



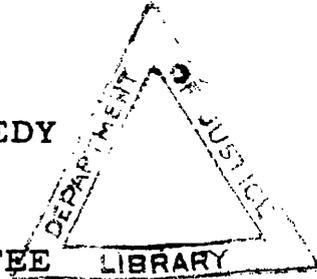
Department of Justice

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STATEMENT BY
ATTORNEY GENERAL ROBERT F. KENNEDY

ON H. R. 7152

BEFORE THE HOUSE JUDICIARY COMMITTEE



ON OCTOBER 15, 1963 (IN EXECUTIVE SESSION)

Mr. Chairman and Members of the Committee:

The President in transmitting a proposed "Civil Rights Act of 1963" to Congress on June 19 outlined the urgent need for passage of this legislation. The President made clear that enactment is necessary not only to provide legal remedies for long-standing injustices and to alleviate racial strife which is weakening the nation, but also because our traditions and ideas of right demand it.

I am here today to support the legislation which the President submitted.

Passage of this legislation is as necessary now as when it was first proposed. Every day of delay aggravates the problems of discrimination by hardening resentments and undermining confidence in the possibility of legal and peaceful solutions.

The President emphasized the importance of enacting the legislation in this session when he urged:

"that the Congress stay in session this year until it has enacted -- preferably as a single omnibus bill -- the most responsible, reasonable, and urgently needed solutions to this problem, solutions which should be acceptable to all fair-minded men.";

and by his statement that:

"enactment of the Civil Rights Act of 1963 at this session of Congress - however long it may take and however troublesome it may be -- is imperative."

Recent efforts by responsible local, state and national leaders have ended some discriminatory practices in some communities. But the basic problems remain throughout the country. The need for Congressional action and Congressional leadership this year is greater than ever.

We are dealing with a national crisis which goes far beyond regional or partisan considerations. Failure to enact comprehensive and effective legislation at this session could have tragic consequences. Only if we act promptly to right wrongs too long ignored or tolerated can we expect the victims of racial discrimination to continue to seek remedies through law rather than in the streets.

A strong civil rights bill can only be enacted if this Committee and this Congress put aside partisan considerations and both political parties work together towards that end. Conviction as to the need for comprehensive legislation and belief in the rightness of the cause is no monopoly of either party.

Legislation will result if Republicans and Democrats work together in this Committee, in the Rules Committee, and on the floor of the House. Differences as to approach and emphasis must not be permitted to be escalated into the

arena of politics -- or else the country will be the loser.

Former President Eisenhower's recent statements relating to discrimination in education and public accommodations underscore that matters of principle, not of party are here involved. I am confident that view is shared by Chairman Celler, by Congressman McCulloch and by other members of this Committee on both sides of the aisle. It is also the strong view of the Administration.

To meet our national needs the law enacted by Congress must effectively eliminate racial discrimination in voting, in public accommodations, in education, and in employment. It must establish the principle that there shall be no such discrimination among the beneficiaries of federally financed programs or activities to which all taxpayers contribute. It should establish a federal agency to assist local communities in the voluntary and equitable resolution of racial disputes.

Enactment of the President's proposals, which were introduced in this House by Chairman Celler as H. R. 7152, would accomplish these basic objectives. It is most noteworthy, I think, that both the President's Message and the accompanying legislative proposals received broad and

enthusiastic support from labor, business and civil rights groups and from whites and Negroes alike.

I am therefore pleased that a Subcommittee of this Committee has recommended a print of H. R. 7152 which, in many respects, closely follows the bill as introduced. Of course the print, which I am here to discuss today, also makes a number of changes and additions.

I shall discuss the most important of these changes in the hope that my comments will assist the Committee in arriving at what the President called "the most responsible, reasonable, and urgently needed solutions."

TITLE I

Title I is designed to provide additional protections of the right to vote. This Title builds upon the Civil Rights Act of 1957 and 1960 by outlawing certain discriminatory practices encountered in their enforcement. Additionally, it provides a method for reducing long delays in affording relief to the victims of discrimination. In my judgment, if Title I is enacted, it will go far toward eliminating other kinds of racial discrimination. Negro citizens will be afforded the means of making their justifiable demands not only heard but acted upon.

The Subcommittee's version of Title I differs from the President's original proposals in two major respects.

