughtful study and attention of every Senator.

By way of summary, may I briefly explain again just what the provisions of the bill are.

1. PUBLIC WORKS PLAN

The President shall draw up a public works plan immediately for:

First. The acceleration of Federal public works projects.

Second. The acceleration of public works projects of State and local governments.

The plan shall include only public works projects to be constructed in areas of substantial unemployment and redevelopment areas.

The plan shall give priority to those public works projects which will help reduce unemployment not only during construction but after completion.

2. ACCELERATION OF EXISTING FEDERAL CONSTRUCTION PROJECTS

The President may accelerate existing Federal public works projects and programs, or initiate new projects and programs already authorized by law.

3. ACCELERATION OF EXISTING FEDERAL GRANT-IN-AID PROGRAMS

The President may initiate or accelerate public works projects for which Federal grants to States and local governments are authorized by Congress.

The Federal Government shall match at the rate of not less than 40 percent nor more than 50 percent of the cost of undertaking and completing the project.

4. ACCELERATION OF GRANT-IN-AID PROGRAMS IN AREAS OF EXTRAORDINARY ECONOMIC DISTRESS

In areas suffering extraordinary economic distress, the President may make grants for projects authorized by Congress on a 75-percent Federal and 25-percent State basis.

Up to $300 million may be spent in the areas of extraordinary economic distress.

The high 75-percent Federal contribution will not be made in all surplus labor and redevelopment areas—rather only in those areas where the President finds extraordinary economic distress.

5. FEDERAL LOANS

When the President makes a determination that proposed projects authorized by Congress are in areas suffering extraordinary economic distress, the executive branch may make loans to States and local governments which would be unable to meet their 25-percent share of the cost of the projects. The loans would run up to 40 years.

The loan funds would not be made available to all surplus labor and redevelopment areas but only to those where the President finds extraordinary economic distress.

6. RESTRICTIONS AND LIMITATIONS

There can be no financial assistance with respect to any project unless the project, first, can be initiated or accelerated within a reasonably short period of time; second, can be completed within 20 months after enactment of the Prouty bill; third, will meet an essential public need; and fourth, is not inconsistent with local plans.

7. OTHER RESTRICTIONS AND LIMITATIONS WHICH REPRESENT SUBSTANTIAL CHANGES IN THE COMMITTEE BILL

Not more than 6 percent of the funds provided for in the form of grants shall be made available within any one State.

No Federal funds shall be obligated under the Prouty bill with respect to any project when the national rate of unemployment falls below the level of 4 percent of the civilian labor force after adjustment for seasonal variation.

8. TOTAL COST OF THE BILL

There is an authorization of $600 million which specifies that the money may be used only for projects authorized by Congress.

Mr. President, I ask unanimous consent that the text of the bill may be printed in the RECORD at this point.

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

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Public Works Employment Act of 1962".

FINDINGS AND PURPOSE

SEC. 2. The Congress finds that unemployment in the United States has reached an undesirable level, and that measures to increase employment opportunities are necessary in the interest of the public welfare. The Congress further finds that one means of increasing employment is through the acceleration of public works programs of the Federal, State, and local governments particularly through smaller projects which can be initiated promptly and completed in a short period of time. Many communities in the Nation in which there is severe unemployment have a backlog of needed public works projects, and an acceleration of these projects now will not only increase employment at a time when jobs are most urgently required but will also meet longstanding public needs, improve community services, and enhance the health and welfare of the citizens of the Nation.

It is the purpose of this Act to stimulate the economy where needed by accelerating programs of Federal public works projects.

It is also the purpose of this Act to provide where needed an incentive, through Federal grants, for State and local governmental bodies to accelerate their capital expenditures programs through the initiation of public works projects which can be begun promptly and completed over a reasonably short period of time, such assistance to be automatically terminated when the rate of unemployment falls below the level of 4 per centum of the civilian labor force after adjustment for seasonal variation.

PUBLIC WORKS PLAN

SEC. 3. The President may prepare and carry out a public works plan which—

(1) shall have as its basic purpose the acceleration of the construction of public works necessary to increase employment and to stabilize the economy;

(2) shall provide for the use of the authority granted in this Act to the extent of funds authorized in this Act for the achievement of such purpose;

(3) shall include only public works projects to be constructed in areas currently designated by the Secretary of Labor as having been areas of substantial unemployment in each of at least nine of the twelve immediately preceding months, and in areas currently designated as "redevelopment

areas" pursuant to the Area Redevelopment Act;

(4) shall give priority to those public works projects which can contribute significantly to the reduction of unemployment during construction and after completion; and

(5) shall provide for the immediate termination of assistance to any public works project under the provisions of this Act when the rate of unemployment in the area of such project falls below the level of 4 per centum of the civilian labor force after adjustment for seasonal variation.

ACCELERATION OF FEDERAL PROJECTS

SEC. 4. In addition to the authority otherwise available to him, the President may, for the purpose of carrying out the plan prepared under section 3 of this Act, direct the departments and agencies of the executive branch, under such rules and regulations as he may prescribe, to use funds provided for the purpose of this Act to accelerate *existing* Federal public works projects and programs or to initiate new projects and programs already authorized by law.

ACCELERATION OF EXISTING FEDERAL GRANT PROGRAMS

SEC. 5. For the purpose of carrying out the plan prepared under section 3, the President may direct the departments and agencies of the executive branch to use funds provided for the purpose of this Act to make grants, upon application and under such rules and regulations as they may prescribe, to States and local governments to finance the initiation or acceleration of public works projects and programs for which Federal grants to such governments are authorized by the Congress and under the terms and conditions prescribed by the Congress: *Provided,* That all grants shall be made by the head of the department, agency, or instrumentality of the Federal Government administering the law authorizing such grants in accordance with all of the provisions of such law: *Provided further,* That no grant under this section shall be subject to any limitation in other laws with respect to the apportionment of funds, the time in which grants may be made, or the aggregate dollar amounts of grants for any prescribed purpose, project, or program: *And provided further,* That, notwithstanding any limitation in other laws, the amount of any grant made under the authority of this section shall be not less than 40 nor more than 50 per centum of the cost of undertaking and completing the project or program for which the grant is made.

AREAS SUFFERING EXTRAORDINARY ECONOMIC DISTRESS

SEC. 6. (a) If the President determines that an area suffering extraordinary economic distress (because of a sustained extremely severe rate of unemployment or an extremely low level of family income and severe underemployment) does not have economic and financial capacity to assume all of the additional financial obligations required by section 5, a grant otherwise authorized pursuant to such section for a project or program in such area may be made under the provisions of this section without regard to any provision of law limiting the amount of such grant to a fixed portion of the cost of the project or program, but the recipient of the grant shall be required to bear such portion of such cost as it is able to and in any event at least 25 per centum thereof.

(b) For the purpose of determining what constitutes an area suffering extraordinary economic distress the President shall prepare and use uniform standards as part of the plan under section 3.

(c) Of the funds authorized pursuant to section 9 not more than $300,000,000 shall be used for the purpose of this section.

FEDERAL LOANS

SEC. 7. (a) For the purpose of carrying out the plan prepared under section 3, the Housing and Home Finance Administrator, or such agency or officer of the Federal Government as he may designate, is authorized, upon application and under such rules and regulations as he shall prescribe, to purchase the securities and obligations of, or make loans to, States and local governments which otherwise would be unable to meet their share of the cost of projects and programs for which grants have been authorized pursuant to section 6 of this Act.

(b) All securities and obligations purchased and all loans made under this section shall be of such sound value or so secured as reasonably to assure retirement or repayment, and such loans may be made either directly or in cooperation with banks or other financial institutions through agreements to participate or by the purchase of participations or otherwise.

(c) No securities or obligations shall be purchased and no loans shall be made, including renewals or extensions thereof, which have maturity dates in excess of forty years.

(d) Financial assistance extended under this section shall bear interest at a rate determined by the Administrator which shall be not more than the higher of (1) 3 per centum per annum, or (2) the total of one-half of 1 per centum per annum added to the rate of interest required to be paid on funds obtained for the purposes of this section as determined by the Secretary of the Treasury as provided under subsection (e) of this section.

(e) The Administrator may use for loans authorized under this section funds appropriated pursuant to section 9 in amounts prescribed from time to time by the President: *Provided,* That the aggregate of all funds allocated by the President for the purposes of this section shall not exceed $75,000,000: *And provided further,* That funds obtained by the Administrator for the purposes of this section shall bear interest at a rate determined by the Secretary of the Treasury which shall be no more than the higher of (1) 2½ per centum per annum, or (2) the average annual interest rate of all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the preceding fiscal year and adjusted to the nearest one-eighth of 1 per centum.

RESTRICTIONS AND LIMITATIONS

SEC. 8. The authority conferred by this Act shall be subject to the following restrictions and limitations:

(1) No financial assistance shall be made with respect to any project or program unless the project or segment of work to be assisted under this Act—

(A) can be initiated or accelerated within a reasonably short period of time;

(B) will meet an essential public need;

(C) if initiated hereunder, can be completed within 20 months after enactment of this Act; and

(D) is not inconsistent with locally approved comprehensive plans for the jurisdictions affected, wherever such plans exist.

(2) Not more than 6 per centum of the funds provided for in the form of grants pursuant to sections 5 and 6 of this Act shall be made available within any one State.

(3) Each department or agency administering financial assistance authorized by this Act shall adopt such rules, regulations, and procedures as will assure that no such assistance shall be made available to any State or local government unless such project or program for which the assistance is granted produces a net increase in the expenditures of the State or local government for public works projects approximately equal to the non-Federal contribution to the project or program.

APPROPRIATIONS

SEC. 9. There is hereby authorized to be appropriated the sum of $600,000,000 to carry out the provisions of this Act.

DELEGATION OF POWERS

SEC. 10. The President may exercise any functions conferred upon him by this Act through such agency or officer of the United States Government as he shall specify. The head of any such agency or such officer may from time to time promulgate such rules and regulations as may be necessary to carry out such functions, and may delegate authority to perform any such functions, including, if he shall so specify, the authority successively to redelegate any of such functions.

DEFINITIONS

SEC. 12. As used in this Act—

(a) The term "States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

(b) The term "local governments" includes public corporate bodies or political subdivisions; public agencies or instrumentalities of one or more States, municipalities, or political subdivisions of States; Indian tribes, and boards of commissions established under the laws of any State to finance specific public works projects.

(c) The term "public works" includes the construction, repair, and improvement of: public streets, sidewalks, highways, parkways, bridges, parking lots, airports, and other public transportation facilities; public hospitals, rehabilitation and health centers and other public health facilities; public refuse and garbage disposal facilities, water, sewage, sanitary facilities, and other public utility facilities; civil defense facilities; public police and fire protection facilities; public educational facilities, libraries, museums, offices, laboratories, employee housing, and other public buildings; and public land, water, timber, fish and wildlife, and other conservation facilities and measures.

(d) The term "project" includes a separable, usable feature of a larger project or development.

(e) The term "segment of work" means a part of a program on which the work performed can be separately identified by location and will provide usable benefits or services.

DICTATOR FRANCO

Mr. YOUNG of Ohio. Mr. President, the time has come for this country to reexamine a policy whereby the United States is enriching the coffers of one of the world's most powerful dictators.

Gen. Francisco Franco is in every way as much a dictator in Spain as Khrushchev is in Russia. Franco is chief of state, dictator, commander in chief of the armed forces, Prime Minister of Spain, and also protector of the church. He is head of the Falange Party which is the only legal political party in Spain. He holds absolute veto power over all legislation submitted by the Spanish Parliament. He has complete control over education, books, newspapers, radio, communications, and speech.

The story of Franco is a story of violence. He rose to power during the Spanish Civil War which lasted from

July 1936 until March 1939. General Franco was a leader of the rebel forces against the then republican government in a brutal war during which hundreds of thousands were killed in battle, cities were destroyed, industries wrecked, and agriculture starved. With the military and financial support of Hitler and Mussolini, the Spanish Fascists under Franco were finally victorious.

Franco emerged from this war as absolute ruler of Spain, since the end of the war he has maintained his power by ruthlessly suppressing all opposition. It is estimated that 6,000 political prisoners are now languishing in Spanish prisons. Thousands more have died in concentration camps or were executed without legal trials.

In 1959 17 Spanish youths were tried for "military rebellion" before the supreme military tribunal of Spain. They were civilians—university students. Their "crime" was that at a football match they distributed leaflets condemning low wages and the high cost of living. The judges at this trial were four generals with an admiral presiding. None of the prisoners was allowed to be present nor testify during the proceedings. All 17 were found guilty.

Mr. President, the Spanish people of today are deprived of even the rudiments of civil liberty, parliamentary rule, and democratic processes. Franco would not be dictator today except for the financial help and military and air assistance during the civil war from his axis partners, Hitler and Mussolini. The tyranny of Hitler and Mussolini has been ended, but Franco is with us still.

After the Allied victory in Europe the countries that had fought in the war against Fascist dictators classified Spain as a defeated Fascist country. In March of 1946 our State Department published a "White Paper" on Spain. This publication exposed Spain's and Franco's intimate relations with Nazi Germany. These documents include a letter to Hitler on February 26, 1941, in which Franco states:

> I stand ready at your side, entirely and decidedly at your disposal, united in a common historical destiny.

In 1946 the Governments of France, the United Kingdom, and the United States agreed that so long as Franco continued to rule Spain, that nation could not participate in the United Nations. At that time it was hoped that Franco's power would collapse and a democratic form of government would be established in Spain.

In 1953 an astonishing turnabout took place. The United States changed its attitude toward Spain. It was decided that we needed bases for our Armed Forces on the Spanish side of the Pyrenees. The United States signed three military aid agreements with Spain. Franco by this single act acquired international respectability. In 1955 Spain was admitted to membership in the United Nations.

Thus America, the main bulwark of democratic traditions and freedom, heretofore contemptuous of Fascist Spain, changed overnight apparently to high appreciation of Dictator Franco. This development has continued. It reached its culmination in the visit by President Eisenhower to Madrid in December 1959. This visit placed the official seal of approval on Franco.

Notwithstanding how much American foreign policy has changed, there has certainly been no change in Franco Spain. It is still a legalized tyranny with a Fascist dictator in power.

Mr. President, I would never advocate any measure which I felt would weaken the military security of our country. I feel strongly that we should thoroughly investigate the need for continuing our alliance with Franco Spain.

We should ask our defense experts if the Strategic Air Command bases in Spain are truly vital to our defense and our retaliatory capability. We now have new long-range ballistic missiles such as the Atlas ICBM and Polaris firing submarines.

Since January 1961, our defenses and the might of our arms and retaliatory power have been greatly strengthened in missilry, and our Polaris-firing submarine force is being added to constantly.

Could these new weapons be based in other areas of the European-Mediterranean sector without sacrificing any of the retaliatory power which our Strategic Air Command bases in Spain now afford us? That is an inquiry for our military experts to answer.

Since the first year of the Eisenhower administration—1953—we have poured more than $1.3 billion into Spain. Three major Strategic Air Command built in Spain at a cost of over $400 million. Franco can use and has used these bases to try to put us over a barrel. The Generalissimo is not bashful about making demands on the United States, and there is always the veiled threat of confiscation of our bases if we fail to comply.

Dictators come high these days and this dictator has our bases as hostages. Indications are that Franco will increase his demands for money and for modern arms to strengthen his dictatorship. He wants not only modern aircraft, but also nuclear arms for his army and air force.

We would do well to consider the words of John Gunther in his recent book, "Inside Europe Today":

> One lesson that may well be drawn from all this is that it is always dangerous for a democracy, like the United States, to become too closely involved with a dictator or semi-dictator, no matter how convenient this may seem to be. It is the people who count in the long run, and no regime is worth supporting if it keeps citizens down—if only for the simple reason that they will kick it out in time.

Mr. President, we should now reassess our policy of knuckling under to Franco. The time has come to cut this despot down to size. Franco has demonstrated that he is quite capable of ruthlessness and treachery. Can we tolerate his demands? Can we put aside our democratic ideals? Do we really need those bases in Spain?

Throughout that portion of the Eisenhower administration while I was a Senator and throughout the present administration, I have supported our Nation's foreign assistance program. However, I am not convinced that $4.9 billion should be appropriated for the coming fiscal year for foreign assistance, at one time improperly called mutual assistance, or as was improperly camouflaged in the last years of the Eisenhower administration, mutual security, I intend to support the administration's proposal but my present view is that it calls for expenditures of too much money for foreign assistance to some governments where I consider assistance should be denied, and would not in fact help the citizens of those countries.

I assert that the waste and fat should be cut from all foreign assistance authorizations and appropriations. More money has flowed from this country overseas than has returned due in large part to the establishment of military bases in many foreign countries and the drain of our dollars in maintaining them. In my judgment a thorough reexamination of our oversea military installations should be made. Some of these bases may be as unnecessary and useless as our frontier forts maintained so long against the Indians after their uselessness should have been apparent to everyone.

With the advance of science and the continuing development of missiles and other modern weapons, surely some of our bases overseas should be eliminated. I find the practice of paying many millions of dollars to Franco's government abhorrent. We should stop, look, and listen before handing out taxpayers' money lest we further enrich the ruling class in countries such as Spain, where the ruling group is already swollen with wealth and power while the millions of common people of such countries are subjects practically in chains.

JAMES M. NORMAN—LITERACY TEST FOR VOTING

The Senate resumed the consideration of the bill (H.R. 1361) for the relief of James M. Norman.

Mr. EASTLAND obtained the floor.

Mr. DIRKSEN. Madam President——

Mr. EASTLAND. Madam President, I ask unanimous consent that at this time I may yield to the distinguished Senator from Illinois [Mr. DIRKSEN], with the understanding that in yielding to him, I shall not lose my right to the floor; that at the conclusion of his remarks, I may proceed with my speech; and that my yielding for this purpose shall not be counted as one speech by me against the pending measure.

The PRESIDING OFFICER (Mrs. NEUBERGER in the chair). Is there objection? Without objection, it is so ordered.

Mr. DIRKSEN. Madam President, it has been almost 100 years since the Congress has stated as clearly and unmistakably as it can be said in the 14th and 15th amendments to the U.S. Constitution

that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States" and 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, [and] the Congress shall have power to enforce this article by appropriate legislation."

The pages of history since the adoption and ratification of these amendments have reflected the glory of our republican form of government to every corner of this planet and have inspired the souls of men everywhere in the long struggle toward freedom, self-determination, and the investing by them of their brothers with the sacred duty and responsibility to preserve ideals of personal freedoms unparalleled in the history of mankind.

Enriched by the transfusion of freedom-loving people who deported from home and homeland for our shores, very often with little else than hope and a rugged will to make good in a new life, we have built upon the foundations laid down for us by them to the envy and inspiration of men everywhere.

At this very moment, government of, by, and for the people stirs the hearts and minds of oppressed peoples who risk, and frequently encounter, death in piercing curtains of iron, and walls of concrete, to demonstrate that such barriers will never effectively shackle the mind of man, designed by his Creator a little less than the angels and endowed with free choice in the equal pursuit of liberty.

Liberty came not easily to this Nation, nor has its enjoyment been peaceful. In almost every generation it has become necessary for us to take up arms in defense of our heritage and we are today on guard in far places to protect our form of government from those who would bury it. Our dedication to personal freedom must not be impassive to the pleas of our own citizens who ask only to be allowed to vote.

The findings of the U.S. Commission on Civil Rights and the testimony of the chief law enforcement officer of the United States, the Attorney General, have made it abundantly clear that there are "grounds to believe that substantial numbers of Negro citizens are, or recently have been, denied the right to vote on grounds of race or color."

Abhorrent for 98 years to fairness and decency has been the history of such discrimination, be it applied to only the minutest number of our citizens. It is today, intolerable. No thinking person can seriously rebut evidence that literacy and other tests have been for a long time, and are today, widely used and abused by persons sworn to uphold the law and the Constitution who subvert the Constitution and distort the law, under whose sacred mantle they operate, to impede and preclude the registration of Negroes who desire only to be allowed to cast a vote for their representation in government.

The U.S. Civil Rights Commission has found and reported that in one State for example, a Federal district judge found that six Negro applicants—two with master's degrees, five with bachelor's degrees, and one with a year of college training—were denied the right to vote on the grounds that they could not read intelligibly or write sections of the State constitution.

In another State it was found that Negro registrants, clearly able to read and write had been disqualified for misspellings, mispronunciations or for failing to answer questions which were clearly irrelevant to literacy or to intelligent exercise of the right to vote.

Father Theodore Hesburgh, president of the University of Notre Dame and a member of the Civil Rights Commission, stated in a speech on February 14, 1960, some of his experiences in the investigation of voter discrimination. Referring to individuals who were qualified but unable to vote he said:

> Some were veterans with long months of oversea duty and decorations for valor in service. Some of the people were ministers. Some of them were college teachers. Some of them were lawyers, doctors. All of them were taxpayers. Some were mothers of families who were hard pressed to tell their children what it is to be a good American citizen when they could not vote themselves. All of them were decent, intelligent American people, and yet they could not cast their ballots for the President of the United States. Some had gone through incredible hardships in attempting to register and had been subjected to incredible indignities. I don't know if any of you in this room have had to go through this experience, but vicariously we had to go through it in listening to their tales. They would go down to the courthouse and instead of going in where the white people registered, they would have to go to a room in the back where they would stand in line from 6 in the morning until 2 in the afternoon, since only two were let in at a time. Then people with Ph. D.'s and the master's degrees and high intelligence would sit down and copy like a schoolchild the first article or the second article of the Constitution. Then they would be asked the usual questions, make out the usual questionnaires, hand in a self-addressed envelope and hear nothing for 3 months. And then they would go back and do it over again, some of them five, six or seven times, some of them standing in line 2 or 3 days until their turn came.

Attorney General Kennedy has stated that existing laws are inadequate to solve this problem and that the 14th and 15th amendments are an affirmative grant of power to Congress to enact legislation to guarantee rights protected by these amendments, including principally the right to vote.

With respect to the 14th and 15th amendments, Mr. Kennedy has said:

> I have no doubt that this bill is valid under that grant of power. There is no doubt that widespread deprivations of the right to vote because of race have occurred and continue to occur. The question is not whether this bill is valid, but whether it would correct the situation. Voting tests, which in this day of high educational achievement can exclude persons with a sixth grade education, are potential devices for discrimination. In my judgment, virtually no one with that amount of education has been turned down as a voter for other than racial reasons. Congressional action adapted to correcting this evil is not a questionable innovation. It is overdue.

Even among opponents of this bill, there are those who concede that it is constitutionally sound, and again in a letter to the distinguished chairman of the Constitutional Rights Subcommittee, dated April 19, 1962, the Assistant Deputy Attorney General stated: "S. 2750, therefore, avoids any real constitutional problem."

Accordingly, Madam President, I urge you who are present today in this Chamber only by reason of free elections, you who are sensitive to their right to vote, to listen to the supplications of our disenfranchised Americans who ask only that we fulfill the command of the 15th amendment to the Constitution, ratified in 1870, which reads as follows:

> SECTION 1. 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.
>
> SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

There exists incontrovertible evidence given by the Attorney General of the United States and by the U.S. Civil Rights Commission that citizens of the United States are today denied the right to vote because of their color.

A compelling urgency exists for the passage of this bill. The authority for congressional action has been clearly spelled out for us. We would be derelict in our duty not to act. I urge your support for this substitute measure now before us, which is identical in text with S. 2750.

In connection with my remarks, I ask unanimous consent to include in the RECORD as a part of my remarks, first, a memorandum prepared by the Department of Justice on the constitutionality of the pending bill, and, second, a staff memorandum from the U.S. Commission on Civil Rights, which also deals with the constitutionality of the pending measure.

There being no objection, the memorandums were ordered to be printed in the RECORD, as follows:

CONSTITUTIONALITY OF S. 2750

The facts calling for the exercise of congressional power under S. 2750 are set forth in the statements of the Attorney General; in the findings and unanimous recommendations of the Civil Rights Commission; and in other statements and materials. This memorandum discusses the constitutional bases for that exercise of power in the context of those facts.

Under the bill the States would be prohibited from denying the right to vote for Federal officials on account of performance in any educational-type examination (whether for literacy or otherwise) to any person who is otherwise qualified by law, has not been adjudged incompetent, and has completed the sixth primary grade of any public school or accredited private school in any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico.

Because separate legal problems are involved, this memorandum deals separately with (1) congressional authority to prohibit denials of the right to vote to citizens who

have completed the sixth grade in a school in a State or territory or the District of Columbia, and (2) its authority to prohibit denials to citizens who have completed the sixth grade in a school in Puerto Rico. Part I is concerned with the general application of the bill; part II discusses it as applied to citizens who have completed six grades in a Puerto Rican school.

THE BILL AS IT APPLIES TO CITIZENS WHO HAVE COMPLETED SIX GRADES IN A SCHOOL IN A STATE OR TERRITORY OR THE DISTRICT OF COLUMBIA

The Civil Rights Commission has unanimously found that literacy and interpretation tests have been widely employed to disenfranchise Negroes. It has reported that (Report of the U.S. Commission on Civil Rights on Voting, 1961, p. 137):

"A common technique of discrimination against would-be voters on racial grounds involves the discriminatory application of legal qualifications for voters. Among the qualifications used in this fashion are requirements that the voter be able to read and write, that he be able to give a satisfactory interpretation of the Constitution, that he be able to calculate his age to the day, and that he be of good character."

To remedy this situation the Commission unanimously recommended (report, at 141):

"That Congress enact legislation providing that in all elections in which, under State law, a 'literacy' test, an 'understanding' or 'interpretation' test or an 'educational' test is administered to determine the qualifications of electors, it shall be sufficient for qualification that the elector have completed at least six grades of formal education."

As it applies to elections for Federal officials, this unanimous recommendation of the Commission is embodied in S. 2750.

Although no language in the Constitution expressly confers such authority, the courts have held that the States have the power to prescribe reasonable qualifications for voting in State and Federal elections. *Lassiter* v. *Northampton Election Board*, 360 U.S. 45, 60 (1959); *Breedlove* v. *Suttles*, 302 U.S. 277 (1937); *Pope* v. *Williams*, 193 U.S. 621, 633 (1904). But no court has held that, acting pursuant to its delegated powers, Congress cannot restrict the States with respect to the qualifications they impose or the manner of testing those qualifications. There are at least four constitutional sources of such congressional power: section 2 of the 15th amendment; section 5 of the 14th amendment; article I, section 4; and the implied power of Congress to protect the purity of Federal elections. The article I, section 4 power in terms extends only to congressional elections; the implied power of Congress extends to all Federal elections; and the 14th and 15th amendments are adequate to reach both State and Federal elections. S. 2750 extends only to Federal elections, and it is therefore not necessary to discuss congressional power to deal with State elections as such.

