



Department of Justice

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STATEMENT
OF
ATTORNEY GENERAL JOHN N. MITCHELL

BEFORE
SUBCOMMITTEE NO. 5
OF THE
HOUSE JUDICIARY COMMITTEE

ON
H.R. 4249
VOTING RIGHTS ACT OF 1965

JULY 1, 1969
10:00 A.M.

Mr. Chairman and members of this Subcommittee, I want to thank you again for your courtesies in scheduling these hearings so as to permit me to meet my prior commitments, particularly last Thursday.

Mr. Chairman, at the hearing last week you asked for five lists of information for insertion into the hearing record. With your permission, I will hand you a letter containing this information at this time.

In addition, may I submit a memorandum setting forth the Constitutional basis for our proposal and the decisions of the Supreme Court supporting it. With your permission, I would ask that the memorandum also be made a part of the testimony.

When I testified last Thursday, I presented my views and the views of this Administration as to what is the best legislative solution to the problems of discrimination in voting and to our commitment to encourage citizens to vote.

There was some discussion before this Committee as to my personal motives and to the political situation.

Perhaps I did not make myself clear and I would, with the permission of the Chairman, like to make a few additional comments.

The proposal for a simple five-year extension of the 1965 Voting Rights Act leaves the undereducated ghetto Negro as today's forgotten man in voting rights legislation.

He would be forgotten both in the 13 states outside the South which have literacy tests now and in the 30 other states which have the ability, at any time, to impose them.

It is not enough to continue to protect Negro voters in seven states. That consideration may have been the justification for the 1965 Act. But it is unrealistic today to ignore the ghettos of Harlem, Watts, Roxbury, Seattle, Hartford and Portland, Oregon -- all of which are located in states which have literacy tests.

I believe the literacy test is an unreasonable physical obstruction to voting even if it is administered in an even handed manner. It unrealistically denies the franchise to those who have no schooling. It unfairly denies the franchise to those who have been denied an equal educational opportunity because of inferior schooling in the North and the South.

But perhaps, most importantly, it is a psychological obstruction in the minds of many of our minority citizens. I don't have all the answers. But I suggest to this Committee that it is the psychological barrier of the literacy test -- long associated with the poll tax as a discriminatory tool to keep the Negro from the ballot box -- that may be responsible for much of the low Negro voter registration in some of our major cities.

A higher percentage of Negroes voted in South Carolina and Mississippi, where literacy tests are suspended, than in

Watts or Harlem, where literacy tests are enforced. A higher percentage of Negroes vote in Philadelphia and Chicago, where there are no literacy tests, than in majority Negro neighborhoods in New York City and Los Angeles.

For example, let us take a Negro who was born and brought up in Alabama under an inferior segregated school system -- and who finished only the fourth grade there before he began to work daily in the fields. When he moves to California or New York and learns that he must take a literacy test, he is unlikely even to try to register to vote: first, because of doubts and embarrassment in regard to his own literacy; and secondly, because in his mind literacy tests are still identified with racial barriers to voting.

Citizens such as this now live all over the country. Some of them were raised in the South -- some in Northern ghettos; and some in Puerto Rico and Mexico. Our proposal is directed at these citizens too.

I want to encourage black people to vote. I want to encourage Mexican-American and Puerto Rican citizens to vote. I especially believe that minority citizens, who may feel alienated from our society, should be given every opportunity to participate in our electoral processes.

I want to encourage our Negro citizens to take out their alienations at the ballot box, and not elsewhere. I want them to know that their ballot is important and will be significant in determining the policies of the officials who govern.

Mr. Chairman, I urge this Committee not to permit the Negro citizens outside of the South to be forgotten. I urge this Committee to grant them the encouragement to vote and the protections for voting that are now granted to Negro citizens in the South. This encouragement has proved so successful that there have been 800,000 Negro voters registered since the passage of the 1965 Act.

I would like these protections extended to the whole country now -- not five years from now.

It has also been suggested before this Committee that our proposal to extend the coverage of the Voting Rights Act would result in weakening some of its provisions.

This criticism is untrue. Our proposal would broaden the Act but would, in many ways, considerably strengthen it.

Our bill would maintain the authority of the 1965 Voting Rights Act for the Attorney General to send examiners and observers into the seven Southern states. But it would extend this authority to all states and counties where the Attorney General had received any complaints of possible violations of 15th Amendment rights.

Under the 1965 Act, the Attorney General is required to go to court to request voting examiners and observers in non-Southern states. Under our bill, he has the authority to send the observers and examiners any place without first applying to a court. Our proposed bill would authorize the courts, on the application of the Attorney General to temporarily enjoin discriminatory voting laws and to freeze any new voting laws passed by the state or county against whom the law suit is filed.

Areas which passed discriminatory voting laws are likely to quickly pass substitutes. Our new proposal would eliminate this practice by giving the courts the authority to issue blanket orders against voting law changes.

The penalty for this violation of the court order would be contempt.

Under the present laws outside of the seven covered states, the Attorney General is limited in voting rights cases to a claim of Constitutional violation. Under our proposal, he could institute a law suit any place in the country based on the broader statutory protection of a discriminatory "purpose or effect" of a particular voting law or set of voting laws.

This would make it clear to the courts that it is unnecessary to prove that the intent of the local or state officials was racially motivated.

For all of these additional safeguards, we have only modified one section of the Act. States and counties would no longer be required to automatically submit all changes in their voting laws.

With the entire nation covered, it would be impossible for the Civil Rights Division of the Department of Justice to screen every voting change in every county in the nation. Furthermore, the evidence indicates that even in the seven covered states officials who wish to pass discriminatory laws do not submit them in advance to the Department of Justice. They put them into effect and require the Justice Department to discover them and bring suit.

Finally, there has been a suggestion that our proposal is merely a delaying tactic to tie up any attempt to extend the 1965 Voting Rights Act. I must disagree with this assessment.

First: As I said in my previous testimony, the Gaston County case extends the literacy test ban for the foreseeable future in those states which previously maintained segregated and inferior school systems. Second: It would appear that any proposed amendment to this bill -- no matter how well motivated and how comprehensive -- would be open to criticism as a delaying tactic. Under these circumstances, it is difficult for me to see how I can extend the coverage to those citizens who need it in any way. Third: We do not want to see the Act lapse in

August 1970. We favor its extensions both in time and in its geographical coverage. I believe there should be sufficient time for the necessary hearings and debate on our proposal prior to the termination of parts of the 1965 Act in August of 1970. I believe that it is worth the extra effort to extend the Act to the entire nation. I would hope that this Committee would support our legislation.

We will cooperate with this Committee and with the Congress to assure a strong and timely bill.