A. The 15th amendment

The 15th amendment prohibits the racially discriminatory administration of State voting laws, even if such laws are valid on their face. *United States* v. *Raines*, 362 U.S. 17 (1960); *United States* v. *Thomas*, 180 F. Supp. 10 (E.D. La., 1960), affirmed 362 U.S. 58 (1960); see *Davis* v. *Schnell*, 81 F. Supp. 872 (S.D. Ala., 1949), affirmed 336 U.S. 933. It also prohibits "contrivances by a State to thwart equality in the enjoyment of the right to vote by citizens of the United States regardless of race or color * * *"; it "nullifies sophisticated as well as simple-minded modes of discrimination"; it forbids "onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race" (*Lane* v. *Wilson*, 307 U.S. 268, 275 (1939); see also *Myers* v. *Anderson*, 238 U.S. 368 (1915); *Guinn* v. *United States*, 238 U.S. 347 (1915)); and it vitiates measures which have the "inevitable effect" of disenfranchising Negroes. *Gomillion* v. *Lightfoot*, 364 U.S. 339, 342 (1960). Where there is a purpose or effect of discrimination, the amendment forbids qualification laws which vest broad discretion in State voting officials, including laws which permit State officials to determine whether an applicant can understand or explain constitutional or other provisions. *Davis* v. *Schnell*, *supra*.

Under section 2 of the 15th amendment Congress is vested with the power to enact appropriate legislation to enforce the amendment. This power is to be interpreted broadly, and includes the enactment of measures reasonably adapted to counteract discriminatory devices. See, *e.g.*, *United States* v. *Raines*, 362 U.S. 17, 25 (1960); *Hannah* v. *Larche*, 363 U.S. 420, 452 (1960).

The measure of congressional power to enforce prohibitory constitutional amendments is illustrated by *James Everard Breweries* v. *Day*, 265 U.S. 545 (1924). There, the Supreme Court held that, although the 18th amendment in terms prohibited only the manufacture and sale of intoxicating liquors for beverage purposes, Congress could, under the appropriate legislation clause of that amendment, bar the prescription of intoxicating liquor for medicinal purposes, for the sole reason that prohibiting traffic in the latter was reasonably adapted to enforcing the terms of the amendment. The Court said (265 U.S. at 561):

"The opportunity to manufacture, sell and prescribe intoxicating malt liquors for medicinal purposes, opens many doors to clandestine traffic in them as beverages under the guise of medicines; facilitates many frauds, subterfuges and artifices; aids evasion; and thereby and to that extent, hampers and obstructs the enforcement of the 18th amendment."

See also *Ruppert* v. *Caffey*, 251 U.S. 264 (1920); *United States* v. *Darby*, 312 U.S. 100, 121 (1941); *McCulloch* v. *Maryland*, 4 Wheat. 316 (1819); *Westfall* v. *United States*, 274 U.S. 256, 258–59 (1927).

This means that Congress, acting under its power to enforce provisions such as those of the 18th or the 15th amendment by appropriate legislation, is not limited to outlawing practices which are forbidden by the terms of the provisions themselves. It may also do whatever is reasonably necessary to remove obstructions to fulfillment of the purposes of the provisions. Congress may restrict the employment of literacy or other qualifying tests, even though on their face they do not violate the amendment, if it deems this necessary effectively to eliminate their use in a manner forbidden by the amendment.

The findings of the Commission on Civil Rights, and those contained in section 1 of S. 2750, make clear that the adoption of objective standards is necessary in order to enforce in an effective way the prohibitions of the 15th amendment. By substituting an objective standard for vague and subjective tests, the bill would strike both at tests which on their face vest excessive and uncontrolled discretion in State registrars and at tests (or other requirements, such as the completion of forms which are treated as tests) which have been administered in a discriminatory manner.

B. The 14th amendment

(1) The Equal Protection Clause

The actions of voting registrars in applying literacy and other qualification tests so as to disenfranchise Negroes, while applying the same tests to whites in a different manner, constitute a denial of the equal protection of the laws guaranteed by the 14th amendment. See, e.g., *Davis* v. *Schnell*, *supra*. See also, *Cooper* v. *Aaron*, 358 U.S. 1 (1958); *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886); *Rice* v. *Elmore*, 165 F. 2d 387, 392 (C.A. 4, 1947). These actions are a proper subject of congressional power under section 5 of the amendment, which grants Congress authority to enforce the provisions of the amendment by "appropriate legislation." *Virginia* v. *Rives*, 100 U.S. 313 (1879); *Ex parte Virginia*, 100 U.S. 339 (1879); *Strauder* v. *West Virginia*, 100 U.S. 303 (1879). The scope of congressional powers under section 5 has been broadly defined by the Supreme Court. Thus, in *Ex parte Virginia*, the Court said (100 U.S. at 345–46):

"Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws, against State denial or invasion, if not prohibited, is brought within the domain of congressional power."

The power vested in Congress by section 5 of the 14th amendment is like its power under the enforcement clause of the 18th amendment, which was sustained in *James Everard Breweries* v. *Day*, 265 U.S. 545 (1924), discussed above.

It is sufficient to support restrictions upon qualification tests which may be valid on their face if Congress finds such action appropriate or necessary effectively to eliminate the discriminatory application of the tests.

(2) The Privileges and Immunities Clause

In *Twining* v. *New Jersey*, 211 U.S. 78, 97 (1908), the Supreme Court said that "* * * among the rights and privileges of national citizenship recognized by this Court are * * * the right to vote for national officers, *Ex parte Yarbrough*, 110 U.S. 651 * * *." See also *United States* v. *Thomas*, 180 F. Supp. 10 (E.D. La., 1960), affirmed, 362 U.S. 58 (1960). The power of Congress to enforce the provisions of the 14th amendment extends to all its provisions. It is as applicable to the privileges and immunities clause as it is to the equal protection clause. Since the bill is limited to Federal elections, the privileges and immunities clause independently supports remedial legislation such as S. 2750 to secure the right to vote.

(3) The Due Process Clause

Arbitrary State tests to determine qualifications of voters in national elections are invalid under the due process clause. *Davis* v. *Schnell*, 81 F. Supp. 872 (S.D. Ala. 1949), affirmed, 336 U.S. 933 (1949). As a privilege and immunity of national citizenship (*Twining* v. *New Jersey*, supra) and as a right implicit in and guaranteed by the Constitution (*United States* v. *Classic*, 313 U.S. 299, 315 (1941) and cases cited), the right of qualified voters to vote for Federal officers cannot be denied without violating "fundamental principles of liberty and justice which lie at the base of all of our civil and political institutions. * * *" *Herbert* v. *Louisiana*, 272 U.S. 312, 316 (1926). The right to vote for such officers is therefore an aspect of "liberty" protected by the due process clause of the 14th amendment from arbitrary and unreasonable infringement by the States. By virtue of its power under section 5 of the 14th amendment, Congress may proscribe State qualification tests which are arbitrary and which for that reason violate the amendment.

Beyond that, however, Congress shares with the judiciary the power to enforce the 14th

amendment. *Ex parte Virginia,* 100 U.S. 339, 345 (1879). Upon appropriate findings, it may declare that certain State restrictions upon the exercise of the franchise (i.e., the requirement that an applicant with a sixth grade education must take a literacy, understanding, or interpretation test) are arbitrary in nature. This is essentially what S. 2750 would do.

The starting basis for the declaration by Congress would be the finding that it is reasonable to believe that persons who have achieved a sixth-grade educational level are sufficiently literate to understand the nature and operation of our Government. Congress can note the generally accepted high standards of education which prevail throughout the United States. Since virtually no one can reasonably be expected to fail a literacy or similar test—fairly administered—if he has completed six grades. Congress is beyond question justified on the evidence available to it in finding that the exclusion of Negroes from the voting rolls is the real purpose of the testing in those places where persons of sixth-grade or higher educational achievement are rejected. It can find that the tests are required on arbitrary grounds having no relations to literacy. Such a finding, based in part on the Civil Rights Commission's report, would be entitled to great weight in the courts. See *Communist Party* v. *Subversive Activities Control Board,* 367 U.S. 1, 94–95 (1961). There the Court said:

"It is not for the courts to reexamine the validity of these legislative findings [about the dangers to the United States of the "worldwide Communist conspiracy"] and reject them. * * * They are the products of extensive investigation in committees of Congress over more than a decade and a half. * * * We certainly cannot dismiss them as unfounded or irrational imaginings."

On the basis of its findings Congress may declare that State performance test requirements are arbitrary and, notwithstanding decisions such as *Lassiter* v. *Northampton Election Board, supra,* and *Camacho* v. *Rogers,* 199 F. Supp. 155 (S.D. N.Y. 1961), it may restrict their application. It is pertinent to note that findings of this sort were not before the courts in the *Lassiter* and *Camacho* cases. The arbitrary use of literacy tests on a wide scale in a matter peculiarly within the province of the National Legislature to investigate—either directly, or through a congressionally created arm such as the Civil Rights Commission, or in both ways. And where Congress, upon the basis of such an investigation makes a declaration of arbitrariness, that declaration is entitled to very great weight in the courts. See Goodnow, *Congressional Regulation of State Taxation,* 28 Pol. Sci. Q. 405, 429–431 (1913); cf. *NLRB* v. *Hearst Publications, Inc.,* 322 U.S. 11 (1944).

Congress has, in fact, previously exercised similar power in order to prevent discriminatory State action by defining the equal protection of the laws to which a person is entitled under the 14th amendment to include the right to make and enforce contracts, to sue, and to give evidence, 42 U.S.C. 1981, and the right to inherit, purchase, lease, sell, hold and convey property, 42 U.S.C. 1982, and by defining under the enforcement clause of the 13th amendment, involuntary servitude to include the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, 42 U.S.C. 1994.

There is little doubt that the courts would be bound by a congressional declaration that literacy and similar tests required of persons who have completed the sixth grade are arbitrary and unreasonable within the meaning of the due process clause of the 14th amendment.

C. Article I, section 4

(1) Historical Evidence

Article I, section 4 of the Constitution provides that:

"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."

With minor revision, this was substantially the provision as it was submitted by the Committee of Detail of the Constitutional Convention on August 9, 1787. As submitted by the committee, the provision read as follows (Prescott, "Drafting the Federal Constitution," 488 (1941)):

"The times, and places, and manner of holding the elections of the members of each house, shall be prescribed by the legislature of each State; but their provisions concerning them may, at any time, be altered by the Legislature of the United States."

A motion was made by Pickney and Rutledge to strike out the words "but their provisions concerning them may, at any time, be altered by the Legislature of the United States." It was urged that the States could and must be relied on in such cases (id. at 489). James Madison answered this contention as follows (ibid.):

"The necessity of a general government supposes that the State legislatures will sometimes fail or refuse to consult the common interest at the expense of their local convenience or prejudices. The policy of referring the appointment of the House of Representatives to the people and not to the legislatures of the States supposes that the result will be somewhat influenced by the mode. This view of the question seems to decide that the legislatures of the States ought not to have the uncontrolled right of regulating the times, places, and manner, of holding elections. These were words of great latitude. It was impossible to foresee all the abuses that might be made of the discretionary power."

His arguments were persuasive and, after relatively brief discussion, the motion to strike was defeated (id. at 490).

Madison's statement affords impressive support for the view that the authority conferred upon Congress by article I, section 4 should be construed broadly so as to permit Congress to counteract State election laws which leave the election of national officers wholly at the mercy of local prejudices. His words suggest, moreover, that the congressional power was intended to reach the substance, not merely the form, of such an election. That this indeed was the intent is confirmed by the discussion of article I, section 4 in the Federalist No. 59 (The Federalist (Ed. J. E. Cooke, 1961), 398–399), written by Hamilton:

"It will not be alleged, that an election law could have been framed and inserted in the Constitution, which would have been always applicable to every probable change in the situation of the country; and it will, therefore, not be denied, that a discretionary power over elections ought to exist somewhere. It will, I presume, be as readily conceded, that there are only three ways in which this power could have been reasonably modified and disposed: That it must either have been lodged wholly in the National Legislature, or wholly in the State legislatures, or primarily in the latter and ultimately in the former. The last mode has, with reason, been preferred by the Convention. They have permitted the regulation of elections for the Federal Government, in the first instance, to the local administration; which, in ordinary cases, and when no improper views prevail, may be both more convenient and more satisfactory; but they have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety.

"Nothing can be more evident, than that an exclusive power of regulating elections for the National Government, in the hands of the State legislatures, would leave the existence of the Union entirely at their mercy."

Hamilton also stressed that "it is more consonant to the rules of a just theory to intrust the Union with the care of its own existence, than to transfer that care to any other hands." (Id. at 399.)

Similarly, when a motion to strike the portion of article I, section 4, vesting authority in the Congress to regulate elections of national officers was made, Madison said (5 Elliot's "Debates on the Federal Constitution" 402):

"What danger could there be in giving a controlling power to the National Legislature? Of whom was it to consist? First, of a Senate to be chosen by the State legislatures. If the latter, therefore, could be trusted, their representatives could not be dangerous. Secondly, or Representatives elected by the same people who elect the State legislatures. Surely, then, if confidence is due to the latter, it must be due to the former. It seems as improper in principle, though it might be less inconvenient in practice, to give to the State legislatures this great authority over the election of the Representatives of the people in the General Legislature, as it would be to give to the latter a like power over the election of the Representatives of the State legislatures."

Madison's views were concurred by King, who said (ibid.):

"If this power be not given to the National Legislature, their right of judging of the returns of their members may be frustrated."

It is true that in The Federalist No. 60, in discussing whether the congressional power under article I, section 4 could be used to favor the wealthy and the well born, Hamilton said (The Federalist (Ed. J. E. Cooke, 1961) 408, 409):

"The truth is that there is no method of securing to the rich the preference apprehended, but by prescribing qualifications of property either for those who may elect, or be elected. But this forms no part of the power to be conferred upon the National Government. Its authority would be expressly restricted to the regulation of the times, the places, and the manner of elections. The qualifications of the persons who may choose or be chosen, as has been remarked upon another occasion, are defined and fixed in the Constitution; and are unalterable by the Legislature.

Hamilton's view that the congressional power was not so broad as to permit Congress to alter the qualifications of voters (it may be noted parenthetically that Hamilton was discussing the issue of whether Congress could impose more stringent requirements for voting) reflects a measure of disagreement as to the ultimate scope of article I, section 4. Others took the view that such power was conferred by article I, section 4. The question was touched upon in the Massachusetts ratifying convention. Hon. Mr. White said (2 Elliot's "Debates on the Federal Constitution" 28):

"If we give up this section * * * there is nothing left. Suppose the Congress should say that none should be electors but those worth 50 or a 100 [pounds] sterling; cannot they do it? Yes, said he, they can."

So too, Dr. Taylor mentioned the possibility that the two branches of Congress could agree to play into each other's hands, and "by making the qualifications of electors 100 [pounds] by their power of regulat-

ing elections fix the matters of elections so as to keep themselves in." (Id. at 49–50.) Compare the statement of Rufus King (id. at 51). Similarly, speaking of article I, section 4 in the Virginia convention, Patrick Henry said (2 Elliot's "Debates" 149):

"According to the mode prescribed, Congress may tell you that they have a right to make the vote of 1 gentleman go as far as the votes of 100 poor men."

He continued (ibid):

"The power over the manner admits of the most dangerous latitude. They may modify it as they please. They may regulate the number of votes by the quantity of property without involving any repugnancy to the Constitution."

As this memorandum emphasizes in detail elsewhere, S. 2750 does not prescribe or alter State-imposed qualifications for voting, but simply establishes an objective method of ascertaining whether an applicant possesses the State-imposed qualification, i.e., ability to inform one's self of election issues. The critical question, then, is not whether the Founding Fathers intended to permit Congress to alter qualifications—an issue upon which history provides inconclusive answers—but whether they intended to permit the States, without redress by Congress, to abuse their powers over Federal electoral processes by enacting procedures for determining the existence of particular qualifications which are of such a nature as to permit local prejudice to disfranchise qualified citizens. Unquestionably the Founding Fathers did not intend to confer such vast and unchecked power on the State legislatures.

The power given Congress by article I, section 4, was intended to provide the means to remedy abuses by the States in their regulations concerning congressional elections.

In the Virginia ratifying convention, for example, Monroe wanted to know "why Congress had the ultimate control over the time, place, and manner, of elections of Representatives * * *." Madison gave article I, section 4, this construction (3 Elliot's "Debates on the Federal Constitution," 367):

"Should the people of any State by any means be deprived of the right of suffrage, it was judged proper that it should be remedied by the General Government. It was found necesary to leave the regulation of these, in the first place, to the State governments, as being best acquainted with the situation of the people, subject to the control of the General Government, in order to enable it to produce uniformity, and prevent its own dissolution."

In the Massachusetts convention, Parsons feared that without the power vested in Congress under section 4, "the people can have no remedy" against unequal and partial division of the States into districts for the election of Representatives, and that if the manner were left to State legislatures free from control by Congress, "they might even disqualify one-third of the electors." (Id. at 27.) The various views in the Massachusetts convention were summarized by the reporters as follows (id. at 35):

"Several other gentlemen went largely into the debate on the fourth section, which those in favor of it demonstrated to be necessary; first, as it may be used to correct a negligence in elections; secondly, as it will prevent the dissolution of the Government by designing the refractory States; thirdly, as it will operate as a check in favor of the people against any designs of the Federal Senate and their constituents, the State legislatures, to deprive the people of their rights of election; and fourthly, as it provides a remedy for the evil, should any State, by invasion or other cause, not have it in its power to appoint a place where the citizens thereof may meet to choose their Federal Representatives."

In the debates in the New York convention, Jones opposed article I, section 4, upon the ground that it might be construed to deprive the States of an essential right which the Constitution intended to reserve to them. Morris replied (2 Elliott's "Debates on the Federal Constitution," 326):

"That so far as the people, distinct from their legislatures, were concerned in the operation of the Constitution, it was absolutely necessary that the existence of the General Government should not depend for a moment on the will of the State legislatures. The power of perpetuating the Government ought to belong to their Federal Representatives; otherwise, the rights of the people would be essentially abridged."

In the debates in the North Carolina convention, Spencer objected to article I, section 4, on the ground that it gave Congress unlimited power over the election of Representatives and "seemed to throw the whole power of election into the hands of Congress." (Id., vol. 4, p. 52). Iredell defended section 4 upon various grounds, saying at one point (id. at 54):

"It might also be useful for this reason: Lest a few powerful States should combine, and make regulations concerning elections which might deprive many of the electors of a fair exercise of their rights, and thus injure the community, and occasion great dissatisfaction."

In the debates in the Pennsylvania convention, Wilson said (id., vol. 2, p. 482):

"It is repeated again and again by the honorable gentleman, 'that the power over elections which is given to the General Government in this system is a dangerous power. * * * The times, places, and manner of holding elections for Representatives may be altered by Congress.' This power, sir, has been shown to be necessary, not only on some particular occasions, but even to the very existence of the Federal Government. I have heard some very improbable suspicions, indeed, suggested with regard to the manner in which it will be exercised. Let us suppose it may be improperly exercised, is it not more likely so to be by the particular States than by the Government of the United States? Because the General Government will be more studious of the good of the whole than a particular State will be; and, therefore, when the power of regulating the time, place or manner of holding elections is exercised by the Congress, it will be to correct the improper regulations of a particular State."

And in the debates in the South Carolina convention, Pinkney said (id. at 303):

"It is absolutely necessary that Congress should have this superintending power, lest by the intrigues of a ruling faction in a State the Members of the House of Representatives should not really represent the people of the State, and lest the same faction, through partial State views, should altogether refuse to send Representatives of the people to the General Government."

In the light of these debates at the National and State Conventions, it is fairly clear that sections 2 and 4 of article I, read together, are concerned with realities of the situation, not with mere form. These debates show that the Founding Fathers intended to secure not the shadow but the substance of the right of the people to choose Federal officers, and that they did not want to leave unprotected at the outset the very machinery by which the constitutional right to choose Federal officers could subsequently be exercised. Of what practical use would this important constitutional right be if a citizen could be barred at the threshold by subtle and sophisticated manipulation in order to disqualify him?

Little in the history of the Constitution prior to its adoption lends support to such an artificial, harsh, and undemocratic result. The most serious disagreement in the Constitutional Convention hinged over whether the people or the State legislatures should elect the Members of the House of Representatives. The conflict was resolved by specifically providing in article I, section 2 that Members of the House shall be "chosen by the people." The power of selection was not given to the State legislatures because of the fear that they might devise types of elections which would defeat the end of representative government, i.e., election by the people. Thus, when on June 21, 1787, General Pinckney moved "that the first branch [the House of Representatives], instead of being elected by the people, should be elected in such manner as the legislature of each State should direct" (Prescott, "Drafting the Federal Constitution" (1941), 208 et. seq.), his resolution was vigorously attacked, and ultimately defeated. According to Mr. Madison's note (id. at 208–209):

"Hamilton considered the motion as intended manifestly to transfer the election from the people to the State legislatures, which would essentially vitiate the plan. It would increase the State influence which could not be too watchfully guarded against.

"Wilson considered the election of the first branch by the people, not only as the cornerstone, but as the foundation of the fabric * * *. The difference was particularly worthy of notice in this respect, that the legislatures are actuated not merely by the sentiment of the people, but have an official sentiment opposed to that of the General Government, and perhaps to that of the people themselves.

"King enlarged on the same distinction. He supposed the legislatures would constantly choose men subservient to their own views, as contrasted to the general interest, and that they might even devise modes of election that would be subversive of the end in view. He remarked several instances in which the views of a State might be at variance with those of the General Government."

If the authority to determine the method of electing Representatives to Congress was denied to the State legislatures because of the fear that they "might * * * devise modes of election that would be subversive of the end in view," the framers could hardly have contemplated that Congress should sit powerless while States subvert "the end in view" by devices susceptible of abuse and actually used to disfranchise qualified citizens. Such a construction of the Constitution would be wholly inconsistent with its spirit.

It is significant, moreover, that in seven State conventions on the ratification of the Constitution, resolutions were adopted which embodied objections to article I, section 4, and proposed that it should not be invoked except where the legislatures of the States refused or neglected to perform their duties as required by the Constitution. "Documents, Formation of the Union of the American States" (1927): 1018–1019 (Massachusetts); 1023 (South Carolina); 1025 (New Hampshire); 1033 (Virginia); 1039–1040 (New York); 1056–1057 (Rhode Island); 1050 (North Carolina). Despite these objections and proposed changes in language, article I, section 4 was not revised when the Constitution was ratified, and, although the First Congress recommended 12 amendments to the Constitution, none of these related to article I, section 4. Indeed, the First Congress specifically considered and rejected an amendment which would have restricted the congressional power over elections. I "The Debates and Proceedings in the Congress of the United States" 797–800 (1834).

The attemped changes in article I, section 4 demonstrate common recognition that under article I, section 4, the power of Congress was sweeping, and reinforce the conclusion that the Founding Fathers intended the power of Congress under article I, section 4 to apply not merely to the mechanical aspects of elections for national officers, but also to the substance of such elections.

(2) Judicial Construction

The courts have also recognized that article I, section 4 is concerned with substance as well as with form. As the court said in *United States* v. *Munford*, 16 Fed. 223, 228 (C.C.E.D. Va., 1883):

"There is little regarding an election that is not included in the terms, time, place, and manner of holding it."

In *Smiley* v. *Holm*, 285 U.S. 355, 366 (1932), the Supreme Court spoke of article I, section 4 in equally broad terms:

"It cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necesary in order to enforce the fundamental right involved."

Acting under article I, section 4, Congress in the Enforcement Act of 1870 and associated measures, 16 Stat. 144 (1870); 16 Stat. 254 (1870); 17 Stat. 347–349 (1872), provided measures (mostly later repealed) extensively regulating the conduct of elections of Members of the House. False registration, bribery, voting without legal right, making false returns, interference with election officers, and the neglect by any such officer of any duty required of him by State or Federal law, were made Federal offenses. These laws also made provision for the appointment by Federal judges of persons to attend at places of registration and at elections, with authority to challenge any person proposing to register or vote, to witness the counting of votes and to identify by their signatures the registration of voters and election tally sheets. See *United States* v. *Gradwell*, 243 U.S. 476, 483 (1917). This far-reaching legislation, which "committed to Federal officers a very full participation in the process of the election of Congressmen, from the registration of voters to the final certifying of the results," ibid., was held to be a constitutional exercise of the power conferred upon Congress by article I, section 4, with respect to the election of its Members. *Ex parte Siebold*, 100 U.S. 371 (1880); *Ex parte Clarke*, 100 U.S. 399 (1880); *United States* v. *Gale*, 109 U.S. 65 (1883).

In *Ex parte Siebold, supra*, the Court, in sustaining indictments of officers of election for stuffing ballot boxes, relied upon the power of Congress under article I, section 4. The Court said (100 U.S. at 388):

"It is the duty of the States to elect Representatives to Congress. The due and fair election of these Representatives is of vital importance to the United States. The Government of the United States is no less concerned in the transaction than the State government is. It certainly is not bound to stand by as a passive spectator, when duties are violated and outrageous frauds are committed. It is directly interested in the faithful performance, by the officers of election, of their respective duties. Those duties are owed as well to the United States as to the State."

S. 2750 would constitute a permissible regulation of the "manner" of holding elections for Federal officials in two respects. First, it would alter the method of testing whether a prospective voter possesses the particular educational or similar qualification set by the State. Instead, it would substitute an objective and easily ascertainable requirement—completion of six grades of formal education. Second, it would eliminate the racially discriminatory fashion in which existing tests have been administered. In these ways Congress would insure that "the manner" of holding elections for its members is not improper.

Improper conduct of election officials, as ex parte Siebold states, is an end within the reach of Congress under article I, section 4. As Chief Justice Marshall wrote in *McCulloch* v. *Maryland*, 321 U.S. 316, 421 (1820):

"Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."

Although the validity of S. 2750 does not depend upon it, the Supreme Court has recognized that even the qualifications which the States may set for voting in elections for Members of Congress are subject to restrictions which Congress may impose under its article I, section 4 power. This was suggested as early as 1875, when, in holding that denial of suffrage to women did not contravene the privileges and immunities clause of the 14th amendment, the Court said (*Minor* v. *Happersett*, 21 Wall. 162 (1875)):

"It is not necessary to inquire whether this power of supervision [over congressional elections] thus given to Congress is sufficient to authorize any interference with the State laws prescribing the qualifications of voters, for no such interference has ever been attempted. The power of the State in this particular is certainly supreme until Congress acts."

In 1941, the Supreme Court went further to declare that under article I, section 4, as supplemented by article I, section 8, clause 18 (the "necessary and proper" clause) Congress may limit the States in the imposition of qualifications themselves. In *United States* v. *Classic*, 313 U.S. 299, 315 (1941), the Court, speaking through Justice Stone, declared:

"While, in a loose sense, the right to vote for Representatives in Congress is sometimes spoken of as a right derived from the States, see *Minor* v. *Happersett*, 21 Wall. 162, 170; *United States* v. *Reese*, 92 U.S. 214, 217–218; *McPherson* v. *Blacker*, 146 U.S. 1, 38–39; *Breedlove* v. *Suttles*, 302 U.S. 277, 283, this statement is true only in the sense that the States are authorized by the Constitution, to legislate on the subject as provided by section 2 of article I, to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4 and its more general power under article I, section 8, clause 18 of the Constitution 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.'"

The above language of the Court in the *Classic* case was cited with approval in *Lassiter* v. *Northampton Election Board*, 360 U.S. 45 (1959). Although holding that a North Carolina literacy test did not violate the 14th and 17th amendments, the Supreme Court was careful to note that it was not suggesting that the Congress had no power to set limits on the imposition of qualifications. Citing the passage from the *Classic* case quoted above, the Court said (360 U.S. at 51):

"So while the right of suffrage is established and guaranteed by the Constitution (*Ex parte Yarbrough*, 110 U.S. 651, 663–665; *Smith* v. *Allwright*, 321 U.S. 649, 661–662) it is subject to the imposition of State standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed. See *United States* v. *Classic*, 313 U.S. 299, 315."

The issue in the Lassiter case was the validity of State literacy tests. The Court in the quoted sentence was referring to literacy (as well as other qualifications) in speaking of the State "standards" which would be invalid and ineffective where they conflict with restrictions imposed by Congress "acting pursuant to its constitutional powers." The only constitutional power discussed on the page of the Classic opinion cited by the Court in Lassiter was the power of Congress under article I, section 4, and article I, section 8, clause 18. It is a necessary inference that the Court in Lassiter was reaffirming congressional power to restrict State standards or qualifications for voting for Federal officials. If the congressional power under article I extends this far, there can be no doubt that it permits Congress to set limits upon the manner in which particular qualifications are determined.

D. The implied power of Congress to protect the purity of the Federal ballot

It is settled that Congress possesses powers which, though not specifically enumerated in the Constitution, are implied because they are "necessary and proper" (art. I, sec. 8, clause 18) to carry out the powers expressly delegated by the Constitution to Congress. For example, the Federal criminal power is largely an implied power. *United States* v. *Fox*, 95 U.S. 670, 672 (1878); *United States* v. *Hall*, 98 U.S. 343, 357 (1879); *United States* v. *Metzdorf*, 252 Fed. 933, 935–36 (D. Mont. 1918). See *Ex parte Yarbrough*, 110 U.S. 651, 658–59 (1884). So, too, are the powers to protect the Government from armed rebellion, *Dennis* v. *United States*, 341 U.S. 494, 501 (1951); *Barenblatt* v. *United States*, 360 U.S. 109, 127–128 (1959); and to regulate lobbying for Federal legislation and financial contributions to candidates for Federal office. *United States* v. *Harriss*, 347 U.S. 612 (1954); *Burroughs and Cannon* v. *United States*, 290 U.S. 534, 545 (1934).

As the Burroughs case illustrates, the implied powers of Congress extend to measures to insure the purity of the Federal ballot. The Burroughs decision sustained the validity of the Federal Corrupt Practices Act, which required political committees to keep detailed accounts of contributions and to file statements thereof with the Clerk of the House of Representatives. The term "political committee" was defined as including any organization which accepted contributions for the purpose of influencing or attempting to influence the election of presidential or vice-presidential electors in two or more States. The defendants, charged with criminal violation of this act, contended that the power of appointment of presidential electors and the manner of their appointment are expressly committed by article II, section 1 of the Constitution to the States, and that congressional authority was limited by that section to prescribing "the time of choosing the electors, and the day on which they shall give their votes * * *." Rejecting this contention, the Court declared (290 U.S. at 545):

"While presidential electors are not officers or agents of the Federal Government (*In re Green*, 134 U.S. 377, 379), they exercise Federal functions under, and discharge duties in virtue of authority conferred by, the Constitution of the United States. The President is vested with the Executive power of the Nation. The importance of his election and the vital character of its relationship to and effect upon the welfare and safety of the whole people cannot be too strongly stated. To say that Congress is

without power to pass appropriate legislation to safeguard such an election from the improper use of money to influence the result is to deny to the Nation in a vital particular the power of self-protection. Congress, undoubtedly, possesses that power, as it possesses every other power essential to preserve the departments and institutions of the General Government from impairment or destruction whether threatened by force or by corruption."

In Burroughs the Court relied heavily upon the leading case of *Ex parte Yarbrough*, 110 U.S. 651 (1884). The decision in that case established that the right of qualified voters to vote in congressional elections is derived from the Constitution of the United States and that in the exercise of its implied power to secure the integrity of such elections Congress may legislate to bar the intimidation of voters in those elections. Addressing itself to the argument that "[b]ecause there is no express power to provide for preventing violence exercised on the voter as a means of controlling his vote, no such law can be enacted," the Court said (110 U.S. at 658).

"It [the argument] destroys at one blow, in construing the Constitution of the United States, the doctrine universally applied to all instruments of writing, that what is implied is as much a part of the instrument as what is expressed. This principle, in its application to the Constitution of the United States, more than to almost any other writing, is a necessity, by reason of the inherent inability to put into words all derivative powers—a difficulty which the instrument itself recognizes by conferring on Congress the authority to pass all laws necessary and proper to carry into execution the powers expressly granted and all other powers vested in the Government or any branch of it by the Constitution, article I, section 8, clause 18."

There is an obvious similarity between corruption of the Federal electoral process by the use of money and corruption of the same process by devices susceptible of being used and actually used to disenfranchise voters because of race. If anything, the latter is more subject to congressional control for a number of reasons: (1) it is directed toward a special class; (2) it is inconsistent with constitutional principles given express recognition in the 14th and 15th amendments; and (3) it is perpetrated by the State, or by State officials sworn to uphold the Constitution, rather than by private persons. As the Court of Appeals for the Fifth Circuit said in *United States* v. *Wood*, 295 F. 2d 772 (C.A. 5, 1961):

"The foundation of our form of government is the consent of the governed. Whenever any person interferes with the right of any other person to vote or to vote as he may choose, he acts like a political termite to destroy a part of that foundation. * * * Eradication of political termites, or at least checking their activities, is necessary to prevent irreparable damage to our Government."

E. The relationship between the powers granted to Congress and other powers reserved to the States

It has been suggested that, whatever powers to correct voting abuses Congress might possess, the exercise of these powers by S. 2750 would clash with other constitutional provisions: Article I, section 2 and the 17th amendment (which provide that the qualifications for voting in congressional elections shall be the same as those requisite for voting in elections for the most numerous branch of the State legislature); and article II, section 1 (which deals with the method of appointment of presidential electors). These provisions, however, are not inconsistent with the proposed legislation. Moreover, it is obvious that any exercise of State power based on these provisions cannot override the limitations imposed by the 14th and 15th amendments.

1. S. 2750 would not prescribe qualifications for voting in Federal elections and would not interfere with the imposition of qualifications by the States.

It would leave the substantive State-imposed qualification (e.g., literacy) untouched and merely prescribe an objective method of ascertaining whether an applicant possesses that qualification. The power to establish the manner of ascertaining this derives from the express language of article I, section 4 of the Constitution, and as such forms no part of the "qualifications" for voting, as that term is used in article I, section 2 and in the 17th amendment.

At the time of the adoption of the Constitution, the qualifications which the States required were the possession of such qualities or status as were thought to render probable a responsible exercise of the franchise. See *Minor* v. *Happersett*, 21 Wall. 162, 172–3 (1875) for a list of the qualifications then imposed by each State. There is no reason for believing that the means of proving the qualifications were regarded by the framers as an inseparable part of the qualifications themselves.

In short, article I, section 2 and the 17th amendment permit the States to prescribe qualifications for elections to congressional office—they do not vest in them the power to override a congressional judgment concerning the manner in which qualifications are to be tested. S. 2750 deals with the manner of testing qualifications—not with the qualifications themselves. Thus, it is clear that article I, section 2 and the 17th amendment do not conflict with the congressional exercise of power embodied in the instant bill.

2. Nor is there any conflict between the bill and article II, section 1, which deals with the appointment of presidential electors.

Congress has the power to protect the presidential election process from any corrupt influence, and it has exercised this power on a number of occasions. See, e.g., 42 U.S.C. 1985(c); 42 U.S.C. 1971(b); 18 U.S.C. 610. The courts have sustained this exercise as applied to the regulation of campaign contributions in presidential elections (*Burroughs & Cannon* v. *United States*, 290 U.S. 534 (1934) and to the protection from intimidation of Negroes who seek to vote in such elections (compare *Burroughs and Cannon, supra*, at 545–546 with *Ex parte Yarbrough*, 110 U.S. 651 (1884)). Upon the same basis, Congress may also adopt measures effectively to control racial or other discrimination in the administration of literacy or similar performance tests where such discrimination corrupts elections for the Presidency of the United States.

3. The 14th and 15th amendments prohibit arbitrary State action, denial of equal protection, and racial discrimination in the voting process, irrespective of whether these practices occur in connection with qualifications for voting or with the manner in which qualifications are tested. It is no defense to an action alleging violation of the 14th or the 15th amendment that the activity involved is otherwise within the jurisdiction of the State. Cf. *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960) (power of States to control their own municipalities overcome by the 15th amendment). Thus, appropriate congressional action under the amendments would be valid with respect to all elections, Federal and State, notwithstanding article I, section 4, article II, section 1, or the 10th amendment. And, as we have shown, supra, this proposed legislation constitutes an appropriate enforcement of the 14th and 15th amendments.

THE BILL AS IT AFFECTS CITIZENS WHO HAVE COMPLETED THE SIXTH GRADE IN A SCHOOL IN PUERTO RICO IN WHICH SPANISH IS THE LANGUAGE OF INSTRUCTION

There are also several independent sources of congressional power to support the bill as it affects citizens of the United States who have completed six grades of education in Puerto Rico.

In considering these powers it is important to understand the status of Puerto Ricans in relation to the United States and the development of that status. When Puerto Rico was acquired by the United States, Puerto Ricans lost the protection of the Government of Spain. As stated in *Balzac* v. *Porto Rico*, 258 U.S. 298, 308 (1922) "[t]hey had a right to expect, in passing under the domination of the United States a status entitling them to the protection of their new sovereign." Under the Treaty of Paris between the United States and Spain of 1899 (30 Stat. 1899), it was provided that "the civil rights and political status of the native inhabitants of [Puerto Rico] shall be determined by the Congress." In the Jones Act of 1917 Congress conferred U.S. citizenship on Puerto Ricans. In giving to Puerto Ricans the status of citizens of the United States, Congress was motivated "by the desire to put them as individuals on an exact equality with citizens from the American homeland, to secure them more certain protection against the world, and to give them an opportunity should they desire to move into the United States proper and there without naturalization to enjoy all political and other rights." *Balzac* v. *Porto Rico, supra*, at 308. The Jones Act "enables them to move into the continental United States and becoming residents of any State there to enjoy every right of any other citizen of the United States, civil, social, and political." Ibid. "A citizen of the Philippines must be naturalized before he can settle and vote in this country * * *. Not so the Puerto Rican under the Organic Act of 1917." Ibid.

At the present time Puerto Rico occupies what is designated as a "Commonwealth" status. It has a special and unique relationship to the United States. See Public Law 600, 64 Stat. 319 (1950); *Constitution of Puerto Rico*, 48 U.S.C. 713(d); 66 Stat. 327 (1952); Magruder, *The Commonwealth Status of Puerto Rico*, 15 U. Pitt. L. Rev. 1 (1953). This relationship is in the nature of a "union [of Puerto Rico] with the United States of America," *Const. of P.R., Preamble*, 48 U.S.C. 731(d). The Puerto Rican constitution recognizes the "coexistence in Puerto Rico of the two great cultures of the American Hemisphere * * *," ibid. It further declares that "We consider as determining factors in our life our citizenship of the United States of America and our aspiration continually to enrich our democratic heritage in the individual and collective enjoyment of its rights and privileges." Congress approved the Puerto Rican constitution by a joint resolution of July 3, 1952, 66 Stat. 327 (1952).

With this background in mind, there are a number of powers vested in Congress that support the Puerto Rican provision of the bill: (1) the express power of Congress provided by article IV, section 3, clause 2, of the Constitution to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States," (2) the implied power of Congress to regulate the activities of persons entitled to the special protection of the Government (cf. *United States* v. *Nice*, 241 U.S. 591, (1916) (American Indians); *United States* v. *Holliday*, 3 Wall. 407, 416 (1886) (same); *United States* v. *Kagama*, 118 U.S. 375 (1886) (same); and (3) the Treaty of Paris, 30 Stat. 1754 (1899) which provides that "the

civil rights and political status of the native inhabitants of Puerto Rico shall be determined by the Congress." Compare *Missouri* v. *Holland*, 252 U.S. 416 (1920) (reserved power) with *Reid* v. *Covert*, 354 U.S. 1 (1957) (express prohibition)).

In considering the extent of these powers as they relate to the instant bill, it is clear that whatever may ultimately be the status of Puerto Rico, they are to be construed in a manner that would enable Congress to encourage the close association of Puerto Rico with this Nation as contemplated in the constitution of Puerto Rico.

Moreover, as the decisions cited above show, the courts have recognized a far-reaching power in Congress to grant privileges to and to protect citizens who occupy a special dependent status with respect to the Federal Government, and have sustained the extension of this power to areas within the several States. The courts have also upheld the power of Congress to give U.S. citizenship status to citizens of Puerto Rico. S. 2750 would make more effective this grant of citizenship by precluding the denial of the franchise to a person of Puerto Rican origin merely because, even though he is literate, the language in which he was educated—under the auspices of the United States—is Spanish rather than English. Congress has the relatively vast power to confer citizenship upon Puerto Ricans. It must also have the power to accomplish the far more limited aim embodied in the bill. This is especially so since the bill deals only with elections to Federal office—a matter in which both the United States and those affected by this bill have an obviously close interest.

In addition to these several special sources of congressional power, the bill as applied to persons educated in Puerto Rico rests also upon the constitutional provisions discussed in part I of this memorandum. Article I, section 4 confers power to regulate the manner of testing State-imposed qualifications in congressional elections. Congress, as indicated, has the duty of assuring to every State a republican form of government and to legislate concerning arbitrary discrimination. The declaration of the Congress that denial of the franchise to Spanish-educated Puerto Ricans is arbitrary within the meaning of the due process clause of the 14th amendment, would, of course, be accorded considerable weight by the courts. See part I above. And the relationships of all these powers to article I, section 2, the 17th amendment and article II, section 1 is the same as that of the powers discussed in part I respecting English-speaking citizens.

The bill is valid in its several applications.

U.S. COMMISSION ON CIVIL RIGHTS STAFF MEMORANDUM, MARCH 1962

CONSTITUTIONALITY OF LEGISLATION ON THE SUBJECT OF LITERACY AS A REQUIREMENT FOR VOTING

In its 1962 report on voting the Commission on Civil Rights unanimously recommended legislation to provide "that Congress enact legislation providing that in all elections in which, under State law, a literacy test, an understanding or interpretation test, or an educational test is administered to determine the qualifications of electors, it shall be sufficient for qualification that the elector have completed at least six grades of formal education."

Legislation related to the Commission's recommendation is now before the Congress. There is ample support in the Constitution for legislation to correct the kinds of abuses to which literacy requirements for voting have been put. For the sake of convenience, relevant constitutional issues are discussed with reference to S. 2750, the Mansfield-Dirksen bill.

A. Substance of the bill

Section 2 of the bill defines a "deprivation of the right to vote" to include "(1) the application to any person of standards or procedures more stringent than are applied to others similarly situated and (2) the denial to any person otherwise qualified by law of the right to vote on account of his performance in any examination, whether for literacy or otherwise, if such other person has not been adjudged incompetent and has completed the sixth primary grade of any public school or accredited private school in any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico."

In a sense, the proposal does not establish qualifications of electors; it merely treats as a deprivation of the right to vote in Federal elections the refusal to qualify any person on the basis of any test, provided he has completed the sixth grade. Narrowly viewed, the provision tells the States that a sixth-grade education qualities an elector of Federal officers regardless of "any examination, whether for literacy or otherwise," which may be imposed by the States voter qualification laws.[1]

B. The power of the States to provide for the qualification of electors for Representatives and Senators

1. Article I, section 2, of the Constitution provides:

"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."

2. The 17th amendment makes similar provision for the qualification of electors for Senators.

3. Also pertinent is the 10th amendment providing that powers not delegated to the United States by the States are reserved to the States or to the people.

A series of cases illustrates the extent of the power of the States to provide for the qualification of electors. In *Minor* v. *Happersett*, 88 U.S. (21 Wall.) 162 (1874), the Court upheld a provision of the Missouri constitution limiting the suffrage to males. The power of a State to impose a literacy test requiring the prospective voter to read or interpret any section of the Constitution was upheld in *Williams* v. *Mississippi*, 170 U.S. 213 (1898). Similarly, the Court validated a provision of the Maryland constitution which required new residents to declare their intention to be a citizen before registering to vote, *Pope* v. *Williams*, 193 U.S. 621 (1904). The Court approved the constitutionality of the poll tax as a prerequisite to registering to vote, *Breedlove* v. *Suttles*, 302 U.S. 277 (1937). In a recent case the Court upheld the literacy test imposed by the State of North Carolina, *Lassiter* v. *Northampton County Bd. of Elections*, 360 U.S. 45 (1959).

Article I, section 2 is not, however, authority for the States to enact voter qualifications for State electors—that right existed prior to and independent of the Constitution. In a sense, article I, section 2, is not a grant of power to the States at all, for the Constitution, particularly article I, concerns the delegation of powers from the States and the people to the Federal Government. Nor does article I, section 2, grant a power to the States in any degree superior to or different from powers reserved to the States by the 10th amendment. This is clear from the Supreme Court's characterization of article I, section 2, and from its description by persons who attended the Constitutional Convention.

The Court considered article I, section 2, in *ex parte Yarbrough*, 110 U.S. 651 (1884), where the power of Congress to enact laws to protect the right to vote in Federal elections was in issue:

"The States, in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election for Members of Congress. Nor can they prescribe the qualification for voters for those eo nomine. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for Members of Congress in that State." *Ex parte Yarbrough*, *supra*, 663.

Turning to the 15th amendment to illustrate the nature of article I, section 2, the Court stated:

"The 15th amendment of the Constitution, by its limitation on the power of the States in the exercise of their right to prescribe the qualifications of voters in their own elections, and by its limitation of the power of the United States over that subject, clearly shows that the right of suffrage was considered to be of supreme importance to the National Government, and was not intended to be left within the exclusive control of the States." Supra, 664.

Referring again to the right of the States under article I, section 2, the Court in *Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45, 51 (1959), pointed out:

"While the right of suffrage is established and guaranteed by the Constitution [citations omitted] it is subject to the imposition of State standards which are not discriminatory and which do not contravene any restriction that Congress acting pursuant to its constitutional powers, has imposed."

James Madison explained:

"The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the convention, therefore, to define and establish this right in this Constitution. To have left it open for the occasional regulation of the Congress would have been improper for the reason just mentioned. To have submitted it to the legislative discretion of the States would have been improper for the same reason; and for the additional reason that it would have rendered too dependent on the State governments that branch of the Federal Government which ought to be dependent on the people alone." "The Federalist Papers," Mentor Ed., pp. 325–326.

Viewed from the standpoint of the Federal Government, article I, section 2, serves to identify the class of persons who shall elect Federal officers; it incorporates by reference those qualified under the laws of the States. Viewed from the standpoint of the States, article I, section 2 is a limitation on the power of the Federal Government to create a different electorate from that created by the States. Properly speaking, then, article I, section 2 does not concern a grant of power either to the Federal Government or to the States. The only power involved is the power of the Federal Government to protect its elections. This power of protection is implied from the existence of Federal elections, the subject of article I,

[1] The following States provide for literacy as a qualification for voting: Alabama, Alaska, Arizona, California, Connecticut, Delaware, Georgia, Hawaii, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, New York, Oregon, North Carolina, South Carolina, Virginia, Washington, and Wyoming.

section 2. The same considerations apply to the identical language in the 17th amendment. In this connection the Court has said:

"If this Government is anything more than a mere aggregation of delegated agents of other States and governments, each of which is superior to the General Government, it must have the power to protect the elections on which its existence depends, from violence and corruption." *Ex Parte Yarbrough*, 110 U.S. 651, 658 (1884).

See also, *Wiley* v. *Sinkler*, 179 U.S. 58 (1908); *Swafford* v. *Templeton*, 185 U.S. 487 (1902); *United States* v. *Classic*, 313, U.S. 299 (1941). The power to protect the right thus secured is not limited to State action but extends to the acts of private individuals.

Yarbrough concerned private persons who intimidated a Negro from voting at an election for a Member of Congress. The criminal statute's application to private persons was therefore beyond the scope of the 14th and 15th amendments, which reach only State action. The power of Congress to protect Federal elections, even from racial discrimination, exists under article I, section 2, and appears to be independent of authority to do so under the amendments.

C. Constitutional limitations on the power of States to prescribe voter qualifications

The Constitution contains other important limitations on the power of the States to enact voter qualification laws. These take the form of powers granted to the Federal Government and limitations imposed upon the States.

1. Article I, section 2, has been dealt with above.

2. Article I, section 4, provides:

"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 chusing Senators."

The Constitution distinguishes between "qualifications" mentioned in article I, section 2, and the "times, places, and manner of holding elections" referred to in article I, section 4. No case has settled the issue of whether there may not be some qualifications which might also be subject to regulation by the Federal Government as affecting the times, places, and manner of holding elections.

3. The 14th amendment is a further limitation upon the States, and section 5 gives the Congress the power to enact legislation appropriate for its enforcement.

4. The 15th amendment is a limitation upon the United States and the States. It provides:

"SECTION 1. 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—"

Section 2 empowers Congress to enforce its provisions by appropriate legislation.

5. The 19th amendment imposes a further limitation upon both the Federal and State governments:

"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 sex."

Section 2 empowers Congress to enforce its provisions with appropriate legislation.

6. Two other provisions of the Constitution are relevant, the supremacy clause, article VI, clause 2, providing that the Constitution and laws shall be "the supreme Law of the Land," and the necessary and proper clause, article I, section 8, clause 18, empowering Congress "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, * * *."

D. The bill's findings and references to constitutional powers

Section 1 of the bill lays a factual and legal predicate for the proposition that what follows in section 2 of the bill is designed as appropriate legislation. The most important of these facts are the following according to their designations in the text of the bill:

Section 1(c): "Congress further finds that many persons have been subjected to arbitrary and unreasonable voting restrictions on account of their race or color; that literacy tests and other performance examinations have been used extensively to effect arbitrary and unreasonable denials of the right to vote; and that existing statutes are inadequate to assure that all qualified persons shall enjoy the right to vote."

Section 1(d): "Congress further finds that education in the United States is such that persons who have completed six primary grades in public school or accredited private school cannot reasonably be denied the franchise on grounds of illiteracy or lack of sufficient education or intelligence to exercise the prerogatives of citizenship."

Section 1(e): "Congress further finds that large numbers of American citizens who are also citizens of the several States are deprived of the right to vote by virtue of their birth and education in a part of the United States in which the Spanish language is commonly used; that these citizens are well qualified to exercise the franchise; that such information as is necessary for the intelligent exercise of the franchise is available through Spanish-language news sources; that lack of proficiency in the English language provides no reasonable basis for excluding these citizens from participating in the democratic process."

Section 1(f) invokes article I, section 4, of the Constitution, section 2 of the 15th amendment, and the "power to protect the integrity of the Federal electoral process."

It is not clear how any provision of the bill fairly relates to regulation of the times, places, and manner of holding elections authorized by article I, section 4. However, as will be pointed out below, it is arguable that clause (1), section 2, of the bill relates to the manner of holding elections. *United States* v. *Classic*, 313 U.S. 299 (1941). The power of Congress to enact legislation to protect Federal elections, article I, section 2, and the powers to enact laws appropriate to the enforcement of the 14th and 15th amendments are clearly relevant, however.

Article I, section 2, has already been referred to. The scope of the 15th amendment is indicated by cases involving State as well as national legislation. In the cases of *Guinn* v. *United States*, 238 U.S. 347 (1915), and *Lane* v. *Wilson*, 307 U.S. 268 (1939), the Court struck down Oklahoma grandfather clauses. Referring to the scope of the 15th amendment the Court stated in the *Lane* case:

"The reach of the 15th amendment against contrivances by a State to thwart equality in the enjoyment of the right to vote by citizens of the United States regardless of race or color, has been amply expounded by prior decisions [citations omitted]. The amendment nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race." *Lane* v. *Wilson*, *supra*, 275.

The Court upheld the Civil Rights Act of 1957 as appropriate legislation for carrying out the purpose of the 15th amendment, *Hannah* v. *Larche*, 363 U.S. 420 (1960). In still another recent case the Court interposed the 15th amendment between citizens and the power of the State to draw political boundaries under circumstances indicating a purpose to disfranchise voters on the ground of race or color, *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960). In *Davis* v. *Schnell*, 336 U.S. 933, affirming 81 F. Supp. 872, the Court overturned a provision of State law requiring a citizen to understand and explain any article of the Constitution. The Court found that the purpose of the law was to discriminate and that the administration of the law was in fact discriminatory and therefore within the effective range of the 15th amendment.

E. The necessary and proper clause

It is reasonable to conclude that the States right to prescribe voter qualifications cannot be exercised in any area defined by the limitations of the 14th and 15th amendments. Difficulty arises from the fact that in many of the States whose voter qualification laws will be affected by the bill, there has been no discrimination. The power of Congress to enact legislation pursuant to a granted power regardless of the fact that such legislation affects objects and persons outside the scope of direct Federal control supports the power of Congress to strike at discrimination despite its effect upon nondiscriminatory State laws.

"Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.), 316, 421 (1819).

In the case of *United States* v. *Darby*, 312 U.S. 100 (1941), the Court upheld the Fair Labor Standards Act and in so doing approved the control of a purely intrastate activity, manufacturing, as a necessary and proper regulation of interstate commerce.

In *Guss* v. *Utah Labor Relations Board*, 353 U.S. 1 (1957), the Court approved the displacement of all similar labor measures affecting interstate commerce despite the fact that the NLRB declined to exercise its jurisdiction. In *First Iowa Hydro-Electric Cooperative* v. *Federal Power Commission*, 328 U.S. 152 (1946), the Court upheld provisions of the Federal Power Act authorizing Federal licenses to construct dams, even where the States forbade their construction. While some State dams would be harmless to the national interest, Congress found it necessary and proper to take over the control of all damming of streams, affecting interstate commerce. Likewise, the Court approved the Corrupt Practices Act, which employed the device of regulating campaign contributions.

"If it can be seen that the means adopted are really calculated to attain the end, the degree of their necessity, the extent to which they conduce to the end, the closeness of the relationship between the means adopted, and the end to be attained, are matters for congressional determination alone." *Burroughs* v. *United States*, 290 U.S. 534, 547 (1934).

See also, *Everards' Breweries* v. *Day*, 265 U.S. 545 (1924); *Westfall* v. *United States*, 274 U.S. 259 (1927); *Ruppert* v. *Caffey*, 251 U.S. 264 (1920).

F. Scope of the bill and the effect of its limitation to Federal elections

1. The Mansfield-Dirksen bill is an amendment to the Civil Rights Act of 1957. Subsection (b) of title 42, United States Code, section 1971, a part of the 1957 act, concerns threats, intimidation and coercion of persons for the purpose of interfering with their right to vote in Federal elections. Subsection (c) of the 1957 act authorizes the

Attorney General to enjoin violations of both subsection (a), which extends to State and Federal elections, and subsection (b).

Subsection (a) is based directly upon the 15th amendment; it concerns only denials of the right to vote on account of "race, color, or previous condition of servitude." The 15th amendment, and therefore subsection (a) implementing it, cover State as well as Federal elections. The limitation of subsection (b) to Federal elections indicates that it is based on article I, section 2, or on article I, section 4, both of which support the power of Congress to protect Federal elections. Subsection (b) reaches private as well as State action, which is beyond the scope of the 14th and 15th amendments. *James* v. *Bowman,* 190 U.S. 127 (1903); *United States* v. *Reese,* 92 U.S. 214 (1875).

The Mansfield-Dirksen bill amends subsection (b) rather than subsection (a). Presumably the limitation of subsection (b) to Federal elections was dictated by a desire to reach violations in the form of economic reprisals, usually committed by individuals and not by persons acting under color of State law. The limitation to Federal elections included in the Mansfield-Dirksen bill conforms to the original scope of the statute. However, there are several reasons why a limitation to Federal elections appears unnecessary, even if subsection (b) is to be amended.

(a) If it is the intent of the bill to rely upon the power of Congress to protect Federal elections (art. I, sec. 2) and to regulate the times, places, and manner of holding Federal elections (art. I, sec. 4), it is not clear why the bill expressly invokes the 14th and 15th amendments. Congress has the power under article I to secure its elections against any kind of abuse. *Ex parte Yarbrough,* 110 U.S. 651 (1884); *Ex parte Siebold,* 100 U.S. 371 (1879); *United States* v. *Classic,* 313 U.S. 299 (1941). But the factfindings and express reference in the bill to the amendments show an intention to invoke them. The fact that subsection (b) as amended by the bill will reach persons "whether acting under color of law or otherwise" does not mean that Congress is confined to its article I powers. Subsection (b) reaches private action in the form of economic reprisals. *United States* v. *Beaty,* 288 F. (2d) 653 (6th cir., 1961). As amended by the bill, it will still reach private action. In addition it will reach State registration officials. The fact that the law as amended will reach both private and State action does not mean that the law is not based upon the amendments or that it does not observe their limitation to State action. It only raises the question of what powers Congress has acted upon.

It is clear that the bill is based not only upon the article I powers but also upon the amendments. The 15th amendment supports clause (2), section 2, of the bill, which strikes at discriminatory use of literacy and other tests, while the 14th amendment supports clause (1), section 2, of the bill, which guarantees equal protection in the matter of administering standards and procedures. The power of Congress to act is in each particular clearly supported by the Constitution. The fact that different parts of the bill are based upon different powers under the Constitution does not, of course, limit the powers, unless there is some basis for assuming that power to do one thing will be used to accomplish another.

The bill's limitation to Federal elections is therefore not because the bill aims at private persons rather than persons acting under color of law. The limitation is not dictated by the amendments. The same powers in the Constitution support appropriate legislation to cover State as well as Federal elections.

(b) Once the legal distinction between these different powers is understood, there is no reason to assume that the Court will find that Congress has acted beyond the scope of one power rather than within the admitted range of the other.

(c) No case can be imagined which would involve deprivation of the right to vote by reason of a literacy test which did not also involve the necessary State action.

The Court has consistently found that voting is so integrally a Government function that the concept of State action is broad enough to include private persons not acting directly for the State. *Nixon* v. *Condon,* 286 U.S. 273 (1923), State executive committee of a political party; *Smith* v. *Allwright,* 321 U.S. 649 (1944), a State party convention; *United States* v. *Classic,* 313 U.S. 229 (1941), a party primary; *Terry* v. *Adams,* 345 U.S. 461 (1953), a preprimary convention; and most recently *United States* v. *McElveen,* 177 F. Supp. 355 (E.D. LS. 1959), affirmed sub nomine, *United States* v. *Thomas,* 362 U.S. 58 (1960), a citizens council.

(d) Finally, the Court has shown impatience with arguments based on this limitation of the Civil War amendments. The defendant registrars of voters in the recent case of *United States* v. *Raines,* 362 U.S. 17 (1960), had argued that the Civil Rights Act of 1957 was unconstitutional for the reason that subsection (b) of the act reached private action. Even though they were sued under subsection (a) of the act, they maintained that they could raise the issue of the scope of the law. To this the Court responded:

"In the exercise of that jurisdiction, it [the Court] is bound by two rules, to which it has rigidly adhered: One, never to anticipate a question of constitutional law in advance of the necessity of deciding it; the other, never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *United States* v. *Raines,* supra, 21.

2. Clause (1), section 2, of the bill, quoted above, broadens the basis upon which the Attorney General may proceed in voting cases. The bulk of litigation pursuant to the Civil Rights Act of 1957 and 1960 involves discriminatory registration procedures. These suits are based upon the power of the Attorney General to file a civil suit to enjoin violations of subsection (a) and (b) of title 42, United States Code, section 1971. One of the difficulties with subsection (a) is that it imposes the burden of proving that the acts or practices complained of are based on race or color. Clause (1), section 2, of the bill will permit the Attorney General to enjoin the use of different standards for Negroes and white persons without the necessity of proving that the use of such standards is motivated by race.

The use of different standards or procedures is not a voter qualification in the sense of article I, section 2, and therefore legislation to curb this kind of abuse is not in any sense controlled by the States. Discriminatory administration of voter qualification laws is within effective range of article I, section 2, as well as article I, section 4, *Ex parte Siebold,* 100 U.S. 371 (1870).

Direct support for clause (1), section 2, of the bill, however, flows from the equal protection clause of the 14th amendment under which Congress has the power to enact appropriate legislation. The equal protection clause has been the basis for judicial action to curb discriminatory administration of otherwise constitutional laws. *Yick Wo* v. *Hopkins,* 118 U.S. 256 (1886); *Davis* v. *Schnell,* 336 U.S. 933, affirming 81 F. Supp. 872 (1949).

3. Section 1(e) of the bill finds that American citizens who have been educated in a part of the United States where the Spanish language is commonly used are deprived of the right to vote by reason of their lack of proficiency in the English language and that "lack of proficiency in the English language provides no reasonable basis for excluding these citizens from participating in the democratic process."

The bill therefore provides in clause (2), section 2, that it will be a deprivation of the right to vote in Federal elections to deny any citizen the vote who has completed the sixth grade of any public school "in any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico." This provision, it should be noted, does not limit the law to Spanish.

The New York Court of Appeals on November 19, 1959, upheld the lower court's ruling that a New York resident, a citizen of Puerto Rican birth, was not deprived of his right to vote by reason of the refusal of the election officials to permit him to take a voter registration literacy test in the Spanish language.

"The inspectors of election contended in the court of appeals that distinction between literacy in English and literacy in another language was reasonable and did not violate the 14th amendment, and that the requirement of literacy in English did not violate the 15th amendment because it made no distinction based on race or color. Order affirmed, without costs. All concur." *Camacho* v. *Doe,* 5 Race Rel. Law Rep. 778, 7 N.Y. 2d 762, 194 N.Y.S. 2d 33 (1959).

The bill's fact findings in regard to the Puerto Ricans avoid reference to race or color. This part of the bill therefore seems to rest upon the powers of the Congress to enact laws pursuant to article I and the 14th amendment. At issue is the power of Congress so acting to substitute its judgment for that of the States in the matter of voter qualifications. This puts the issue in an unfavorable light, but it may be so argued. The Supreme Court has stated:

"We do not suggest that any standards which a State desires to adopt may be required of voters. But there is wide scope for exercise of its jurisdiction. Residence requirements, age, previous criminal record [citations omitted] 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 intelligence are obviously not synonymous. Illiterate people may be intelligent voters. * * * 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. [Citation omitted] 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." *Lassiter* v. *Northampton County Bd. of Elections,* 360 U.S. 51, 51–53 (1959).

However, the bill does not go so far as to outlaw literacy tests; it merely declares that a sixth-grade education in any public school, including those of Puerto Rico, is a sufficient demonstration of literacy. Under the bill it would be unreasonable and a denial of the right to vote to impose a higher standard. The bill assures all Americans, whether educated in a State or territory, the District of Columbia or the Commonwealth of Puerto Rico, of a minimum standard for voting purposes.

Since English is now required in the elementary schools in Puerto Rico, the effect of the bill on New York residents from Puerto Rico will be minimal.

Even if this part of the bill is regarded as an improper exercise of power under article I or the 14th amendment, the severability clause will save other portions of the bill.

Since Congress may clearly impose the standard of a sixth grade education as a

necessary and proper means of exercising its powers under article I and the amendments, it is possible that the extension of the standard to all Americans, including those of Puerto Rico, is but a part of the means adopted and therefore without need of direct support in the Constitution.

In conclusion, it appears beyond reasonable doubt that the Constitution supports the power of Congress to act by any necessary and proper means (art. I, sec. 8, cl. 18) to secure Federal elections from any abuse, private or public, which deprives citizens of the right to vote (art. I, sec. 2); that Congress may likewise regulate the times, places, and manner of holding elections (art. I, sec. 4); that Congress may, acting pursuant to the 15th amendment, legislate against abuses which deprive citizens of the right to vote in State or Federal elections on the grounds of race, color, or previous condition of servitude; and, under the equal protection clause of the 14th amendment, secure all elections from discriminatory administration of law.

The authority of the States to prescribe the qualifications of electors must yield to the exercise of these substantial powers. Finally, against generalized claims of interference with States rights, one further provision of the Constitution, should be cited:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land * * * any Thing in the Constitution or Laws of any State to the Contrary notwithstanding" (art. VI, cl. 2).

Mr. DIRKSEN. I am deeply grateful to my distinguished friend from Mississippi.

Mr. EASTLAND. Madam President, my distinguished friend from Illinois has grieved me very much by conducting a filibuster against a vote on this matter——

Mr. DIRKSEN. Madam President, will the Senator yield?

Mr. EASTLAND. The Senator is a very distinguished Member of this body. I know that he is sincere. I know that he is honest. I know that he is conscientious. What I am going to say does not apply to my distinguished friend, but the driving power behind this bill is not to give the Negro suffrage, because all who are qualified to vote, both black and white, exercise the right of suffrage in my State, as I am sure they do in Louisiana and other Southern States. I think the driving power behind it is an appeal to the Negro vote in northern cities for political purposes.

Mr. DIRKSEN. Madam President, will the Senator yield?

Mr. EASTLAND. For a question.

Mr. DIRKSEN. Without losing his right to the floor?

Mr. EASTLAND. No.

Mr. DIRKSEN. When my friend says I am participating in a filibuster, I can only say I am always entranced by his delightful sense of humor. [Laughter.]

Mr. EASTLAND. Now, you see, Madam President. See how he takes up time. [Laughter.]

What is happening, truly—and I hope I am not letting the cat out of the bag—is a filibuster against a vote on this measure, and it is not conducted by southerners. There are too many able Senators who know the Constitution of the United States and who will uphold that Constitution, and who realize that this bill cannot be enacted into law.

Madam President, our distinguished majority leader in his opening remarks on the substitute amendment he has offered to H.R. 1361, raised certain issues that go far beyond the immediate consideration of the so-called literacy standard bill that will be applied in fixing the qualifications for voters to participate in the election of national officers. It is my position that this proposed substitute is wholly and completely unconstitutional and beyond the power of Congress to enact by simple legislation. While the proposed legislation is confined to the narrow question of contravening existing or prospective literacy qualifications that are established or might be established by the 50 States, the principle involved deeply concerns the very bottom and foundation of our republican form of constitutional Government—the basic relationship of the sovereign States to the National Government, the relationship of the Federal judicial establishment to the legislative and executive branches of the Federal Government, and the relationship of both the judicial and executive branches of our Federal Government to the States. I say with all the sincerity and force that I can command that the fundamental issue involved is whether the United States of America will survive and continue under the form of government envisioned by our forefathers and now delineated in the U.S. Constitution and the amendments thereto, or whether it will be completely transformed and perverted into an instrument of power, oppression, and tyranny.

The majority leader said in his remarks:

I suggest again, therefore, that Members ponder the question before us as they should any other issue of significance. I suggest that they ponder it not only in the light of the Senate's capacity to prevent rash change but also in the light of the Constitution's wise provision for change. The recent constitutional history of this Nation is most pertinent in this connection. It makes clear that progress toward the equalization in practice of the ideals of human freedom on which this Nation stands will not be halted indefinitely. It makes clear that when one road to this end fails, others will unfold as, indeed, they have unfolded. If the process is ignored in legislative channels, it will not necessarily be blocked in other channels—in the executive branch and in the courts.

So said the majority leader.

First, I must say, Madam President, that I full well appreciate that different individuals can sincerely hold different ideas as to what constitutes progress toward the equalization in practice of the ideals of human freedom on which this Nation stands. If equalization of ideals means that we are going to destroy the individual, his individuality, individual initiative and the right of persons to live at the level of the local community and within the several States free from the oppressive, dictated and arbitrary powers and control of a Federal establishment, then I want no part of it. I hold with Jefferson that those who are governed best are those who are governed least, and if liberty and freedom require the subjection of an individual to the whims and dictates of a totalitarian central government, deliver me from it.

I deny that either the executive branch or the judicial branch of our Federal Government has any statutory or constitutional right or power to take the plain and simple language of the Constitution of the United States and the amendments thereto and consider the established judicial precedents that have existed for over 175 years in interpreting this document; overturn the precedents; deny the simple meaning and intent of the language itself, and embark on a course of judicial and executive tyranny with the pious disclaimer that these decisions, acts and orders are performed for the purpose of the equalization in practice of the ideals of human freedom on which this Nation stands.

The ideals of human freedom on which this Nation stands are founded upon the political position, heritage and history of those brave and courageous people who traveled an uncharted sea, settled this vast continent, and carved this great civilization out of a wilderness. They are the sources of our traditions. Their blood was shed to make possible the birth of these United States; and it was a document drafted by them in Philadelphia that constituted the charter of their liberties and set forth the details of the forms of the political institutions under which they wished to live. If we do not wish today to live under a charter of government such as they drafted, then we should abolish or change the Constitution—not pervert and distort it out of all semblance of its specific meaning and intent.

With sadness, I must agree with our distinguished majority leader that in the recent constitutional history of this Nation, the Supreme Court of the United States has infringed, invaded, and usurped the powers vested by the Constitution in the legislative branch of the Federal Government. Congress has from time to time vested in the executive branch of the Government vast power and authority to exercise prerogatives that are fundamentally in their nature legislative powers. Further, the executive branch of our Government, through the use of Executive orders, has invaded and usurped the power of the legislative branch in creating rules of law and conduct that are not to be found in any statute law of the United States and cannot be justified by any remote constitutional authority.

The Members of the Senate and our colleagues in the House of Representatives are the last bastion for the defense of constitutional government. Far from yielding to the pressures and demands of the courts and the Executive, it is our duty to resist on every side the encroachments on our power and prerogatives, and to begin here and now to restore to the people of the United States the proper balance of power between the three coordinate branches of the Federal Government, and to protect the rights of the States and of the people thereof in preserving to them all powers that were not specifically delegated to the National Establishment.

This is the challenge that is laid down, and I know of no greater service that could be performed for all the people of

the United States than that we here and now begin to turn and reverse the tide and to assert that our republican form of government shall continue to operate and exist in the manner and form that it was so designed to operate and exist under the Constitution of the United States.

It is a mockery for Congress to so concern itself over any federally established right to vote, when nine men appointed for life, with no responsibility to the people in either their appointments or tenure, can arrogate unto themselves the power to dictate to the sovereign States how they shall conduct their internal affairs, even to the point of stepping in and overturning the established constitutions and laws of the States and sitting down with a slide rule and dividing people by the head in the same way that a skilled butcher could carve meat. This is not a fancy—it is a fact. Not only has the Supreme Court directed the inferior judges in the Federal judiciary to undertake the task of remaking States, but also it has advised the judiciary systems of the States themselves that it is now their bounden duty under the U.S. Constitution to put the courts and judges in the political thickets, and for these State courts and judges to get about the business of either blackjacking State legislatures to reapportion or, if the threat and intimidation fails, do it themselves.

Madam President, the great genius of our constitutional system lies in the fact that it was designed, both at the level of the National Government and the State governments, to protect the liberty, freedom, and right of the individual as against actions by a raw majority of the people. Are we to define liberty and freedom as that which 51 percent of the people want, as opposed to the wishes of 49 percent who voted on the other side? If the individual is to be given a number, and the numbers are going to be added and divided, this will be the inevitable result. No one has ever claimed that our system of government is perfect, any more than anyone has ever claimed that courts and judges render perfect justice under the law. Only the Infinite can be infallible, but by and large we have rightly claimed that we have a better form of government and a system for deciding cases and controversies that has resulted in giving a better and more equitable form of justice than results from any other device, by human ingenuity. I deny that nine platonic guardians who sit on the bench of the U.S. Supreme Court have any more infallibility or perfection than either the people or the elected representatives of this country, be they at the level of the State or within the National Establishment.

As early as 1936 a U.S. Senator, speaking on the floor of the Senate, criticizing a decision of the Supreme Court, said:

> The Supreme Court now, in effect, for all practical purposes, is a continuous Constitutional Convention.

Another Senator said:

> This means that 120 million are ruled by 5 men.

Today he can amend his statement of a quarter of a century ago and say:

> One hundred and eighty million are ruled by five men, and I am one of them.

If Ripley himself were alive today and wanted to pose one of the most incredible and incredulous "believe it or nots," this would be the one for him, because this statement was made by none other than Associate Justice Hugo L. Black of Alabama when he was a member of the U.S. Senate.

On March 26, 1962, Justice Black joined with six of his colleagues on the Supreme Court Bench to render a decision that is the culmination of the long line of cases which this Court has previously decided destroying and usurping first one power and then another unconstitutionally invading and weakening the reserved powers of the States in first one area and then another, and lending aid and comfort to the conspiracy that is dedicated to the overthrow and destruction of our system of government itself. The case of Baker, et al. against Carr is commonly known as the Tennessee apportionment case, and in this case for the first time the Supreme Court declared that the Federal judiciary had an alleged constitutional authority to invalidate State constitutions and statutes and divide the representation in State legislatures in such a manner and form as the courts might deem just and equitable in the premises.

The impact of this decision is even now reverberating throughout State after State, and inevitably the judiciary in both the State and Federal departments is being drawn into the heart of the political thicket and will become so enmeshed in partisan power politics that it is doubtful if the courts can ever be restored to the point of dignity and confidence that is required in the character of a judicial system that was envisioned by the founders of this Republic and that continued down to the change in the complexion of the U.S. Supreme Court in the late 1930's.

The words that Mr. Justice Harlan wrote in his separate dissenting opinion in the Tennessee case will be prophetic. He said:

> In conclusion, it is appropriate to say that one need not agree as a citizen with what Tennessee has done or failed to do in order to deprecate, as a judge, what the majority is doing today. Those observers of the Court who see it primarily as the last refuge for the correction of all inequality or injustice, no matter what its nature or source, will no doubt applaud this decision and its break with the past. Those who consider that continuing national respect for the Court's authority depends in large measure upon its wise exercise of self-restraint and discipline in constitutional adjudication, will view the decision with deep concern.

Mr. Justice Frankfurter in his long dissenting opinion, with which Justice Harlan joined, said:

> The Court today reverses a uniform course of decision established by a dozen cases, including one by which the very claim now sustained was unanimously rejected only 5 years ago. The impressive body of rulings thus cast aside reflected the equally uniform course of our political history regarding the relationship between population and legislative representation—a wholly different matter from denial of the franchise to individuals because of race, color, religion or sex. Such a massive repudiation of the experience of our whole past in asserting destructively novel judicial power demands a detailed analysis of the role of this Court in our constitutional scheme. Disregard of inherent limits in the effective exercise of the Court's "judicial power" not only presages the futility of judicial intervention in the essentially political conflict of forces by which the relation between population and representation has time out of mind been and now is determined. It may well impair the Court's position as the ultimate organ of "the supreme law of the land" in that vast range of legal problems, often strongly entangled in popular feeling, on which this Court must pronounce. The Court's authority—possessed neither of the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the Court's complete detachment, in fact and in appearance, from political entanglements and by abstention from injecting itself into the clash of political forces in political settlements.

No language that I can employ can speak as loud and as forcefully as the words from these two dissenting opinions as to the ultimate result that is going to flow from this Tennessee decision, joined in by six of the nine justices. The sovereign States are hereby reduced to the status of automatons who must blindly follow the voice and direction of the Federal judges, regardless of what area of human conduct and relationship in either the political or social field the Court chooses to direct its attention. The day is coming when such a usurpation of power on the part of nine such men must and will be repudiated.

My voice has been raised time and time again in viewing with alarm both the language and effects of decisions by that body that transgress constitutional principles, established precedents, and threaten fundamentally the basic security of our country from the onslaught of the Communist conspiracy from without and within. In 1958 I had prepared charts and statistics concerning the attitudes and decisions of individual members of the Supreme Court in cases that involved one aspect or another of the Communist conspiracy. The rule of thumb applied to determine the results of the survey is simple. If the decision of the individual judge was in favor of the position advocated by the Communist Party, or the Communist sympathizer involved in the particular case, it was scored as pro, meaning pro-Communist. If the judge's decision was contrary to this position, he was scored as con—or contrary.

Since 1919 through June of 1961, the U.S. Supreme Court rendered 115 decisions involving Communists or subversive activities in cases where the position of the individual judge could be determined.

In 24 years—1919 to 1942—the Court decided only 11 cases in this category. Of these 11, the first 7 were decided

against the Communist position and in favor of the Government.

Since 1943 down to June 1961, 104 cases involving communism or subversion have been decided where the position of the individual judge could be ascertained.

Madam President, I ask unanimous consent that a chart containing a detailed breakdown of the cases to which I have referred be printed at this point in the RECORD.

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

Supreme Court cases involving subversive activities

[Legend: Pro—vote in accordance with position advocated by Communists; Con—vote against position advocated by Communists; Dnp—Justice did not participate in this case]

	Stone	Roberts	Black	Reed	Frankfurter	Douglas	Murphy	Jackson	Rutledge	Burton	Vinson	Clark	Minton	Warren	Harlan	Brennan	Whittaker	Stewart
Schneiderman v. U.S., 320 U.S. 118 (1943)	Con	Con	Pro	Pro	Con	Pro	Pro [1]	Dnp	Pro	-----	-----	-----	-----	-----	-----	-----	-----	-----
Bridges v. Wixon, 326 U.S. 135 (1945)	Con	Con	Pro	Pro	Con	Pro [1]	Pro	Dnp	Pro	-----	-----	-----	-----	-----	-----	-----	-----	-----
U.S. v. Lovett, 328 U.S. 303 (1946)	-----	-----	Pro [1]	Pro	Pro	Pro	Pro	Dnp	Pro	Pro	Pro	-----	-----	-----	-----	-----	-----	-----
Marzani v. U.S., 335 U.S. 895 (1948) [2]	-----	-----	-----	-----	-----	Dnp	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Christoffel v. U.S., 338 U.S. 84 (1949)	-----	-----	Pro	Con	Pro	Pro	Pro [1]	Con	Pro	Con	Con	-----	-----	-----	-----	-----	-----	-----
Dennis v. U.S., 339 U.S. 162 (1950)	-----	-----	Pro	Con	Pro	Dnp	-----	Con	-----	Con	Con	Dnp	Con [1]	-----	-----	-----	-----	-----
Morford v. U.S., 339 U.S. 258 (1950) [3]	-----	-----	Pro	Pro	Pro	Pro	-----	Pro	-----	Pro	Pro	Dnp	Pro	-----	-----	-----	-----	-----
U.S. v. Bryan, 339 U.S. 323 (1950)	-----	-----	Pro	Con	Pro	Dnp	-----	Con	-----	Con	Con [1]	Dnp	Con	-----	-----	-----	-----	-----
U.S. v. Fleischman, 339 U.S. 349 (1950)	-----	-----	Pro	Con	Pro	Dnp	-----	Con	-----	Con	Con [1]	Dnp	Con	-----	-----	-----	-----	-----
American Communications Assoc. v. Douds, 339 U.S. 382 (1950)	-----	-----	Pro	Con	Pro	Dnp	-----	Pro	-----	Con	Con [1]	Dnp	Dnp	-----	-----	-----	-----	-----
Osman v. Douds, 339 U.S. 846 (1950) [3]	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	Dnp	-----	-----	-----	-----	-----	-----
Blau v. U.S., 340 U.S. 159 (1950)	-----	-----	Pro [1]	Pro	Pro	Pro	-----	Pro	-----	Pro	Pro	Dnp	Pro	-----	-----	-----	-----	-----
Blau v. U.S., 340 U.S. 332 (1951)	-----	-----	Pro [1]	Pro	Pro	Pro	-----	Con	-----	Pro	Pro	Dnp	Con	-----	-----	-----	-----	-----
Rogers v. U.S., 340 U.S. 367 (1951)	-----	-----	Pro	Con	Pro	Pro	-----	Con	-----	Con	Con [1]	Dnp	Con	-----	-----	-----	-----	-----
Gerende v. Election Board, 341 U.S. 56 (1951) [3]	-----	-----	Pro	Pro	Pro	Pro	-----	Pro	-----	Pro	Pro	Pro	Pro	-----	-----	-----	-----	-----
Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951)	-----	-----	Pro	Con	Pro	Pro	-----	Pro	-----	Pro [1]	Con	Dnp	Con	-----	-----	-----	-----	-----
NLRB v. Highland Park Manufacturing Co., 341 U.S. 322 (1951)	-----	-----	Dnp	Con	Pro	Pro	-----	Con [1]	-----	Con	Con	Con	Con	-----	-----	-----	-----	-----
Dennis v. U.S., 341 U.S. 494 (1951)	-----	-----	Pro	Con	Con	Pro	-----	Con	-----	Con	Con [1]	Dnp	Con	-----	-----	-----	-----	-----
Garner v. Board of Public Works of Los Angeles, 341 U.S. 716 (1951)	-----	-----	Pro	Con	Pro	Pro	-----	Con	-----	Pro	Con	Con [1]	Con	-----	-----	-----	-----	-----
Bailey v. Richardson, 341 U.S. 918 (1951) [3]	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	Dnp	-----	-----	-----	-----	-----	-----
Stack v. Boyle, 342 U.S. 1 (1952)	-----	-----	Pro	Pro	Pro	Pro	-----	Pro	-----	Pro	Pro [1]	Pro	Dnp	-----	-----	-----	-----	-----
Adler v. Board of Education, 342 U.S. 485 (1952)	-----	-----	Pro	Con	Pro	Pro	-----	Con	-----	Con	Con	Con	Con [1]	-----	-----	-----	-----	-----
Carlson v. Landon, 342 U.S. 524 (1952)	-----	-----	Pro	Con [1]	Pro	Pro	-----	Con	-----	Pro	Con	Con	Con	-----	-----	-----	-----	-----
Harisiades v. Shaughnessy, 342 U.S. 580 (1952)	-----	-----	Pro	Con	Con	Pro	-----	Con [1]	-----	Con	Con	Dnp	Con	-----	-----	-----	-----	-----
L'Hommedieu v. Board of Regents, 342 U.S. 951 (1952) [3]	-----	-----	Pro	Con	Pro	Pro	-----	Con	-----	Con	Con	Con	Con	-----	-----	-----	-----	-----
Sacher v. U.S., 343 U.S. 1 (1952)	-----	-----	Pro	Con	Pro	Pro	-----	Con [1]	-----	Con	Con	Dnp	Con	-----	-----	-----	-----	-----
U.S. v. Spector, 343 U.S. 169 (1952)	-----	-----	Pro	Con	Pro	Con [1]	-----	Pro	-----	Con	Con	Dnp	Con	-----	-----	-----	-----	-----
Brunner v. U.S., 343 U.S. 918 (1952) [3]	-----	-----	Pro	Con	Dnp	Con	-----	Pro	-----	Pro	Pro	Pro	Pro	-----	-----	-----	-----	-----
Wieman v. Updegraff, 344 U.S. 183 (1952)	-----	-----	Pro	Pro	Pro	Pro	-----	Dnp	-----	Pro	Pro	Pro [1]	Pro	-----	-----	-----	-----	-----
NLRB v. Dant, 344 U.S. 375 (1953)	-----	-----	Pro	Pro [1]	Pro	Pro	-----	Pro	-----	Pro	Pro	Pro	Pro	-----	-----	-----	-----	-----
Orloff v. Willoughby, 345 U.S. 83 (1953)	-----	-----	Pro	Con	Pro	Pro	-----	Con [1]	-----	Con	Con	Con	Con	-----	-----	-----	-----	-----
Heikkila v. Barber, 345 U.S. 229 (1953)	-----	-----	Pro	Con	Pro	Con	-----	Con	-----	Con	Con	Con [1]	Con	-----	-----	-----	-----	-----
Albertson v. Millard, 345 U.S. 242 (1953) [3]	-----	-----	Pro	Con	Con	Pro	-----	Con	-----	Con	Con	Con	Con	-----	-----	-----	-----	-----
In re Isserman, 345 U.S. 286 (1953)	-----	-----	Pro	Con	Pro	Pro	-----	Pro	-----	Con	Con [1]	Dnp	Con	-----	-----	-----	-----	-----
Bridges v. U.S., 345 U.S. 979 (1953) [3]	-----	-----	Pro	Con	Pro	Pro	-----	Dnp	-----	Pro	Con	Dnp	Con	-----	-----	-----	-----	-----
Bridges v. U.S., 346 U.S. 209 (1953)	-----	-----	Pro	Con	Pro	Pro	-----	Dnp	-----	Pro [1]	Con	Dnp	Con	-----	-----	-----	-----	-----
Rosenberg v. U.S., 346 U.S. 273 (1953) [3]	-----	-----	Pro	Con	Pro	Pro	-----	Con	-----	Con	Con [1]	Con	Con	-----	-----	-----	-----	-----
Sacher v. Association of the Bar of the City of New York, 347 U.S. 388 (1954) [3]	-----	-----	Pro	Con	Pro	Pro	-----	Pro	-----	Con	-----	Dnp	Pro	Pro	-----	-----	-----	-----
Barsky v. Board of Regents, 347 U.S. 442 (1954)	-----	-----	Pro	Con	Pro	Pro	-----	Con	-----	Con [1]	-----	Con	Con	Con	-----	-----	-----	-----
Galvan v. Press, 347 U.S. 522 (1954)	-----	-----	Pro	Con	Con [1]	Pro	-----	Con	-----	Con	-----	Con	Con	Con	-----	-----	-----	-----
Quinn v. U.S., 349 U.S. 155 (1955)	-----	-----	Pro	Con	Pro	Pro	-----	-----	-----	Pro	-----	Pro	Con	Pro [1]	Pro	-----	-----	-----
Emspak v. U.S., 349 U.S. 190 (1955)	-----	-----	Pro	Con	Pro	Pro	-----	-----	-----	Pro	-----	Pro	Con	Pro [1]	Con	-----	-----	-----
Bart v. U.S., 349 U.S. 219 (1955)	-----	-----	Pro	Con	Pro	Pro	-----	-----	-----	Pro	-----	Pro	Con	Pro [1]	Con	-----	-----	-----
Peters v. Hobby, 349 U.S. 331 (1955)	-----	-----	Pro	Con	Pro	Pro	-----	-----	-----	Con	-----	Pro	Pro	Pro [1]	Pro	-----	-----	-----
Ullman v. U.S., 350 U.S. 422 (1956)	-----	-----	Pro	Con	Con [1]	Pro	-----	-----	-----	Con	-----	Con	Con	Con	Con	-----	-----	-----
Pennsylvania v. Nelson, 350 U.S. 497 (1956)	-----	-----	Pro	Con	Pro	Pro	-----	-----	-----	Con	-----	Pro	Con	Pro [1]	Pro	-----	-----	-----
Slochower v. Board of Education, 350 U.S. 551 (1956)	-----	-----	Pro	Con	Pro	Pro	-----	-----	-----	Con	-----	Pro [1]	Con	Pro	Con	-----	-----	-----
United Mine Workers v. Arkansas Oak Flooring Co., 351 U.S. 62 (1956)	-----	-----	Pro	Pro	Con	Pro	-----	-----	-----	Pro [1]	-----	Pro	Pro	Pro	Dnp	-----	-----	-----
U.S. v. Zucca, 351 U.S. 91 (1956)	-----	-----	Pro	Con	Pro	Pro	-----	-----	-----	Pro	-----	Con	Con	Pro [1]	Dnp	-----	-----	-----
Communist Party, U.S.A. v. Subversive Activities Control Board, 351 U.S. 115 (1956)	-----	-----	Pro	Con	Pro [1]	Pro	-----	-----	-----	Pro	-----	Con	Con	Pro	Pro	-----	-----	-----
Black v. Cutter Laboratories, 351 U.S. 292 (1956)	-----	-----	Pro	Con	Con	Pro	-----	-----	-----	Con	-----	Con [1]	Con	Pro	Con	-----	-----	-----
Jay v. Boyd, 351 U.S. 345 (1956)	-----	-----	Pro	Con [1]	Pro	Pro	-----	-----	-----	Con	-----	Con	Con	Pro	Con	-----	-----	-----
Cole v. Young 351 U.S. 536 (1956)	-----	-----	Pro	Con	Pro	Pro	-----	-----	-----	Pro	-----	Con	Con	Pro	Pro [1]	-----	-----	-----
Mesarosh v. U.S., 352 U.S. 1 (1956)	-----	-----	Pro	Pro	Con	Pro	-----	-----	-----	Con	-----	Pro	Pro	Pro [1]	Con	-----	-----	-----
Leedom v. International Union of Mine, Mill and Smelter Workers, 352 U.S. 145 (1956)	-----	-----	Pro	Pro	Pro	Pro [1]	-----	-----	-----	Pro	-----	Pro	-----	Pro	Pro	Pro	-----	-----
Amalgamated Meat Cutters and Butcher Workmen v. NLRB, 352 U.S. 153 (1956)	-----	-----	Pro	Pro	Pro	Pro [1]	-----	-----	-----	Pro	-----	Pro	-----	Pro	Pro	Pro	-----	-----
Gold v. U.S., 352 U.S. 985 (1957) [3]	-----	-----	Pro	Con	Pro	Pro	-----	-----	-----	Con	-----	Con	-----	Pro	Pro	Pro	-----	-----
U.S.A. v. George Witkovich, 353 U.S. 194 (1957)	-----	-----	Pro	-----	Pro [1]	Pro	-----	-----	-----	Con	-----	Con	-----	Pro	Pro	Pro	Dnp	-----
Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232 (1957)	-----	-----	Pro [1]	-----	Pro	Pro	-----	-----	-----	Pro	-----	Pro	-----	Pro	Pro	Pro	Dnp	-----
Konigsberg v. State Bar of Calif. and the Committee of Bar Examiners of the State Bar of California, 353 U.S. 252 (1957)	-----	-----	Pro [1]	-----	Con	Pro	-----	-----	-----	Pro	-----	Con	-----	Pro	Con	Pro	Dnp	-----
Jencks v. U.S., 353 U.S. 657 (1957)	-----	-----	Pro	-----	Pro	Pro	-----	-----	-----	Pro	-----	Con	-----	Pro	Pro	Pro [1]	Dnp	-----
Joseph Curico v. U.S., 354 U.S. 118 (1957)	-----	-----	Pro	-----	Pro	Pro	-----	-----	-----	Pro [1]	-----	Pro [1]	-----	Pro	Pro	Pro	Pro	-----
Yates v. U.S., 354 U.S. 298 (1957)	-----	-----	Pro	-----	Pro	Pro	-----	-----	-----	Pro	-----	Con	-----	Pro	Pro [1]	Dnp	Dnp	-----
Schneiderman v. U.S., 354 U.S. 298 (1957)	-----	-----	Pro	-----	Pro	Pro	-----	-----	-----	Pro	-----	Con	-----	Pro	Pro [1]	Dnp	Dnp	-----
Watkins v. U.S., 354 U.S. 178 (1957)	-----	-----	Pro	-----	Pro	Pro	-----	-----	-----	Dnp	-----	Con	-----	Pro [1]	Pro	Pro	Dnp	-----
Sweezy v. New Hampshire, 354 U.S. 234 (1957)	-----	-----	Pro	-----	Pro	Pro	-----	-----	-----	Con	-----	Con	-----	Pro [1]	Pro	Pro	Dnp	-----
Service v. Dulles, 354 U.S. 363 (1957)	-----	-----	Dnp	-----	Pro	Pro	-----	-----	-----	Pro	-----	Dnp	-----	Pro	Pro [1]	Pro	Pro	-----
Heikkinen v. U.S., 355 U.S. 273 (1958)	-----	-----	Pro	-----	Pro	Pro	-----	-----	-----	Pro	-----	Pro	-----	Pro	Pro	Pro	Pro [1]	-----
Yates v. United States, 355 U.S. 66 (1957) [3]	-----	-----	Pro	-----	Con	Pro	-----	-----	-----	Con	-----	Con [1]	-----	Pro	Con	Con	Con	-----
Rowaldt v. Perfetto, 355 U.S. 115 (1957)	-----	-----	Pro	-----	Pro [1]	Pro	-----	-----	-----	Con	-----	Con	-----	Pro	Con	Pro	Con	-----
Green v. United States, 356 U.S. 165 (1958)	-----	-----	Pro	-----	Con	Pro	-----	-----	-----	Con	-----	Con	-----	Pro	Con	Pro	Con	-----
Winston v. United States, 356 U.S. 165 (1958)	-----	-----	Pro	-----	Con	Pro	-----	-----	-----	Con	-----	Con	-----	Pro	Con	Pro	Con	-----
Perez v. Brownell, 356 U.S. 44 (1958)	-----	-----	Pro	-----	Con [1]	Pro	-----	-----	-----	Con	-----	Con	-----	Pro	Con	Con	Con	-----
Yates v. United States, 356 U.S. 363 (1958) [3]	-----	-----	Pro	-----	Pro	Pro	-----	-----	-----	Con	-----	Con	-----	Pro	Pro	Pro	Con	-----
Sacher v. United States, 356 U.S. 576 (1958) [3]	-----	-----	Pro	-----	Pro	Pro	-----	-----	-----	Dnp	-----	Con	-----	Pro	Pro	Pro	Con	-----
Bonetti v. U.S., 356 U.S. 691 (1958)	-----	-----	Pro	-----	Con	Pro	-----	-----	-----	Pro	-----	Con	-----	Pro	Con	Pro	Pro [1]	-----
Nowak v. U.S., 356 U.S. 660 (1958)	-----	-----	Pro	-----	Pro	Pro	-----	-----	-----	Con	-----	Con	-----	Pro	Pro [1]	Pro	Con	-----
Maisenberg v. U.S., 356 U.S. 670 (1958)	-----	-----	Pro	-----	Pro	Pro	-----	-----	-----	Con	-----	Con	-----	Pro	Pro [1]	Pro	Con	-----
Kent et al. v. Dulles, 357 U.S. 116 (1958)	-----	-----	Pro	-----	Pro	Pro [1]	-----	-----	-----	Con	-----	Con	-----	Pro	Con	Pro	Con	-----
Briehl v. Rogers, 357 U.S. 116 (1958)	-----	-----	Pro	-----	Pro	Pro [1]	-----	-----	-----	Con	-----	Con	-----	Pro	Con	Pro	Con	-----

See footnotes at end of table.

Supreme Court cases involving subversive activities—Continued

[Legend: Pro—vote in accordance with position advocated by Communists; Con—vote against position advocated by Communists; Dnp—Justice did not participate in this case]

	Stone	Roberts	Black	Reed	Frankfurter	Douglas	Murphy	Jackson	Rutledge	Burton	Vinson	Clark	Minton	Warren	Harlan	Brennan	Whittaker	Stewart
Dayton v. *Dulles*, 357 U.S. 144 (1958)	------	------	Pro	------	Pro	Pro [1]	------	------	------	Con	------	Con	------	Pro	Con	Pro	Con	------
Beilan v. *Board of Public Education*, 357 U.S. 399 (1958)	------	------	Pro	------	Con	Pro	------	------	------	Con [1]	------	Con	------	Pro	Con	Pro	Con	------
Lerner v. *Casey*, 357 U.S. 468 (1958)	------	------	Pro	------	Con	Pro	------	------	------	Con	------	Con	------	Pro	Con [1]	Pro	Con	------
Speiser v. *Randall*, 357 U.S. 513 (1958)	------	------	Pro	------	Pro	Pro	------	------	------	Pro	------	Con	------	Dnp	Pro	Pro [1]	Pro	------
Prince v. *City and Co. San Francisco*, 357 U.S. 513 (1958)	------	------	Pro	------	Pro	Pro	------	------	------	Pro	------	Con	------	Dnp	Pro	Pro [1]	Pro	------
First Unitarian Church of L.A. v. *City and County of L.A.*, 357 U.S. 545 (1958)	------	------	Pro	------	Pro	Pro	------	------	------	Pro	------	Con	------	Dnp	Pro	Pro [1]	Pro	------
Valley Unitarian-Universal Church v. *City and Co. of L.A.*, 357 U.S. 545 (1958)	------	------	Pro	------	Pro	Pro	------	------	------	Pro	------	Con	------	Dnp	Pro	Pro [1]	Pro	------
Flazer v. *U.S.*, 358 U.S. 147 (1958)	------	------	Pro	------	Pro	Pro [1]	------	------	------	Pro	------	Pro	------	Pro	Pro	Pro	Pro	Pro
Uphaus v. *Wyman*, 360 U.S. 72 (1959)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con [1]	------	Pro	Con	Pro	Con	Con
Barenblatt v. *U.S.*, 360 U.S. 109 (1959)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con [1]	Pro	Con	Con
In re Sawyer (Bousley), 360 U.S. 622 (1959)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con	Pro [1]	Con	Pro
Nelson et al. v. *Cal.*, 362 U.S. 1 (1960)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con [1]	------	Dnp	Con	Pro	Con	Con
Abel v. *U.S.*, 362 U.S. 217 (1960)	------	------	Pro	------	Con [1]	Pro	------	------	------	------	------	Con	------	Pro	Con	Pro	Con	Con
Nuikkanen v. *McAlexander*, 362 U.S. 390 (1960)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con	Pro	Con	Con
Chaunt v. *U.S.*, 364 U.S. 350 (1960)	------	------	Pro	------	Pro	Pro [1]	------	------	------	------	------	Con	------	Pro	Pro	Pro	Con	Con
McPhaul v. *U.S.*, 364 U.S. 372 (1960)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con	Pro	Con [1]	Con
Polites v. *U.S.*, 364 U.S. 426 (1960)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con	Pro	Con	Con [1]
Travis v. *U.S.*, 364 U.S. 631 (1960)	------	------	Pro	------	Con	Pro [1]	------	------	------	------	------	Con	------	Pro	Con	Pro	Pro	Pro
Wilkinson v. *U.S.*, 365 U.S. 399 (1961)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con	Pro	Con	Con [1]
Braden v. *U.S.*, 365 U.S. 431 (1961)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con	Pro	Con	Con [1]
Konigsberg v. *State Bar Cal.*, 366 U.S. 36 (1961)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con [1]	Pro	Con	Con
In re Anastaple, 366 U.S. 82 (1961)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con [1]	Pro	Con	Con
Scales v. *U.S.*,—U.S.—(6-5-1961)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con [1]	Pro	Con	Con
Note v. *U.S.*,—U.S.—(6-5-1961)	------	------	Pro	------	Pro	Pro	------	------	------	------	------	Pro	------	Pro	Pro [1]	Pro	Pro	Pro
CPUSA v. *Board*—U.S.—(6-5-1961)	------	------	Pro	------	Con [1]	Pro	------	------	------	------	------	Con	------	Pro	Con	Pro	Con	Con
CPUSA v. *Catherwood*,—U.S.—(6-12-1961)	------	------	Pro	------	Pro	Pro	------	------	------	------	------	Pro	------	Pro	Pro [1]	Pro	Pro	Pro
Deutch v. *U.S.*,—U.S.—(6-12-1961)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con	Pro	Con	Pro [1]

[1] Wrote opinion.
[2] Per curiam decision; Court equally divided.
[3] Per curiam decision.

Summary: Beginning with Schneiderman *v.* U.S. *(1943) and ending with* Deutch *v.* U.S. *(June 12, 1961)*

Justices	Number of cases participated	Number of opinions written	Pro	Con	Justices	Number of cases participated	Number of opinions written	Pro	Con
Stone	2	0	0	2	Burton	81	6	37	44
Roberts	2	0	0	2	Vinson	32	8	9	23
Black	102	5	102	0	Clark	82	8	21	61
Reed	54	3	14	40	Minton	45	2	10	35
Frankfurter	103	7	69	34	Warren	65	9	62	3
Douglas	100	10	97	3	Harlan	65	14	30	35
Murphy	4	2	4	0	Brennan	51	6	49	2
Jackson	31	4	11	20	Whittaker	42	3	12	30
Rutledge	4	0	4	0	Stewart	20	4	6	14

Mr. EASTLAND. Madam President, from 1943 through 1953, a total of 34 cases in the described category were considered. A majority of the Court voted in favor of the position advocated by the Communists in 15 cases, and held contrary to what the Communists wanted in 19 cases.

Earl Warren took the oath of office as Chief Justice in October 1953. In the 7½ years since he has been Chief Justice, the Court has heard the enormous total of 70 cases or more involving Communist or subversive activities in one form or another. Forty-six of these decisions have sustained the position advocated by the Communists, and 24 have been to the contrary.

In regard to decisions involving subversive activities, the balance of power on the presently constituted Court has been frightfully narrow. Justice Stewart was appointed to the Court in October 1958. He did not participate in any of the cases contained in the original tabulations. He has participated in 20 of the decisions now under discussion since that time. In 12 of these 20 decisions, he was the swing man in a 5-4 decision contrary to the position advocated by the Communist Party. If these 12 decisions had been on the "pro" side, the box score of the Warren Court would stand at 58 pro-Communist decisions and only 12 taking the contrary position.

Now let me turn from the composite results of the opinions to the box score registered by the individual judges. Hugo Black is the senior judge on the Supreme Court. He has been on the Court since August 1937. As to cases involving communism or subversive activities, it is impossible for a man to demonstrate greater consistency than he has evidenced. Over this span of 24 years, he participated in 102 decisions where his position could be ascertained. He supported the position urged upon the Court by the Communist Party or its sympathizers exactly 102 times. His support of decisions contrary to the position urged by the Communists is zero.

Justice Douglas participated in a total of 100 cases. Out of this total he reached a conclusion favorable to the position urged by the Communists 97 times and held to the contrary 3 times.

Chief Justice Warren participated in 65 decisions. His box score is 62 pro and 3 contrary.

Justice Brennan has participated in 51 cases. His score is 49 pro and 2 con.

Justice Frankfurter participated in a total of 103 decisions. His record reveals 69 votes pro and 34 votes con.

Now the pendulum swings to the judges who have opposed the position urged by the Communists more than they have supported it. Justice Clark has the longest record of vigorous opposition to the position favoring communism or subversive activities. Out of a total of 82 opinions, he has been on the pro side only 21 times and contrary 61.

Justice Harlan's decisions total 65—30 pro, 35 con.

Justice Whittaker, 42 decisions—12 pro, 30 con.

Justice Stewart, 20 decisions—6 pro, 14 con.

I ask unanimous consent, Madam President, that the chart reflecting the specific cases decided by the Supreme Court involving subversive activities, with the position of the individual judges and the summary of their pro and con votes, be inserted in the RECORD at this point in my remarks.

There being no objection, the chart was ordered to be printed in the RECORD.

Supreme Court cases involving subversive activities

[Legend: Pro—vote in accordance with position advocated by Communists; Con—vote against position advocated by Communists; Dnp—Justice did not participate in this case]

	Stone	Roberts	Black	Reed	Frankfurter	Douglas	Murphy	Jackson	Rutledge	Burton	Vinson	Clark	Minton	Warren	Harlan	Brennan	Whittaker	Stewart
Schneiderman v. U.S., 320 U.S. 118 (1943)	Con	Con	Pro	Pro	Con	Pro	Pro [1]	Dnp	Pro									
Bridges v. Wixon, 326 U.S. 135 (1945)	Con	Con	Pro	Pro	Con	Pro [1]	Pro	Dnp	Pro									
U.S. v. Lovett, 328 U.S. 303 (1946)			Pro [1]	Pro	Pro	Pro	Pro	Dnp	Pro	Pro	Pro							
Marzani v. U.S., 335 U.S. 895 (1948) [2]						Dnp												
Christoffel v. U.S., 338 U.S. 84 (1949)			Pro	Con	Pro	Pro	Pro [1]	Con	Pro	Con	Con							
Dennis v. U.S., 339 U.S. 162 (1950)			Pro	Con	Pro	Dnp		Con		Con	Con	Dnp	Con [1]					
Morford v. U.S., 339 U.S. 258 (1950) [3]			Pro	Pro	Pro	Pro		Pro		Pro	Pro	Dnp	Pro					
U.S. v. Bryan, 339 U.S. 323 (1950)			Pro	Con	Pro	Dnp		Con		Con	Con [1]	Dnp	Con					
U.S. v. Fleischman, 339 U.S. 349 (1950)			Pro	Con	Pro	Dnp		Con		Con	Con [1]	Dnp	Con					
American Communications Assoc. v. Douds, 339 U.S. 382 (1950)			Pro	Con	Pro	Dnp		Pro		Con	Con [1]	Dnp	Dnp					
Osman v. Douds, 339 U.S. 846 (1950) [2]												Dnp						
Blau v. U.S., 340 U.S. 159 (1950)			Pro [1]	Pro	Pro	Pro		Pro		Pro	Pro	Dnp	Pro					
Blau v. U.S., 340 U.S. 332 (1951)			Pro [1]	Pro	Pro	Pro		Con		Pro	Pro	Dnp	Con					
Rogers v. U.S., 340 U.S. 367 (1951)			Pro	Con	Pro	Pro		Con		Con	Con [1]	Dnp	Con					
Gerende v. Election Board, 341 U.S. 56 (1951) [3]			Pro	Pro	Pro	Pro		Pro		Pro	Pro	Pro	Pro					
Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951)			Pro	Con	Pro	Pro		Pro		Pro [1]	Con	Dnp	Con					
NLRB v. Highland Park Manufacturing Co., 341 U.S. 322 (1951)			Dnp	Con	Pro	Pro		Con [1]		Con	Con	Con	Con					
Dennis v. U.S., 341 U.S. 494 (1951)			Pro	Con	Con	Pro		Con		Con	Con [1]	Dnp	Con					
Garner v. Board of Public Works of Los Angeles, 341 U.S. 716 (1951)			Pro	Con	Pro	Pro		Con		Pro	Con	Con [1]	Con					
Bailey v. Richardson, 341 U.S. 918 (1951) [2]												Dnp						
Stack v. Boyle, 342 U.S. 1 (1952)			Pro	Pro	Pro	Pro		Pro		Pro	Pro [1]	Pro	Dnp					
Adler v. Board of Education, 342 U.S. 485 (1952)			Pro	Con	Pro	Pro		Con		Con	Con	Con	Con [1]					
Carlson v. Landon, 342 U.S. 524 (1952)			Pro	Con [1]	Pro	Pro		Con		Pro	Con	Con	Con					
Harisiades v. Shaughnessy, 342 U.S. 580 (1952)			Pro	Con	Con	Pro		Con [1]		Con	Con	Dnp	Con					
L'Hommedieu v. Board of Regents, 342 U.S. 951 (1952) [3]			Pro	Con	Pro	Pro		Con		Con	Con	Con	Con					
Sacher v. U.S., 343 U.S. 1 (1952)			Pro	Con	Pro	Pro		Con [1]		Con	Con	Dnp	Con					
U.S. v. Spector, 343 U.S. 169 (1952)			Pro	Con	Pro	Con [1]		Pro		Con	Con	Dnp	Con					
Brunner v. U.S., 343 U.S. 918 (1952) [3]			Pro	Con	Dnp	Con		Pro		Pro	Pro	Pro	Pro					
Wieman v. Updegraff, 344 U.S. 183 (1952)			Pro	Pro	Pro	Pro		Dnp		Pro	Pro	Pro [1]	Pro					
NLRB v. Dant, 344 U.S. 375 (1953)			Pro	Pro [1]	Pro	Pro		Pro		Pro	Pro	Pro	Pro					
Orloff v. Willoughby, 345 U.S. 83 (1953)			Pro	Con	Pro	Pro		Con [1]		Con	Con	Con	Con					
Heikkila v. Barber, 345 U.S. 229 (1953)			Pro	Con	Pro	Con		Con		Con	Con	Con [1]	Con					
Albertson v. Millard, 345 U.S. 242 (1953) [3]			Pro	Con	Con	Pro		Con		Con	Con	Con	Con					
In re Isserman, 345 U.S. 286 (1953)			Pro	Con	Pro	Pro		Pro		Con	Con [1]	Dnp	Con					
Bridges v. U.S., 345 U.S. 979 (1953) [3]			Pro	Con	Pro	Pro		Dnp		Pro	Con	Dnp	Con					
Bridges v. U.S., 346 U.S. 209 (1953)			Pro	Con	Pro	Pro		Dnp		Pro [1]	Con	Dnp	Con					
Rosenberg v. U.S., 346 U.S. 273 (1953) [3]			Pro	Con	Pro	Pro		Con		Con	Con [1]	Con	Con					
Sacher v. Association of the Bar of the City of New York, 347 U.S. 388 (1954) [3]			Pro	Con	Pro	Pro		Pro		Con		Dnp	Pro	Pro				
Barsky v. Board of Regents, 347 U.S. 442 (1954)			Pro	Con	Pro	Pro		Con		Con [1]		Con	Con	Con				
Galvan v. Press, 347 U.S. 522 (1954)			Pro	Con	Con [1]	Pro		Con		Con		Con	Con	Con				
Quinn v. U.S., 349 U.S. 155 (1955)			Pro	Con	Pro	Pro				Pro		Pro	Con	Pro [1]	Pro			
Emspak v. U.S., 349 U.S. 190 (1955)			Pro	Con	Pro	Pro				Pro		Pro	Con	Pro [1]	Con			
Bart v. U.S., 349 U.S. 219 (1955)			Pro	Con	Pro	Pro				Pro		Pro	Con	Pro [1]	Con			
Peters v. Hobby, 349 U.S. 331 (1955)			Pro	Con	Pro	Pro				Con		Pro	Pro	Pro [1]	Pro			
Ullman v. U.S., 350 U.S. 422 (1956)			Pro	Con	Con [1]	Pro				Con		Con	Con	Con	Con			
Pennsylvania v. Nelson, 350 U.S. 497 (1956)			Pro	Con	Pro	Pro				Con		Pro	Con	Pro [1]	Pro			
Slochower v. Board of Education, 350 U.S. 551 (1956)			Pro	Con	Pro	Pro				Con		Pro [1]	Con	Pro	Con			
United Mine Workers v. Arkansas Oak Flooring Co., 351 U.S. 62 (1956)			Pro	Pro	Con	Pro				Pro [1]		Pro	Pro	Pro	Dnp			
U.S. v. Zucca, 351 U.S. 91 (1956)			Pro	Con	Pro	Pro				Pro		Con	Con	Pro [1]	Dnp			
Communist Party, U.S.A. v. Subversive Activities Control Board, 351 U.S. 115 (1956)			Pro	Con	Pro [1]	Pro				Pro		Con	Con	Pro	Pro			
Black v. Cutler Laboratories, 351 U.S. 292 (1956)			Pro	Con	Con	Pro				Con		Con [1]	Con	Pro	Con			
Jay v. Boyd, 351 U.S. 345 (1956)			Pro	Con [1]	Pro	Pro				Con		Con	Con	Pro	Con			
Cole v. Young 351 U.S. 536 (1956)			Pro	Con	Pro	Pro				Pro		Con	Con	Pro	Pro [1]			
Mesarosh v. U.S., 352 U.S. 1 (1956)			Pro	Pro	Con	Pro				Con		Pro	Pro	Pro [1]	Con			
Leedom v. International Union of Mine, Mill and Smelter Workers, 352 U.S. 145 (1956)			Pro	Pro	Pro	Pro [1]				Pro		Pro		Pro	Pro	Pro		
Amalgamated Meat Cutters and Butcher Workmen v. NLRB, 352 U.S. 153 (1956)			Pro	Pro	Pro	Pro [1]				Pro		Pro		Pro	Pro	Pro		
Gold v. U.S., 352 U.S. 985 (1957) [3]			Pro	Con	Pro	Pro				Con		Con		Pro	Pro	Pro		
U.S.A. v. George Witkovich, 353 U.S. 194 (1957)			Pro		Pro [1]	Pro				Con		Con		Pro	Pro	Pro	Dnp	
Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232 (1957)			Pro [1]		Pro	Pro				Pro		Pro		Pro	Pro	Pro	Dnp	
Konigsberg v. State Bar of Calif. and the Committee of Bar Examiners of the State Bar of California, 353 U.S. 252 (1957)			Pro [1]		Con	Pro				Pro		Con		Pro	Con	Pro	Dnp	
Jencks v. U.S., 353 U.S. 657 (1957)			Pro		Pro	Pro				Pro		Con		Pro	Pro	Pro [1]	Dnp	
Joseph Curcio v. U.S., 354 U.S. 118 (1957)			Pro		Pro	Pro				Pro [1]		Pro [1]		Pro	Pro	Pro	Pro	
Yates v. U.S., 354 U.S. 298 (1957)			Pro		Pro	Pro				Pro		Con		Pro	Pro [1]	Dnp	Dnp	
Schneiderman v. U.S., 354 U.S. 298 (1957)			Pro		Pro	Pro				Pro		Con		Pro	Pro [1]	Dnp	Dnp	
Watkins v. U.S., 354 U.S. 178 (1957)			Pro		Pro	Pro				Dnp		Con		Pro [1]	Pro	Pro	Dnp	
Sweezy v. New Hampshire, 354 U.S. 234 (1957)			Pro		Pro	Pro				Con		Con		Pro [1]	Pro	Pro	Dnp	
Service v. Dulles, 354 U.S. 363 (1957)			Dnp		Pro	Pro				Pro		Dnp		Pro	Pro [1]	Pro	Pro	
Heikkinen v. U.S., 355 U.S. 273 (1958)			Pro		Pro	Pro				Pro		Pro		Pro	Pro	Pro	Pro [1]	
Yates v. United States, 355 U.S. 66 (1957) [3]			Pro		Con	Pro				Con		Con [1]		Pro	Con	Con	Con	
Rowaldt v. Perfetto, 355 U.S. 115 (1957)			Pro		Pro [1]	Pro				Con		Con		Pro	Con	Pro	Con	
Green v. United States, 356 U.S. 165 (1958)			Pro		Con	Pro				Con		Con		Pro	Con	Pro	Con	
Winston v. United States, 356 U.S. 165 (1958)			Pro		Con	Pro				Con		Con		Pro	Con	Pro	Con	
Perez v. Brownell, 356 U.S. 44 (1958)			Pro		Con [1]	Pro				Con		Con		Pro	Con	Con	Con	
Yates v. United States, 356 U.S. 363 (1958) [3]			Pro		Pro	Pro				Con		Con		Pro	Pro	Pro	Con	
Sacher v. United States, 356 U.S. 576 (1958) [3]			Pro		Pro	Pro				Dnp		Con		Pro	Pro	Pro	Con	
Bonetti v. U.S., 356 U.S. 691 (1958)			Pro		Con	Pro				Pro		Con		Pro	Con	Pro	Pro [1]	
Nowak v. U.S., 356 U.S. 660 (1958)			Pro		Pro	Pro				Con		Con		Pro	Pro [1]	Pro	Con	
Maisenberg v. U.S., 356 U.S. 670 (1958)			Pro		Pro	Pro				Con		Con		Pro	Pro [1]	Pro	Con	
Kent et al. v. Dulles, 357 U.S. 116 (1958)			Pro		Pro	Pro [1]				Con		Con		Pro	Con	Pro	Con	
Briehl v. Rogers, 357 U.S. 116 (1958)			Pro		Pro	Pro [1]				Con		Con		Pro	Con	Pro	Con	
Dayton v. Dulles, 357 U.S. 144 (1958)			Pro		Pro	Pro [1]				Con		Con		Pro	Con	Pro	Con	
Beilan v. Board of Public Education, 357 U.S. 399 (1958)			Pro		Con	Pro				Con [1]		Con		Pro	Con	Pro	Con	
Lerner v. Casey, 357 U.S. 468 (1958)			Pro		Con	Pro				Con		Con		Pro	Con [1]	Pro	Con	
Speiser v. Randall, 357 U.S. 513 (1958)			Pro		Pro	Pro				Pro		Con		Dnp	Pro	Pro [1]	Pro	
Prince v. City and Co. San Francisco, 357 U.S. 513 (1958)			Pro		Pro	Pro				Pro		Con		Dnp	Pro	Pro [1]	Pro	
First Unitarian Church of L.A. v. City and County of L.A., 357 U.S. 545 (1958)			Pro		Pro	Pro				Pro		Con		Dnp	Pro	Pro [1]	Pro	
Valley Unitarian-Universal Church v. City and Co. of L.A., 357 U.S. 545 (1958)			Pro		Pro	Pro				Pro		Con		Dnp	Pro	Pro [1]	Pro	

See footnotes at end of table.

Supreme Court cases involving subversive activities—Continued

[Legend: Pro—vote in accordance with position advocated by Communists ; Con—vote against position advocated by Communists ; Dnp—Justice did not participate in this case]

	Stone	Roberts	Black	Reed	Frankfurter	Douglas	Murphy	Jackson	Rutledge	Burton	Vinson	Clark	Minton	Warren	Harlan	Brennan	Whittaker	Stewart
Flaxer v. *U.S.*, 358 U.S. 147 (1958)	------	------	Pro	------	Pro	Pro [1]	------	------	------	Pro	------	Pro	------	Pro	Pro	Pro	Pro	Pro
Uphaus v. *Wyman*, 360 U.S. 72 (1959)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con [1]	------	Pro	Con	Pro	Con	Con
Barenblatt v. *U.S.*, 360 U.S. 109 (1959)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con [1]	Pro	Con	Con
In re Sawyer (Bousley), 360 U.S. 622 (1959)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con	Pro [1]	Con	Pro
Nelson et al. v. *Cal.*, 362 U.S. 1 (1960)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con [1]	------	Dnp	Con	Pro	Con	Con
Abel v. *U.S.*, 362 U.S. 217 (1960)	------	------	Pro	------	Con [1]	Pro	------	------	------	------	------	Con	------	Pro	Con	Pro	Con	Con
Nuikkanen v. *McAlexander*, 362 U.S. 390 (1960)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con	Pro	Con	Con
Chaunt v. *U.S.*, 364 U.S. 350 (1960)	------	------	Pro	------	Pro	Pro [1]	------	------	------	------	------	Con	------	Pro	Pro	Pro	Con	Con
McPhaul v. *U.S.*, 364 U.S. 372 (1960)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con	Pro	Con [1]	Con
Polites v. *U.S.*, 364 U.S. 426 (1960)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con	Pro	Con	Con [1]
Travis v. *U.S.*, 364 U.S. 631 (1960)	------	------	Pro	------	Con	Pro [1]	------	------	------	------	------	Con	------	Pro	Con	Pro	Pro	Pro
Wilkinson v. *U.S.*, 365 U.S. 399 (1961)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con	Pro	Con	Con [1]
Braden v. *U.S.*, 365 U.S. 431 (1961)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con	Pro	Con	Con [1]
Konigsberg v. *State Bar Cal.*, 366 U.S. 36 (1961)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con [1]	Pro	Con	Con
In re Anastaple, 366 U.S. 82 (1961)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con [1]	Pro	Con	Con
Scales v. *U.S.*,—U.S.—(6-5-1961)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con [1]	Pro	Con	Con
Note v. *U.S.*,—U.S.—(6-5-1961)	------	------	Pro	------	Pro	Pro	------	------	------	------	------	Pro	------	Pro	Pro [1]	Pro	Pro	Pro
CPUSA v. *Board*,—U.S.—(6-5-1961)	------	------	Pro	------	Con [1]	Pro	------	------	------	------	------	Con	------	Pro	Con	Pro	Con	Con
CPUSA v. *Catherwood*,—U.S.—(6-12-1961)	------	------	Pro	------	Pro	Pro	------	------	------	------	------	Pro	------	Pro	Pro [1]	Pro	Pro	Pro
Deutch v. *U.S.*,—U.S.—(6-12-1961)	------	------	Pro	------	Con	Pro	------	------	------	------	------	Con	------	Pro	Con	Pro	Con	Pro [1]

[1] Wrote opinion.
[2] Per curiam decision, Court equally divided.
[3] Per curiam decision.

Summary: Beginning with Schneiderman *v.* U.S. *(1943) and ending with* Deutch *v.* U.S. *(June 12, 1961)*

Justices	Number of cases participated	Number of opinions written	Pro	Con	Justices	Number of cases participated	Number of opinions written	Pro	Con
Stone	2	0	0	2	Burton	81	6	37	44
Roberts	2	0	0	2	Vinson	32	8	9	23
Black	102	5	102	0	Clark	82	8	21	61
Reed	54	3	14	40	Minton	45	2	10	35
Frankfurter	103	7	69	34	Warren	65	9	62	3
Douglas	100	10	97	3	Harlan	65	14	30	35
Murpy	4	2	4	0	Brennan	51	6	49	2
Jackson	31	4	11	20	Whittaker	42	3	12	30
Rutledge	4	0	4	0	Stewart	20	4	6	14

Mr. JAVITS. Madam President, will the Senator yield at that point?

Mr. EASTLAND. I yield.

Mr. JAVITS. May I ask the Senator, so that we may have his view clearly in the RECORD, whether before I came in, or whether he will do so now, state what specific criterion he has set for his statement?

Mr. EASTLAND. That has been put in the RECORD.

Mr. JAVITS. May I ask who sets the criterion that these are pro or anti-Communist decisions?

Mr. EASTLAND. Any lawyer with any sense at all could do that. Intelligent lawyers have done it.

Mr. JAVITS. Could the Senator tell us who the lawyers are who have done that?

Mr. EASTLAND. Yes; my staff has done it.

Mr. JAVITS. The Senator's staff?

Mr. EASTLAND. Yes.

Mr. JAVITS. The Senator's staff is the authority for the criterion?

Mr. EASTLAND. No. I believe the record speaks for itself. I believe the decisions speak for themselves. I do not want to argue the matter with the Senator from New York. This is what the record shows. I know it might displease the Senator from New York, but the record shows it. The test was, if the decision of the individual judge was in favor of the position advocated by the Communist Party or the Communist sympathizer involved in the particular case, it was scored a pro, meaning pro-Communist. If the judge's decision was contrary to this position, it was scored as a con, or contrary position.

Mr. JAVITS. Can we say, therefore, in all fairness that it is the Senator himself, then, who determined that standard, in the Senator's judgment?

Mr. EASTLAND. I think anybody with any intelligence, Madam President, must realize that these cases speak for themselves. This is taken from the documents of the Government of the United States. It is a public record.

Mr. JAVITS. There is no other authority, other than the Senator's statement, then?

Mr. EASTLAND. There is no other authority than the official record. That record speaks for itself.

Mr. JAVITS. The Senator's statement is that that is the official record.

Mr. EASTLAND. That is the official record. It is the record that has gone into the RECORD of this debate.

This is the grim picture of the individual and aggregate results of the attitudes and predilections of both the individual judges and the Court as a whole on issues that have involved the relationship of our laws with activities and manifestations of the Communist conspiracy or related subversive activities within this country. The present balance of opinions on the Court is such that each new decision becomes a grab bag or a game of chance as to which way the Court will go. This is a most narrow balance when fundamentally the issue involved is the security of this country and its ability to protect itself from the machinations of communism.

The Court must be restricted. Unless it is, it will not only snap and bite, but will tear to pieces and devour constitutional government.

Illegitimate and unconstitutional practices get their first footing * * * by silent approaches and slight deviations from legal modes of procedure (*Boyd* v. *United States*, 116 U.S. at page 635).

The widespread illegitimate and unconstitutional practices of today got their first footing by deviations from legal modes of procedure, deviations in fields and areas which aroused sympathy for those deviations rather than criticism of them.

Deviations were of no concern to those who were not harmed by them.

When, in 1944, the Court, with just one Justice dissenting—*Smith* v. *Allwright*, 321 U.S. 649—deliberately and brazenly overruled its decision of a few years before and nullified the white primary nominating system in Texas, people of the North and East and West thought that that served southerners right; why should not Negroes vote in nominating primaries? Overlooked was the fundamental principle: The fact that the Supreme Court, for political purposes, was in that presidential election year invading an area forbidden to it by the Constitution of the United States.

Having succeeded in this first stride, perceiving that most people would wink at deviations when they thought the end

justified the means, the Court took another stride.

With only one Justice dissenting, the Court nullified one of its 70-year-old decisions—*Hall* v. *DeCuir*, 95 U.S. 485, 1878—and held that a Virginia statute relating to the segregation of passengers according to color was a burden upon interstate commerce.

People outside of the South were not concerned about that. Tacitly they said, "Let Virginia and the other Southern States worry about that. Why should not Negroes ride on buses and be seated like any other people?" They overlooked the fundamental principle. They overlooked the fact that again the Supreme Court was testing its strength, and finding out just how far it could go without interference.

Having learned that only we southerners seemed much disturbed by its usurpation of power, and seeing that our fears, and that our expressions of our fears could be drowned out by shouts of "racism" and "demogoguery" and all sorts of name calling, and being aware of the election returns and having read the census reports, a couple of years later it took another step.

For years it had been held that agreements between property owners restricting sales of their property to white persons were not violative of the 14th amendment. The principle had been firmly established, we thought that the 14th amendment erected no shield against mere private conduct, however, discriminatory or wrongful—334 U.S. 13.

But along came election year 1948, and on May 3 of that year the Supreme Court decided that while these restrictive covenant agreements were perfectly legal as between the parties, they became unconstitutional if any State court attempted to enforce them—334 U.S. 1.

The Department of Justice of the United States intervened as a friend of the Court in that case, and helped to induce the Court to decide as it did.

The Honorable Tom C. Clark was Attorney General of the United States then. On August 24, 1949, after President Truman had been elected in November 1948, Mr. Clark became an Associate Justice of the Supreme Court. He still is. He was one of the six who participated in the judgment rendered on March 26, 1962.

At first, many people could not seem to understand the South's distress over the 1954 school segregation decision. Again they overlooked or ignored fundamental principles—eternal constitutional verities. Ever since the adoption of the 14th amendment, the Supreme Court and all other courts which had passed on the question had held that the field of public education was one reserved to the States. These United States had given their pledged word to us. We believed, as Justice Black recently said in an Indian case:

> Great nations like great men should keep their word.

We believed that the United States of America would keep its word to us. We believed that it was firmly established as a corollary to the written Constitution of the United States that the matter of the education of their people in their schools was one for decision by the legislatures of the several States. We believed that because Chief Justice Taft, speaking for a unanimous Court, had said so in 1927—*Gong Lum* v. *Rice*, 275 U.S. 91.

We believed that, and in our belief we spent billions of our people's money relying on the pledged word of the Nation to its people. Our belief was not well founded, as you know.

We tried to say that if the pledged word of the United States of America, speaking through their highest judicial tribunal, could be broken in one respect, it could be broken in any respect, and that your right, Madam President, and my right to worship, to speak, to write—that every one of our constitutional rights—was jeopardized if one of them could be swept aside by five men at any given time.

We "deprecated" them—as Senators and citizens—what now, belatedly, Judge Harlan, as a judge, does.

Where was this deprecation when the Supreme Court, time after time, in year after year, constituted itself "as the last refuge for the correction of" what any five of its members at a given time deemed to be inequality or injustice.

Most of those decisions and their break with the past were applauded.

Let me recount a few of them.

There was *Brown* v. *Board of Education*, 347 U.S. 483.

There were the extensions of that ruling which purported only to nullify the separate but equal doctrine as it applied to public education. Nevertheless, without opinion in any case the Court has applied it to swimming pools, municipal buses, parks, golf courses. The court in Brown against Topeka had said:

> In the field of public education, the doctrine of "separate but equal" has no place.

Without even deigning to tell us why, the Court has universally extended and applied that repeal, even to privately operated businesses—*Burton* v. *Wilmington Parking Authority*, 365 U.S. 715; *Boynton* v. *Virginia*, 364 U.S. 454.

There was *Thompson* v. *City of Louisville*, 362 U.S. 199, and the innumerable cases in which the Court has constituted itself as the supervisor of judicial processes of every State.

Now we turn again to Baker against Carr. We are supposed to live under a government of laws, not of men, and the law covering the question involved in the Tennessee apportionment case was supposed to have been established when *Colegrove* v. *Green*, 328 U.S. 549, was decided in 1946. The three judge court composed of Judges Martin, Boyd and Miller, all Tennesseeans, thought that it was, because they—179 F. Supp. 824—said:

> The question of the distribution of political strength for legislative purposes has been before the Supreme Court of the United States on numerous occasions. From a review of these decisions there can be no doubt that the Federal rule as enunciated and applied by the Supreme Court is that the Federal courts whether from a lack of jurisdiction or from the inappropriateness of the subject matter for judicial consideration will not intervene in cases of this type to compel legislative reapportionment.

Ten decisions of the Supreme Court were cited to support this conclusion of law. First among them was *Colegrove* v. *Green*, 328 U.S. 549. Also there was *MacDougall* v. *Green*, 335 U.S., and *Radford* v. *Gary*, 352 U.S. 991.

That was no answer then, and is no answer now to what Justice Frankfurter had said in his opinion in the Colegrove case regarding elections at large:

> Of course no court can affirmatively remap the Illinois districts so as to bring them more in conformity with the standards of fairness for a representative system. At best we could only declare the existing electoral system invalid. The result would be to leave Illinois undistricted and to bring into operation, if the Illinois Legislature chose not to act, the choice of Members for the House of Representatives on a statewide ticket. The last stage may be worse than the first. The upshot of judicial action may defeat the vital political principle which led Congress more than a hundred years ago to require districting. This requirement, in the language of Chancellor Kent, "was recommended by the wisdom and justice of giving as far as possible to the local subdivisions of the people of each State, a due influence in the choice of representatives so as not to leave the aggregate minority of the people in a State, though approaching perhaps to a majority, to be wholly overpowered by the combined action of the numerical majority, without any voice whatever in the national councils" (p. 553).

Those who speak so lightly of elections at large might think on those words of Chancellor Kent, and think of what an election of Representatives at large would mean in Illinois, New York, Pennsylvania, or even Georgia, with their heavy concentrations of population. They might think, too, of what an election of Senators at large would mean with State lines disregarded. Five States would probably be well represented, and 45 not at all.

The fallacy of the position of at least four of the majority in this Tennessee case follows the fallacy appearing in Justice Black's dissent in the case of Colegrove against Green. If a voter lives in a congressional district having a population of 900,000 and another voter lives in a congressional district having a population of 112,000, the former suffers no discrimination as to any voting right, despite the fact that Mr. Justice Black thought that in such a situation—

> Such a gross inequality in the voting power * * * irrefutably demonstrates a complete lack of effort to make an equitable apportionment (328 U.S. 569).

The right of an American citizen to representation in the American Congress stems from the Constitution of the United States, and he has only such rights as the Constitution or some amendment thereto gives him.

The right of an American citizen to representation in his State legislature is only such as the constitution of his State gives him, provided only that his rights shall not be affected by his race or color or sex.

The right of the States of the Union, and of an American citizen residing in any one of them, to representation in

the House of Representatives was initially determined by article I, section 2, paragraph 3, of the Constitution. After the War for Southern Independence, that paragraph was altered by section 2 of the 14th amendment. The appellants' rights were said to rest on section 1 of that amendment; to wit, that no State shall deny to any person within its jurisdiction the equal protection of the laws. But the very next section is the only basis upon which any State or any person in a State can claim any constitutional right to be represented in Congress. That constitutional provision is that Representatives shall be apportioned among the several States according to their respective numbers. If there are 437 Members of the House of Representatives, to be divided among 50 States having a population of 180 million, a State having a population of 3 million has a constitutional right to three one-hundred-and-eightieths or one-sixtieth of those Representatives. That is the sum total of the State's constitutional right. A fortiori, no citizen of a State can have a greater constitutional right. I am not unmindful of *Smiley* v. *Holm*, 285 U.S. 355, nor of the statute codified as title 2, section 2a, United States Code, the validity of which has never been confirmed. (See 171 F. 2d 986; 339 U.S. 162, *Dennis* v. *United States*.)

The right of the States of the Union and the right of an American citizen residing in any one of them, to representation in the Senate of the United States was initially determined by article I, section 3, paragraph 1 of the Constitution. It is now determined by amendment 17:

> The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof for 6 years and each Senator shall have one vote.

It makes not the slightest difference in a State's constitutional rights to the Senators, or in whatever constitutional right any citizen of a State may have in that respect, that both of those Senators may be from the same block in the same street.

I have said that the right of an American citizen with respect to his State legislature is only such as the Constitution of his State gives him, provided only that his rights shall not be adversely affected by his race, color, or sex—*Smith* v. *Blackwell*, 34 F. Supp. 989, affirmed 115 F. 2d 186; *Tedesco* v. *Board of Supervisors*, 43 So. 2d 514, 339 U.S. 940.

All of the States had governments when the Constitution was adopted. In all, the people participated to some extent, through their representatives elected in the manner specially provided. These governments the Constitution did not change. They were accepted precisely as they were, and it is therefore to be presumed that they were such as it was the duty of the States to provide. Thus we have unmistakable evidence of what was republican in form, within the meaning of that term as employed in article IV, section 4 of the Constitution. It is this clause which expresses the full limit of national control over the internal affairs of the State—*South Carolina* v. *United States*, 199 U.S. 454.

The 14th amendment added nothing to the national control over the internal affairs of the State so far as a citizen's right to representation is concerned. Indeed, until the recent change in notions by Justices of the Supreme Court, it could safely have been said that it added nothing to the national control over the internal affairs of the State, so far as a citizen's right to vote was concerned.

That that is a truism is demonstrated by the fact that in 1875 the Supreme Court decided that the 14th amendment did not require a State to permit women to vote—*Minor* v. *Happersett*, 21 Wall. 175. It was not until the adoption of the 19th amendment in 1920, a half century after the ratification of the 14th, that female citizens received the constitutional right to vote.

If the 14th was not intended to give a female citizen the right to vote, and was not sufficiently broad in its terms so to do, certainly it could have no legal, constitutional effect on the question at issue in the Tennessee case.

Long after the adoption of the 14th amendment, the Supreme Court had for adjudication the meaning of the term "legislatures" as used in article V of the Constitution.

Of it, the Court said:

> That was not a term of uncertain meaning when incorporated into the Constitution. What it meant when adopted it still means for the purpose of interpretation. A legislature was then the representative body which made the laws of the people. The term is often used in the Constitution with this evident meaning. (*Hawke* v. *Smith*, No. 1, 253 U.S. 221, 227 (1920).)

How that representative body was to be composed, how selected, how apportioned was not changed by the 14th amendment.

Because of the diversity of opinion among the eight judges, there were 54 pages in the so-called opinion of the court delivered by Mr. Justice Brennan. Justice Douglas concurred with 10 pages; Justice Clark wrote a separate concurrence of 12 pages, plus 3 of tables. Justice Stewart concurred in 2 pages or so. The Chief Justice and Justice Black concurred without writing. Justice Frankfurter, with whom Mr. Justice Harlan joined in dissenting, wrote 4 pages, and then Justice Harlan wrote a separate dissent of 19 pages. No one knows exactly what the majority of six judges had in their minds. They only cried havoc, and sowed a wind that was soon to reap a whirlwind. In both State and Federal jurisdictions courts will be enmeshed in the political thicket of apportionment for years to come unless something is done to give back to the States and to the people those precious and basic rights not only to which they are entitled under the Constitution, but also which were reserved forever by those who entered into the original compact and who delegated only certain specific and enumerated powers to the Federal Establishment.

As violently as I am opposed to the enactment of the presently pending literacy standard bill, I must say, in all candor, that it is of small concern considering the more far-reaching and basic issues which confront the people of this country today. The political, economic, and social growth and development of this country was achieved without the Supreme Court of the United States acting as a superlegislature and arrogating unto itself powers and rights not granted under the Constitution and involving areas wherein it has no constitutional authority to act. This growth and development was not achieved by the executive branch of this country seizing unto itself the power to legislate through Executive orders and using the Department of Justice as an instrument to interfere with and influence the action of our courts through amicus curiae appearances in cases and controversies not involving the U.S. Government. When this debate is closed and the presently pending substitute amendment is defeated, this Senate and the Congress should turn its attention to more important considerations, and none can be more important than the taking of proper steps to curb and to restrain the judicial branch of this Government from its present heedless and headlong course and to see that the executive branch performs only those functions which it is entitled to perform by statutory authorization from this Congress.

Madam President, the Senate is again confronted with the prospect of a long debate on the alleged issue of proposed "civil rights" legislation. At least it can be said about the presently proposed bill that it is new and unique. We will not be required to go over the ground that has been plowed time and time again in past debates.

It is now proposed that by an act of Congress the constitutions and laws of the 50 States of the Union be restricted in regard to voter qualifications by an arbitrary rule of thumb fixed by the Congress of the United States in regard to so-called literacy requirements, and that the constitutions and laws of at least 21 States be nullified, abrogated, or supplemented in their presently enacted form.

Few measures have ever been proposed in the Senate that were more basically and patently unconstitutional than is this bill "to protect the right to vote in Federal elections free from arbitrary discrimination by literacy tests or other means." It would contravene the division of powers set forth in the Constitution, in article I and article III, between the legislative and judicial branches of the Federal Government.

The entire portion of section 1 of the bill represents the legislative performance of a judicial function, in that it attempts to make findings of fact and conclusions of law on matters which are clearly controversies that must, under our system, be determined under article III, which provides:

> The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.

The whole purpose of section 1 of the proposed bill is to establish a predicate which will form no part of the organic

law of the statutes of the United States, but which must be set forth in detail to give any slight degree of credence, validity, or constitutionality to the language of the new statute that is proposed to be enacted. This attempted exercise in factfinding is a gross invasion of the judicial processes.

Section 1(a) provides:

> Congress finds that it is essential to our form of government that all qualified citizens have the opportunity to participate in the choice of elected officials.

This country has managed to survive, develop, and prosper during the 175 years of its existence without any such alleged finding being required on the part of Congress to insure the continuation and existence of our form of government. Basically, the growth and development of our country has resulted from a form of government that delegated to the Federal Establishment certain specific powers and reserved to the States and the people all other powers not so specifically delegated. The establishment of qualifications for citizens to have the opportunity to participate in the choice of elected officials not only was within the residual powers retained by the States and the people, but also was specifically written into the language of the Constitution itself as being basic to the form of government that was established. When article I, section 2, was drafted, it meant and was intended to mean when it was written into the Constitution the same thing that it means today, that—

> 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.

When the time came to make a basic change in the original charter and the people were permitted to vote directly for Members of the Senate in addition to Members of the House, the 17th amendment to the Constitution reiterated, insofar as the election of Senators was concerned:

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

For this Congress to attempt to find that it is essential to our form of government to transgress not only the Constitution of the United States but also the experience of history shocks both sense and reason. The truth is that when one stands on the floor and waves what is purported to be an issue involving civil rights, sense and reason go out the window. Nothing is more important to the ultimate survival of our country and to the welfare of our people than the preservation of both the form and the fabric of our republican form of government as established by the United States Constitution, and this Congress has neither the power nor the right to make such a finding as is included in 1(a) of the proposed bill.

Section 1(b) provides:

> Congress further finds that the right to vote in Federal elections should be maintained free from discrimination and other corrupt influence.

Both the civil and criminal statutes of the United States are filled with a vast arsenal of legislative enactments designed solely and alone for the purpose of protecting that class of citizens encompassed in the language of the 15th amendment from being denied or abridged the right to vote on account of race, color, or previous condition of servitude. Tools not only are available to individuals, per se, to protect themselves from being denied or abridged the right to vote by the United States or any State, but also the Attorney General of the United States has been clothed with the power to act as both the guardian and advocate of this class and see that the right of this class of citizens 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. Nothing could be more surplusage nor more meaningless than this proposed finding for Congress to make.

Madam President, I propose to finish my argument later in the debate, but at this time I ask unanimous consent that I may yield to the distinguished Senator from Pennsylvania [Mr. CLARK] on the same terms on which I yielded to the distinguished Senator from Illinois [Mr. DIRKSEN] and after the Senator from Pennsylvania concludes, that the Senate then recess until 12 o'clock noon tomorrow.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. CLARK. Madam President, I thank my friend from Mississippi for his courtesy in yielding to me. As I am one of the supporters of the pending bill, I believe it desirable that I should state for the public record my reasons for believing that legislation should be enacted by the Congress and signed by the President which would require all of the States to permit any citizen of the United States to vote for candidates for Federal office, whether in a primary or in a general election, provided the citizen of the United States had completed six grades of education in the public school system or its equivalent in a recognized private school.

First, I wish to develop the need for the proposed legislation. For many years it has been well known that in certain States of the Union so-called literacy requirements of State legislation have been utilized for the purpose of denying to citizens of the United States the right to vote because of their race or color. That fact, widely known for many years, has been documented in recent reports of the Civil Rights Commission. Those reports have been available to Members of this body and have been referred to from time to time in the present debate. I quote only a very few of the more outstanding findings of the Commission made after extensive hearings and investigation. I quote from a report of the Commission:

> Substantial numbers of Negro citizens are, or recently have been, denied the right to vote on the grounds of race or color in about 100 counties in 8 Southern States.

That statement appears on page 135 of the 1961 report of the Commission.

The Commission further found:

> A common technique of discriminating against would-be voters on racial grounds involves the discriminatory application of legal qualifications for voters. Among the qualifications used in this fashion are requirements that the voter be able to read and write, that he be able to give a satisfactory interpretation of the Constitution, that he be able to calculate his age to the day, and that he be of "good character."

That statement appears on page 137 of the 1961 report.

It must be clear that registrars or other officials of the voting precincts under legislation of that sort are able, if they so desire, to discriminate against citizens of the United States on the ground of race or color. The Commission has found that what they can do under such legislation they have done extensively in 100 counties in 8 Southern States.

As another example, in one county a Federal district judge found that six Negro applicants, two of whom had master's degrees from recognized universities, five of whom had bachelor's degrees from recognized colleges or universities, and one of whom had 1 year of college training, were denied the right to vote on the ground that they could not read intelligently or write sections of the State constitution. That statement appears at page 116 of the Senate hearings.

As another example, a Negro schoolteacher was rejected when she appeared to register or to vote because in reading a long passage aloud, she pronounced the word "equity" as though it were spelled "eequity," with two "e's" instead of one.

Some of my colleagues will perhaps recall incidents on the floor of this body of Senators taking at least equal liberties with the English language and its pronunciation.

The incident to which I referred appears in the hearings on page 262.

As another example, on six occasions Negro applicants alleged that they were rejected because they did not answer questions to the registrar's satisfaction. Among such questions were the following:

> What does "create" mean? Who was the Creator? Do you know how you were born? Are all people born alike? Was I born like Queen Elizabeth? When God made you and President Eisenhower, did he make both of you the same?

It occurs to me that these questions raise, in addition to interesting problems of physiology, various problems of philosophy, which are well beyond my capacity to answer definitively, and which, I suspect, should not in a properly administered voting precinct be required to be answered to the satisfaction of a registrar as a condition to the right to register to vote.

This incident appears on page 33 of the 1961 report.

Finally, a witness from Red River Parish, La., testified that the registrar asked him certain questions concerning, "I believe, in the Constitution, about habeas corpus. I told him I thought it was speedy trial, you know, been in jail

and you want to get a hearing, he asked for speedy trial. He said, 'Well, that wasn't quite it.'"

His application to register was denied.

This appears at page 59 of the report.

Perhaps after practicing law for more than 35 years, I could come forth with a better definition of habeas corpus than that, but I submit that it would not be much better. I suggest that even under the stringent literacy test imposed, the applicant made a good enough answer to permit a fairminded registrar to register the applicant and allow him to vote.

So much for the need for this proposed legislation.

I turn now to the question as to whether the pending proposal meets that need in a wise and reasonable manner. I conclude that it does. It has been argued in the debate with great ability and conviction by the senior Senator from Florida [Mr. HOLLAND], among others, that the bill is unwise because we cannot by legislation enfranchise those who either do not wish to be enfranchised because they will not exercise the franchise, or those whom a substantial portion of the local population do not wish to see enfranchised, and are prepared to take drastic action to insure that the franchise is not granted to such people.

The able Senator from Florida quoted examples of substantial progress that has been made in Negro voting in Florida, where there is neither a poll tax nor a literacy test. He indicated that there was still a long way to go before a majority of the Negro population in Florida would vote. He attributed that condition to two factors: First, indifference; second, the existence in a few counties in the State of Florida of an unfortunate atmosphere of antagonism between the races, which, he felt, prevented Negroes from registering to vote, which condition he hoped in due course would be eliminated from those areas, as it had been in the rest of the State.

My own view is that the legal situation in Florida as described by the able Senator is entirely satisfactory and one to which I can take no present exception. My point is, however, that what is true in Florida is not true in many other States, and that the basic legal condition under which all States should operate is one in which no artificial restrictions are imposed on the rights of citizens of the United States to register and vote by reason of their race or color; and that this requirement of the Constitution of the United States is one which, in view of the facts found by the Civil Rights Commission, and well known throughout the country before they were so elaborately and ably documented, imposes a duty on the Congress of the United States and on the President to remove legal disparities which now exist in States where the 100 counties are located, and where citizens of the United States are being denied the privileges and immunities to which they are entitled.

So I conclude upon this point as I began, that the proposed legislation is wise.

I should like to say a word, finally, as to whether the legislation is constitutional. If it is needed—and I suggest that it is—and if it is wise—and I believe it is—in my judgment Congress should adopt it and send it for signature to a President who is prepared to sign it, unless it is reasonably clear that the proposed legislation is unconstitutional.

I turn now to the question of constitutionality. It must be apparent from the debate to date that able lawyers are in disagreement as to whether or not the proposed legislation meets the requirements of the Federal Constitution. In the CONGRESSIONAL RECORD for yesterday I have read the comments of two very able Senators who are also able lawyers, appearing in connection with the effort of the majority leader to obtain a unanimous consent agreement to limit debate on the pending business. These were comments by the senior Senator from Georgia [Mr. RUSSELL] and the junior Senator from Virginia [Mr. ROBERTSON], both of whom stated that the unconstitutionality of this provision was very clear.

With deep regret, I must differ with the legal opinion of my respected colleagues. I suggest to them and to my other good friends in the Senate who contend so ably and strenuously that the proposed legislation is unconstitutional, that most, if not all of them—and I do not charge all of them—are very much inclined to discuss the constitutionality of the proposed legislation as though the Constitution of the United States, as drafted by the Founding Fathers and approved by enough of the Original Thirteen States to bring it into effect, had never been changed.

I submit that their argument proceeds not only without giving proper weight to the first 10 amendments, but by practically ignoring the Civil War amendments, especially the 14th and 15th. We who rest our case on the adoption of the 14th and 15th amendments are of the legal view that those amendments removed any doubt whatever which might have arisen under the original Constitution as to the constitutionality of the pending measure. Certainly, able lawyers who are not Members of this body have spoken clearly in support of the constitutionality of the proposed legislation.

I do not intend to engage in an elaborate or detailed legal argument on the question of constitutionality, but I point out that the opinion of the Attorney General of the United States on a legal question is entitled to great weight in this body. It may not be binding. Even in my brief stay in this body, I have participated with other Senators in voting for legislation which an Attorney General of the United States felt was legally unwise or even unconstitutional. Nevertheless, I believe the chief legal officer of the executive arm of the Government is entitled to have his opinion treated with great weight in this body. This must be particularly true when we consider that that opinion is not only his own opinion as an individual lawyer, but is also buttressed by the views of a large group of able attorneys, most of whom are not emotionally involved in the political, sociological, or even economic aspects of the proposed legislation, but are advising their chief purely on the basis of their objective opinion as members of the bar, sworn to support and defend the Constitution of the United States.

At page 264 of the hearings, the Attorney General said:

> Let me say a word or two about the constitutional basis for the proposed legislation.

I interpolate that he is talking about the bill under consideration.

> We have gone into the matter with great care and thoroughness. * * * But the essential constitutional basis for the proposed legislation is really quite simple.
>
> On their face and as a matter of history, the 14th and 15th amendments are an affirmative grant of power to Congress to enact legislation to guarantee the rights protected by these amendments, including principally the right to vote.

I stress the phrase "including principally the right to vote." The Attorney General continues:

> I have no doubt that this bill is valid under that grant of power.

The opinion of the Attorney General of the United States and of the lawyers of the Department of Justice, which he heads, is buttressed by the opinion of Dean Erwin Griswold, of the Harvard Law School, a member of the Civil Rights Commission speaking for himself and for the Civil Rights Commission:

> In my opinion and in the opinion of the Commission, the proposed legislation meets the test of constitutionality.

That statement appears on page 117 of the hearings.

Dean Griswold, it should be noted, making clear that he was speaking for himself as a lawyer and for the Civil Rights Commission, and not as the dean of the Harvard Law School, based his argument on the 14th and 15th amendments, with which all Senators are familiar, and which I do not need to read into the RECORD. However, I should like to read into the RECORD section 1 of the 14th amendment, because it seems to me to make this question very clear. I quote section 1 of the 14th amendment:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

I shall not read the remainder of the section, although it is pertinent and relevant; but I stress that the people in 100 counties in 8 States are citizens of the United States, without the shadow of a doubt. As citizens of the United States, they are entitled to the privileges and immunities thereof, without a doubt; and one of the most important of those privileges and immunities is the right to vote on an equal basis with every other citizen of the United States, regardless of race or color.

My view, the view of Dean Griswold, and the view of the Attorney General, Hon. Robert F. Kennedy, as to the constitutionality of the present proposed legislation, find substantial support in

decisions of the Supreme Court of the United States. I shall cite only three.

Lassiter v. *Northampton Election Board,* 360 U.S. 45, page 53, decided in 1959, states:

> Of course, a literacy test, fair on its face, may be employed to perpetuate that discrimination which the 15th amendment was designed to uproot.

The provision of the 15th amendment which I did not read into the RECORD earlier is this:

> SECTION 1. 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.

In the Lassiter case, there was no finding of such discrimination; but the evidence before the Senate, represented not only in the hearings held by the Subcommittee on Constitutional Rights of the Committee on the Judiciary, but also in the reports of the Civil Rights Commission, makes it very clear that in 100 counties of 8 States the discrimination which the 15th amendment was designed to uproot does exist, and exists on a widespread basis.

Another case is *Ex parte Yarbrough,* 110 U.S. 651, decided in 1884, an old case frequently cited, has a pertinent quotation at page 664, which I should like to read:

> The 15th amendment of the Constitution, by its limitation on the power of the States in the exercise of their right to prescribe qualifications of voters in their own elections, and by its limitation of the power of the United States over that subject, clearly shows that the right of suffrage was considered to be of supreme importance to the National Government, and was not intended to be left within the exclusive control of the States.

Finally, Madam President, I refer to the case of *Davis Schnell,* 336 U.S. 933, affirming the decision of a lower court—the District Court for the Southern District of Alabama—decided in 1949, which had overturned a provision of the Alabama law requiring a citizen to understand and explain any article of the Constitution, because, said the Court, that law had a discriminatory purpose and was also administered in a discriminatory manner.

From these cases and from this brief consideration of the 14th and 15th amendments, buttressed by the opinions of the Attorney General and of Dean Griswold, I take it that this proposed legislation is constitutional. It is clear to me that it is so apparently constitutional that no Member of the Senate, particularly no Member of the Senate who is also an attorney, need hesitate for an instant to vote in support of this bill because of a fear of its lack of constitutionality.

Madam President, in opposition to the constitutional argument I have very briefly made, Senators who oppose this measure refer to article 1, section 4 of the Constitution, which provides:

> 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.

Some Senators say this provision gives the States the unqualified right to set the qualifications for voting, and to set the qualifications by literacy test statutes in the eight Southern States. Reference is also made to article I, section 2 of the Constitution and to the 17th amendment, which provides for the direct election of Senators, on the ground that these provisions of the Constitution and of the amendment permit the States to set the qualifications for electors for Members of the House of Representatives and Members of the Senate, respectively.

But, Madam President, in rebuttal to that argument, I submit that the second clause of section 2 of article 1 shows that the States' power to set such qualifications is not absolute. Furthermore, I submit that even if it were absolute, it is further qualified by the 14th amendment and the 15th amendment of the Constitution, which must be carried into effect to the same extent as are all other provisions which were adopted earlier, and which, as I have argued, render the pending legislation constitutional.

The findings of the Civil Rights Commission constitute ample proof that literacy tests have been used and are being used today to deny voting rights to citizens of the United States who, under the 14th amendment and the 15th amendment, are clearly citizens entitled to the privileges and immunities of all citizens—and, in particular, to the right to vote.

I submit further that the pending legislation does not set qualifications; it merely states that an individual who has a certain degree of education—namely, 6 years of grade school—is entitled to these privileges and immunities and to the right to vote. It does not deny anything to anyone. It does not set any qualifications of that sort. It merely states that if a person has this qualification, no one may deny him the right to vote because of his race or his color.

In conclusion, Madam President, I strongly support the pending measure, first, because I think the record demonstrates that it is needed; second, because I believe it to be wise; and, finally, because I have no doubt that it is constitutional.

Madam President, I yield the floor.

Mr. DOUGLAS. Madam President, I congratulate the Senator from Pennsylvania on his very able argument. The bar of Philadelphia has long been known as the most learned in the Nation; and the Senator from Pennsylvania [Mr. CLARK] is one of the most able members of that most able bar.

Mr. CLARK. I thank the Senator from Illinois for his statement. He and I have been teasing each other about that matter for some years now.

WITHHOLDING OF THE TAX OWED ON DIVIDENDS AND INTEREST

Mr. DOUGLAS. Madam President——

Mr. EASTLAND. Madam President, I ask unanimous consent that at this time I may yield to the Senator from Illinois, under the same terms under which I yielded to the Senator from Pennsylvania [Mr. CLARK].

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

Mr. DOUGLAS. I thank the Senator from Mississippi.

Madam President, during the last few weeks I have received more than 30,000 letters from constituents in Illinois who protest against the withholding provisions for dividends and interest which are included in a tax bill which now is before the Senate Finance Committee.

I find that from one-third to one-half of those who have written the letters seem to think such a withholding is a new tax on dividends and interest. But, of course, that is a mistake. Dividends and interest are income, just as wages and salaries are income; and income is taxable. Dividends and interest are taxable, just as wages and salaries are taxable.

The only difference is that some 20 years ago Congress included in the Revenue Code a provision which causes the basic tax on wages and salaries to be withheld by those who pay them. In other words, that resulted in withholding at the source for wages and salaries; but that has never been practiced insofar as dividends and interest are concerned. In the case of dividends and interest, the recipient is expected to declare the amount so received, in the income tax statement which he files at the end of the year.

The records show that approximately $4 billion of dividends and interest paid out each year is not reported by the recipients, and therefore escapes taxation; and it is estimated that approximately $800 million in taxes is thus avoided or evaded. The fact that this $800 million of taxes is not paid means that the burden on those who do pay taxes becomes correspondingly heavier.

I wish to emphasize that the withholding system that is proposed for dividends and interest does not impose new taxes; it is merely a better means of collecting existing taxes. The very fact that such a large proportion of those who have written letters to me and to other Members of the Senate assume that this is a new tax is an indication of the widespread evasion or avoidance of the taxes now owed on these amounts.

I want to make it very clear that in a large percentage of cases this is a perfectly innocent avoidance. Very commonly, the person who has a deposit in a building and loan association or in a savings institution allows the interest which is credited to him annually to be accumulated as a capital deposit to his account, and it does not pass into his checking account. Many people innocently do not realize that this is income, and consequently do not declare this income upon their income tax statements.

I hope very much that the basic fact that taxes are already owed on these amounts can be conveyed to the public. I am trying to do so in connection with the taxpayers of my own State.

It is estimated by the Treasury that, while not all of this $800 million would be collected by the proposed withholding

system, approximately $650 million would be.

This is the most important loophole which the administration is trying to plug in the current tax bill. If this effort should be lost, either before the bill passes the Senate or if it should be eliminated from the final tax bill, there will be very few gains in revenue which can then be distributed either in the form of lower taxes or, as the administration proposes, in the form of an investment subsidy.

I have had prepared a series of questions and answers upon this bill which try to go into the question of the magnitude of the problem and the methods of collection and recording.

We have checked these questions and answers with experts, and we believe the answers to be accurate. They do not cover the entire field. Later I hope to insert in the RECORD additional questions and answers which will cover further points, but there has been so much misunderstanding that I felt I should not delay further in putting into the RECORD some material on these basic points, so that a certain degree of popular enlightenment may be carried out.

So, Madam President, I ask unanimous consent that there may be printed in the RECORD at the conclusion of my remarks a series of questions and answers on the withholding of taxes on dividend and interest.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Illinois? The Chair hears none, and it is so ordered.

(See exhibit 1.)

Mr. COOPER. Madam President, will the Senator yield?

Mr. DOUGLAS. I yield.

Mr. COOPER. I am glad the Senator has made this statement. Like other Members of Congress, I have received thousands of letters on the withholding section of the tax bill. In the last week or 10 days we have answered 2,500 letters. After a time, I realized that many persons, particularly older persons, believe an additional 20 percent tax on dividends and interest would be imposed by the bill.

Some of these persons have sent me letters which they had received from institutions, which could convey the impression that a 20-percent additional tax was being levied upon them. I tried to answer those questions in the letters and give the facts, but I am very glad the Senator from Illinois has spoken on the floor and has made this statement. I think it is very bad that some institutions are leaving the impression that a new tax is being imposed upon people, particularly older persons.

Mr. DOUGLAS. I thank the Senator from Kentucky. As usual, the widows and orphans are being dragged into a discussion of this matter. I wish to point out that all children under the age of 18 by merely filing a statement of their age would be exempt from the withholding provision. Also, anyone over the age of 18 who reasonably believes that he or she would not have any tax to pay can, under the bill, file a withholding exemption certificate with the paying institution, and there will be no withholding whatsoever upon that income.

The Treasury estimates, also, that of the over 22 million individuals who receive dividends and interest, only about 2 million will be overwithheld against. That is only about 1 out of every 10. And of those, only 1 million will be overwithheld against to the extent of more than $10 annually.

It is interesting to note, and I am informed of this by the Treasury, that there are 37 million wage earners and salaried workers who are overwithheld against each year. In other words, 37 million are now overwithheld against in the case of wages and salaried workers—but only about 2 million would be overwithheld against in the case of those receiving dividends and interest.

I have not heard any weeping on the floor or in the mails about these 37 million wage and salary workers who are overwithheld against. It should be further noted that the refunds in the case of wage and salaried workers come only once a year, generally five quarters after the beginning of the taxable year upon which there has been overwithholding. The refunds in the case of recipients of dividends and interest will be quarterly, or four times as rapidly. Therefore, there will be very little loss of interest during that time.

To me it is really extraordinary that people who will not only accept but defend the system of withholding on wages and salaries should nevertheless balk on the withholding tax being applied to dividends and interest. Should not they, in common fairness, be given equal treatment?

As a matter of fact, we are giving easier terms to the recipients of dividends and interest than the revenue law accords to the recipients of wages and salaries. If we eliminate from the tax bill the provision for withholding against dividends and interest, then, in all fairness, we should eliminate the withholding provision on salaries and wages from the tax code. I shall be sorely tempted to make such a motion. I do not think, in logic or consistency, unequal or superior treatment should be given to dollars received as a result of ownership than is accorded to dollars received from immediate effort.

I think it is about time that some sanity was introduced into a discussion of this measure, and I hope very much the building and loan associations and some of the savings institutions realize just what the issue is and desist from stirring up this mail campaign. I also hope that they will get their facts straight in the information which they give to their depositors.

Mr. COOPER. Madam President, will the Senator yield once more?

Mr. DOUGLAS. I yield.

Mr. COOPER. One of the charges made to me in the hundreds and thousands of letters I have received is that if dividends and interest should be withheld over and above the amount of tax liability, there will be no procedure by which the overpayment may be collected from the Federal Treasury. Will the Senator respond to that statement?

Mr. DOUGLAS. I am very glad that the Senator from Kentucky has mentioned that point. What will happen is that the recipient of dividends or of interest, who believes he has been overwithheld against, can file a statement quarterly and receive a refund without elaborate checking on the part of the Federal Government. There will be spot checks instituted to determine whether recipients are lying, but there will be a minimum of auditing of claims. The claims, if made, will be honored without elaborate bookkeeping.

After the first quarter the Treasury Department will actually send to the recipient a form upon which the refund claim can be made for the second, third, and fourth quarters of the year.

The Treasury Department is willing to take such statements on faith because if an untrue statement is made it will represent fraud, and fraud is punishable. There will be a minimum of checking.

I think if these facts were widely known that a great deal of the opposition would disappear. Our tax system is based on the assumption of the honesty of taxpayers. There is only enough checking to try to keep people from straying too far. Sometimes this imposes too severe a temptation for people to withstand. This is why withholding has been so beneficial in the case of whose who earn wages and salaries. It would be equally beneficial in the case of those who receive dividends or interest.

There is a further advantage. When there are annual or even quarterly payments, if one waits until the end of the quarter or the end of the year to pay taxes, one may have spent his money. Therefore, the people who work for wages and salaries find it more convenient to have the tax money withheld from each week's pay than to face the payment of the tax at the end of a quarter or at the end of a year.

Although recipients of interest or dividends, on the average, have higher incomes than those who receive wages and salaries, this will also be a convenient method for those who receive dividends or interest. It will enable them to pay taxes on the income as the income is received, and the tax will not accumulate until the end of the year.

We have received estimates that the cost to the paying institution after the initial year will not exceed 30 cents per $100 of tax withheld, or three-tenths of 1 percent.

I am very happy that one or two banks and savings institutions—notably the Franklin Bank of Mineola, Long Island, and a bank on the North Side of Chicago—have taken positions in favor of the withholding of taxes on dividends and interest. I wish the number were larger, but we are grateful to those who have testified.

I congratulate also the association of the bar of the city of New York, which had the courage to come to this city and testify to the same effect.

The savings and loan institutions and the savings banks, in my judgment, already have spent enough on the campaign against the withholding tax to

pay all of the administrative costs which they will experience under the act for 3 or 4 years, and they have distributed, unfortunately, a lot of material which is not accurate.

Madam President, I yield the floor, and I thank the Senator from Mississippi.

EXHIBIT 1

QUESTIONS AND ANSWERS ON THE WITHHOLDING OF TAXES ON DIVIDENDS AND INTEREST

1. How many individuals do not report dividends and interest?

	Million
Number of individual tax returns which should include dividends or interest	17.7
Number of individual tax returns which should report dividends or interest but which do not	6.0

NOTE.—There are no figures available by which to classify these returns as to income groups.

2. Question. What about the widows and orphans and the old people?

Answer. Under the bill, all children under 18 would be exempt from withholding.

Anyone over 18 who reasonably believes that he would not be subject to tax can file a withholding exemption certificate with the paying institution.

In addition, the Treasury estimates that only 2 million individuals of the 22.5 million individuals who receive interest and dividends will be overwithheld against. Of these, only 1 million of them will be overwithheld against to the extent of more than $10 annually.

Of the 1 million in general those with annual incomes of less than $10,000 ($5,000 if single) can claim quarterly refunds up to the amount of their "refund allowance" which takes into account personal exemptions, retirement income, and deductions.

As a result, opposition to this measure on grounds that it would hurt the "widows and orphans" is virtually without substance.

3. Question. Won't the withholding tax take 20 percent of a person's savings account and return it to the Government?

Answer. No. It will take only 20 percent of the interest on the savings account. This, of course, is already taxable but not paid in the case of millions of people.

For example. If a person has $100 in his savings account and receives $4 interest during the year, the withholding will be 20 percent of the $4 or 80 cents, not 20 percent of the savings account or $20.

4. Why would not automatic data processing be an effective substitute for withholding?

Contention. The Internal Revenue Service is adopting an automatic data processing system and this, coupled with account numbers and information returns, should be used to collect the unreported tax on dividends and interest.

Answer. This contention fails to state that an ADP-information return system would probably be more burdensome on the payers of dividends and interest, would be unworkable in some areas, and would, for a higher cost, recoup only one-third as much of the unreported tax as withholding.

Use of ADP-information returns would necessitate requiring information returns with respect to almost all dividend and interest payments. At present, only savings account interest payments of $600 or more must be reported and no reporting is required in the case of bond interest. Because of the millions of interest payments, the information return requirement would be very burdensome on the payers. Some people have told the Treasury that it would be more burdensome than withholding for many paying institutions.

When an individual purchases a bond between interest payment dates, he is only required to include in income that portion of the interest paid at the end of the period which is allocable to the time he held the bond. The seller is required to report the other portion which was paid him as accrued interest by the purchaser. However, since the paying institution does not know whether a bearer bond has been transferred, it would file an information return showing the full interest payment going to the purchaser. This would mean that a matching of the information return with the purchaser's return would indicate a discrepancy where none exists. As a result, the purchaser may be subject to an unnecessary audit. On the other hand, there would be no information filed as to the accrued interest taxable to the seller. In this area, ADP and information returns would be an unworkable method for enforcing the tax on interest.

Even with an expanded information return system and a complete matching of these returns with the returns of the dividend and interest recipients, not one cent of tax would have been collected. There would have to be audit and enforcement followup in each case where a discrepancy is indicated. These procedures are not economically feasible for the millions of relatively small dividend and interest payments involved. The Commissioner of Internal Revenue estimates that no more than $200 million of the over $800 million annual revenue loss could be recouped through these enforcement procedures. This would be at a cost of $27 million.

For only $19 million, withholding can recoup $650 million each year. In addition, with withholding, the ADP-audit procedures would be left free to recapture most of the remaining $150 million of the yearly revenue loss, since this loss involves dividends and interest received by higher income groups where these procedures can be more economically applied.

One additional consideration is that ADP will not be fully operational until 1966. Therefore, without withholding in the interim, the Government will not even be able to collect the limited $200 million of revenues that ADP and audit would help collect.

5. Some say withholding on interest and dividends isn't necessary.

Contention. Some charge that there is no real need to enact the burdensome procedure for withholding income tax from dividend and interest payments.

Answer. Withholding of tax from interest and dividend payments is a greatly needed reform in our tax structure; one that is necessary for both budgetary and equity reasons.

The most convincing argument for withholding on interest and dividends is told by the figures themselves. On the plus side is the fact that about $18.8 billion of dividends and interest is reported on income tax returns each year. On the other side, however, is the fact that around $4 billion of dividends and interest which should be reported each year is not, either because of inadvertence or an unwillingness to pay one's fair share of tax. This results in an annual revenue loss to the Government of over $800 million. Withholding of income tax from interest and dividend payments will recoup almost $650 million of this large yearly loss.

These revenue figures are based on Treasury estimates from data compiled from 1959 returns (the latest data available). They are in substantial accord with the estimates of the prior Republican administration For example, Mr. David A. Lindsay, former General Counsel of the Treasury, in an address before the Tax Institute Symposium on September 29, 1960, estimated that $4 billion of interest and dividends were not reported on tax returns of individuals. To quote him:

"Recent studies have indicated a gap in the amount of dividends paid to individuals and the amount of the dividends reported on individual tax returns of approximately $1 billion, or failure to report about 10 percent of the total amount of dividends received.

"It was also estimated that about $3 billion of interest, which is about one-half of the interest received by individuals, was not reported."

Withholding is important for another reason. It is unfair to those taxpayers who faithfully and accurately pay their full share of taxes to also require them, through higher taxes, to make up the over $800 million of taxes which others fail to pay on their interest and dividends. To have an effective self-assessment system, people must believe that their neighbors are also bearing their share of the taxes. When this belief is questioned, the whole self-assessment system is threatened. Withholding on interest and dividends will be a big step toward making sure that one group does not bear the tax responsibilities of another. In this way it will bolster our self-assessment system.

Withholding is nothing new or novel. It has operated efficiently for many years in helping to collect the taxes due on salaries and wages. There is no reason to believe it is not equally suitable in the area of dividends and interest.

Many people argue that a withholding system is not necessary. They say that the underreporting problem can be solved by taxpayer education. Unfortunately, history shows this is not true. The Treasury and Internal Revenue Service in recent years initiated an extensive educational program to remind taxpayers to report their dividend and interest income. The payers of dividends and interest wholeheartedly cooperated in this program by distributing tens of millions of notices reminding people to report this income. The Government organized a mass publicity campaign, using newspapers, radio, television, and other media. Despite this program, there was no indication of substantial improvement in taxpayer reporting.

6. Some say withholding on interest and dividends will discourage thrift.

(a) Charge that people will withdraw savings:

Contention. If people are subjected to withholding on their dividends and interest, they will sell their stock or withdraw their savings to avoid withholding. This, of course, will discourage thrift.

Answer. It is hard to believe that an individual will forgo any earnings on his savings to avoid having tax withheld from these earnings. For the taxpayer who has been reporting his tax, withholding will merely afford him an efficient method for paying that tax. He would hardly have a motive for withdrawing his savings. For other taxpayers, withholding will result in their paying a tax for the first time. But even for these people, interest or dividends after tax is certainly better than no interest or dividends at all. There is no motive for them to withdraw their savings.

Since withholding would be required with respect to nearly all types of investments available to the average individual, there will generally be no opportunity for him to shift investments to avoid withholding. This is an important safeguard in that it insures that withholding will be a neutral factor when an individual decides where to invest his funds and will not result in giving one type of investment a competitive advantage over another.

(b) Charge that withholding will reduce invested funds:

Contention. Many depositors never withdraw their interest with the result that it increases their savings. The same is true in the case of dividends declared by mutual funds. Withholding will automatically reduce by 20 percent the earnings reinvested by the depositor or shareholder, thereby reducing his savings.

Answer. This is an effect that naturally flows from any withholding system. It

would seem, however, that much of the noncompliance occurs in those cases where people automatically reinvest their dividend and interest income and therefore do not receive any cash payments. Many of these people apparently forget or do not bother to check how much interest or dividends have been credited during the year. Therefore, it would seem that withholding is especially important in this area.

7. Answer to objection that there will be massive overwithholding; and that exemption and refund procedures are inadequate and burdensome.

(a) Charge of massive overwithholding:

Contention. The withholding system will result in massive overwithholding.

Answer. It is estimated that 22.5 million individuals receive interest and dividends. Only 2 million of these individuals will be subject to overwithholding and only 1 million of them to the extent of more than $10 annually. Of the latter 1 million, those with annual income of less than $10,000 ($5,000, if single) can claim quarterly refunds of the overwithheld tax up to the amount of their "refund allowance". This refund allowance in effect gives an individual credit for his personal exemptions, retirement income credit, and standard deduction, to the extent there is no other income against which to apply them.

According to Treasury estimates, $3 billion will be withheld on dividends and interest received by individuals, of which only $170 million would be overwithholding. This is a mere 5 percent of overwithholding, as compared to 14 percent in the case of wages. In terms of number of individuals subject to overwithholding, 73 percent of wage earners are overwithheld while only 13 percent of dividend and interest recipients would be overwithheld.

In fact, overwithholding is almost completely avoided by the exemption system. Nontaxable individuals would be eligible to file exemption certificates and, thereby, completely exempt their dividends and most forms of interest from withholding. In addition, 6 million schoolchildren would be automatically exempt from withholding on their school savings accounts.

(b) Charge that individuals will forget to claim their refunds resulting in a windfall to the Government:

Contention. Even though the bill provides for quarterly refunds, many people will forget to claim them with a resulting windfall to the Government.

Answer. Under proposed administrative procedures, an individual would need to initiate only the first quarterly refund claim for the year. The Internal Revenue Service would recompute his "refund allowance" for the second and third quarters and would mail him a partially completed claim for refund on which he would need only enter the amount of dividends and interest he received during the quarter. At the end of the year, the Internal Revenue Service will send each individual who has claimed quarterly refunds a summary statement. For the fourth quarter the refund would be claimed on the individual's regular tax return which he could file immediately after the end of the year. Although no quarterly claim could be filed for an amount under $10, the individual could cumulate amounts withheld during more than one quarter for purposes of meeting the $10 limit.

8. Charge that withholding of funds from low income persons may cause severe hardship.

Contention. Withholding of 20 percent of dividend and interest payments to low income (but taxable) individuals might cause severe hardship to these individuals who need that money on which to live.

Answer. Most of these individuals would be eligible for quarterly refunds of the overwithheld tax. The individual does not have to wait until the end of the quarter to file his claim for refund but may do so any time during the quarter. For example, an individual who receives all his interest and dividends during the first week of a quarter may file his quarterly refund claim at the end of that first week. Therefore, in many cases, individuals will be without the withheld funds for only a very short period of time. Even if an individual must withdraw funds from his savings to make up for withholding, the net effect is the loss of interest on those funds for up to 3–4 months at the very most. In the case of an individual who receives $500 of interest during a quarter, the loss would amount to only $1 (assuming a 4-percent rate of interest).

9. The charge that lack of withholding receipts will result in fraud.

Contention. There is no requirement that payers of dividends and interest must furnish the recipients withholding receipts (similar to the W–2 receipts in the case of wage withholding). As a result, there will be a great deal of fraud, with the result that extensive audits of records will be necessary.

Answer. There is no area of tax law in which deliberate fraud is not possible. It is known that people claim dependents who do not exist, list charitable contributions they never gave, and claim medical expenses they did not have. Some of this, of course, goes undetected. But deliberate tax fraud is relatively rare. Specifically, deliberate claims for unjustified refunds and credits could never even approach in either dollar volume or numbers of individuals involved the tax evasion currently possible in the absence of a withholding system.

10. Argument that small interest payments should be excluded from withholding.

(a) Generally not subject to tax:

Contention. Small interest payments should be excluded from withholding since they are usually not subject to tax anyway.

Answer. The size of an individual's savings account does not necessarily have any relation to his tax status. For example, an individual could be earning a substantial salary and yet, because of his expenses or other forms of savings, have a relatively small savings account. Since the withholding system has as its major purpose the collection of tax, there is no logical reason to exclude arbitrarily from withholding small amounts which, nevertheless, may very well be fully subject to tax.

In addition, an exclusion from withholding for small interest payments would provide a means by which people could avoid withholding on all of their bank account interest. This could be done merely by opening relatively small accounts in different banks or by opening several small accounts in the names of different members of the family.

Moreover, an exclusion from withholding for interest payments below a specified amount would materially reduce the effectiveness of the "gross-up" system. For example, in some cases an individual may have two savings accounts, one subject to withholding and one not. This could occur, for example, when an individual has a large account for his family's ordinary savings (earning interest above the minimum limit) and a small account (earning interest below the minimum limit) containing savings for a particular purpose, such as a vacation. In such a case, part of the interest received by the individual would be subject to withholding and part would not. This could cause considerable taxpayer uncertainty in applying the "gross-up" system, since part of the interest would be included and part not.

(b) Unclaimed refunds will be large:

Contention. Withholding will result in a large windfall to the Government in the form of unclaimed refunds. As an example, it has been indicated that there are some 32 million bank accounts involving withholding of less than 40 cents, and that many of the depositors in these accounts will not undertake to file either an exemption certificate or a claim for refund with the result that these withheld funds will be a windfall to the Government.

Answer. These figures are very misleading. The 32 million accounts evidently include accounts paying no interest because they are dormant accounts or accounts where no interest is paid as a matter of bank policy. Therefore, this figure in itself is open to question.

However, even assuming they are correct, it is by no means true that all the withheld funds will be forfeited to the Government. First, many of these small accounts will be automatically exempt through the exemption for all school savings accounts without regard to the filing of exemption certificates. It is estimated that savings accounts of 6 million children will fall in this category.

Second, most dividend and interest recipients, even though receiving small payments, will have other income (such as wages) and, as a result, will owe tax for the year. These individuals are required to file income tax returns on which they will be able to take credit against their tax liability for the dividend and interest withholding. The returns will clearly show that these individuals must report their interest and dividend income and also that they may take a credit or obtain a refund for any withheld tax. There should be no reason for them to forget to take the credit or claim the refund.

Third, even though they owe no tax for the year, many of these recipients will be required to file tax returns because they have more than $600 ($1,200 if over 65) of income. The returns will clearly indicate they are entitled to a refund.

Fourth, many of these individuals will avail themselves of the exemption certificates procedure.

Therefore, after taking into account all those different situations, it seems clear that only a very small number of people will in fact forfeit their withheld tax.

11. The charge that withholding will do nothing to enforce tax on high income people.

Contention. Since the withholding rate is only 20 percent, it will have no impact on the collection of taxes on dividends and interest received by individuals in the higher income tax brackets.

Answer. It is necessary to set a rate of withholding approximating the first tax bracket in order to avoid undue overwithholding on the great majority of recipients. However, with withholding taking care of the tax liability of the great majority of dividend and interest recipients, the Internal Revenue Service will be able to concentrate its ADP facilities and enforcement personnel on enforcing the tax on higher income individuals. It is in this area that the new ADP system will prove very effective in helping to enforce the tax on dividends and interest.

12. The mechanics of withholding.

The withholding procedures to be followed by payers of dividends and interest will be relatively simple. Basically, a payer will perform three steps in performing withholding:

(1) The payer will total up the amount of dividends or interest that is to be paid to persons who have not filed exemption certificates and will deduct 20 percent of this total amount. This 20 percent is the amount of taxes to be withheld.

(2) Each recipient will then be paid 80 percent of the dividend or interest due him. Persons who have filed exemption certificates will be paid their full dividends or interest.

(3) At the end of the month following the close of the quarter in which the dividends

or interest were paid, the payer will remit to the Government the 20 percent withheld reduced by any taxes withheld on dividends and interest received by the payer during that quarter. The remittance to the Government will be in a lump sum with no breakdown according to individual recipients.

The following are examples of how these withholding procedures would operate when a bank credits interest to its depositors, and when a corporation pays dividends:

Example 1 (interest paid to depositors):

Bank A credits interest to its depositors twice a year, January 1 and July 1, at a rate of 4 percent annually (2 percent on each payment date). The total interest due depositors on July 1, 1963, is $110,000, broken down as follows:

(a) School savings accounts	$2,000
(b) Accounts of persons who have filed exemption certificates	8,000
(c) All other accounts	100,000

Since school savings accounts and accounts of persons who have filed exemption certificates are exempt from withholding, Bank A will credit interest to these accounts in the amount of 2 percent.

The bank will then deduct 20 percent (or $20,000) from the $100,000 of interest due on all other accounts and credit the remaining $80,000 to these accounts. This means that the bank would credit interest in the amount of 1.6 percent, rather than 2 percent, to each such account. It would not be necessary for the bank to make two computations for each account since it is not required to show the gross interest before withholding.

If the bank reports its taxes on a calendar year basis, it may retain the $20,000 withheld on July 1 until October 31. In determining how much it must remit to the Government on October 31, the bank may take a credit for any taxes withheld on dividends and interest it received. Thus, if $15,000 was withheld on interest and dividends it received during the quarter beginning July 1, it will only be required to remit $5,000 to the Government on October 31.

Example 2 (dividends):

Corporation B declares a dividend of 50 cents a share, payable on April 1, 1963. The total amount of dividends to be paid is $52,000, broken down as follows:

(a) Dividends on shares owned by individuals who have filed exemption certificates	$2,000
(b) Dividends on all other shares	50,000

Corporation B will then pay the full dividend of 50 cents a share (totaling $2,000) to those individuals who have filed exemption certificates. It will deduct 20 percent (or $10,000) of the dividends payable on all the other shares and pay out dividends at the rate of 40 cents a share. It will not be necessary for the corporation to make two computations with respect to each shareholder since there is no requirement that the gross dividend must be shown.

If the corporation reports its taxes on a calendar year basis, it may retain the $10,000 withheld on April 1 until July 31. In determining how much it must remit to the Government on July 31, the corporation may take a credit for any taxes withheld on its dividend and interest income. Thus, if $2,000 was withheld on dividends and interest it received during the quarter beginning April 1, the corporation will only be required to remit $8,000 to the Government on July 1.

Gross-up procedure for individuals:

Although there is no provision for withholding receipts (similar to the W–2 receipts under wage withholding), a person will easily be able to determine the total amount of his dividends and interest and the amount of withheld tax. This will be done through a simple gross-up schedule which will be a part of the income tax returns and refund claims. For example, assume that an individual receives a dividend of $80. He will then perform the following simple calculations:

(1) Amount of dividend received	$80
(2) One-fourth of this amount (withheld tax)	20
(3) Total amount of dividend ((1) plus (2))	100

From this schedule, the individual would know that $100 is the total amount of his dividend to be included in his income for tax purposes and that $20 of tax was withheld for which he is allowed a credit against his tax liability and a refund of any excess.

ADJOURNMENT

Mr. EASTLAND. Madam President, I move, pursuant to the previous order, that the Senate stand in adjournment until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 6 o'clock and 25 minutes p.m.) the Senate adjourned, under the previous order, until tomorrow, Thursday, May 3, 1962, at 12 o'clock meridian.

NOMINATION

Executive nomination received by the Senate May 2, 1962:

U.S. ATTORNEY

Louis C. LaCour, of Louisiana, to be U.S. attorney for the eastern district of Louisiana for the term of 4 years, vice M. Hepburn Many, resigned.

EXTENSIONS OF REMARKS

The National Lottery of Israel

EXTENSION OF REMARKS
OF
HON. PAUL A. FINO
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Wednesday, May 2, 1962

Mr. FINO. Mr. Speaker, I should like to acquaint the Members of this House with the national lottery of Israel.

In 1961, the gross receipts of the national lottery of Israel amounted to about $20 million, an increase of $6 million over the previous year. The net income to the Government, earmarked solely for the construction of schools and hospitals, exceeded $6 million.

Mr. Speaker, the fight to establish a national lottery in Israel was not easily won. It took a few years after the declaration of the State of Israel before the Government and public circles consented to the organization of a lottery in that country. It has now been in existence about 10 years and proven very successful.

Mr. Speaker, why cannot we, like Israel and other nations, overwhelm the hypocrites, bluenoses and moralists? If we can only wipe out hypocrisy in the United States we could, with a national lottery, pump into our Government Treasury over $10 billion a year in new revenue which could be used for tax cuts and reduction of our national debt.

Friendship Day Camp

EXTENSION OF REMARKS
OF
HON. JAMES ROOSEVELT
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, May 2, 1962

Mr. ROOSEVELT. Mr. Speaker, for the past 10 years Los Angeles has been justifiably proud of Friendship Day Camp, a nonprofit interracial day camp serving children between the ages of 6 and 15 in the Greater Los Angeles area.

It is camp policy to be representative of all Los Angeles' racial, religious, and cultural groups. This applies to counselors as well as to the children. While enjoying the experience of outdoor camping, the youngsters share songs, dances, stories, and games of various cultures, thereby developing a sense of pride in their own backgrounds as well as learning the true meaning of democracy through the appreciation of the rich variety in America's racial and cultural diversity.

Friendship is operated on a nonprofit basis, and with an extremely limited budget. Although a small sum is charged for tuition, any child whose parents cannot pay the full tuition is nevertheless eligible to attend even if circumstances permit payment of as little as 25 cents a week.

I am happy to join those civic-minded citizens and groups of the community who have praised and endorsed Friendship Day Camp for its contribution to the preservation of our American way of life.

Alexander Gsoell, Winner of National Maritime Poster Contest

EXTENSION OF REMARKS
OF
HON. DONALD D. CLANCY
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Wednesday, May 2, 1962

Mr. CLANCY. Mr. Speaker, tomorrow, May 3, 1962, will be a proud day in the life of 17-year-old Austrian-born Alexander Gsoell, of 6743 Hearne Road, Cincinnati, Ohio, as he stands on the steps of the Nation's Capitol to receive a $500 check and the congratulations of the