Section 101 prescribes the application of the same registration standards to all persons, prohibits the rejection of applicants for immaterial errors, requires literacy tests to be in writing, and raises a rebuttable presumption, applicable in voting suits, that a person with a sixth grade education is literate.

The first change has been to make these provisions applicable to state as well as federal elections. This change eliminates one of the constitutional bases for the legislation, since the power of Congress under Article I, section 4 of the Constitution extends only to the regulation of federal elections. These provisions of the bill would, however, still be supported by the Fourteenth and Fifteenth Amendments. In my view, therefore, they would be constitutional even as applied to state elections.

Others do not share my views in this regard. Their doubts both as to the constitutionality and wisdom of federal regulation of state elections could impede passage

of the bill. It was for this reason, and because we believe that the legislation would be effective whether or not state elections were covered, that the bill we proposed was confined to federal elections.

The second major change made by the Subcommittee in Title I has been to require the impounding of ballots cast by persons found qualified to vote under the temporary voting referee procedure. A proviso specifies that if no judicial determination has been made as to the existence of a pattern or practice of discrimination by the time an election is held, all ballots cast by persons qualified pursuant to the Act shall be impounded by the court.

If the impounded ballots are sufficient in number to affect the result of an election, they are not counted until a final determination has been made that a pattern or practice of discrimination exists. If these ballots are insufficient in number to affect the result of an election, they are not counted at all.

This amendment destroys the basic purpose of Title I. The objective of the temporary referee provisions is to

permit qualified voters to cast their ballots and to have them counted without awaiting the determination of prolonged lawsuits.

I want to emphasize that each person who votes under the referee provision will have been found by a court to be qualified to vote under state law.

Since this is so, it is difficult to understand how the state or any individual can claim to have been hurt or prejudiced by allowing such persons to vote and to have their votes counted when cast.

Even if no finding of a pattern or practice of discrimination is ultimately made, this in no way alters the fact that only qualified voters have been permitted to cast ballots.

As a practical matter, this proviso attempts to deal with a contingency which is most unlikely to occur. This is the possibility that a federal court will qualify enough voters to affect an election and later find that no pattern or practice of racial discrimination exists. The very fact, however, that a federal court registers enough persons, after their rejection by state officials, to affect the outcome of an election almost certainly establishes that the officials are rejecting qualified applicants pursuant to a pattern or practice of racial discrimination.

The proviso is also objectionable because it may make the outcome of various elections uncertain. It will be impossible in some cases to determine which candidate has been elected until the court has finally determined whether a pattern

or practice of discrimination exists. This could be long after the election. The introduction of this uncertainty is unnecessary and objectionable.

TITLE II

Since the introduction of the Administration's bill, Title II, which deals with discrimination in places of public accommodation, has become the focus of interest and debate. Despite voluntary efforts, establishments which serve the public generally, but which discriminate against Negroes, continue to be a constant irritant and inconvenience to large numbers of citizens.

Such discrimination is morally offensive to all of us. As I stated in earlier testimony it is one of the most embittering forms of racial discrimination, requiring Negroes to suffer humiliation and deprivation no white citizen would tolerate. No wonder then, it has been the source of more than 65% of the 1,580 civil rights demonstrations that have taken place since May.

The bill as passed, therefore, must contain strong public accommodations provisions.

In view of the magnitude of the problem, I think it would be fair to characterize Title II, as introduced, as a reasonable proposal designed to eliminate the most significant sources of discrimination. Nevertheless, immediately upon its introduction it was attacked as unnecessarily and unwisely invading rights of private property and as being too dependent upon one source of constitutional authority.

The basic purposes of Title II are to embody in legislative form a strong expression of the American people's disapproval of racial discrimination in places open to the general public and to eliminate the significant sources of this daily insult to millions of our fellow citizens.

Although the economic consequences of racial discrimination by public establishments are grave, the principle upon which Title II stands is a moral one and all forms of racial discrimination are equally objectionable.

One can argue legitimately from this moral principle to the inclusion of all forms of business enterprise within the reach of the Constitution. The administration proposal did not attempt to extend federal law so far. The focus of Title II was upon those businesses which, on the basis of our experience, posed the most troublesome problems of discrimination. It was our view that Congress could legitimately take into account the following:

First, the extent to which businesses potentially affected do in fact discriminate against Negro customers;

Second, the extent to which enforcement in key businesses would induce voluntary practices in others within the same community;

Third, the areas of coverage should be clear to both the proprietors and the public; and

Fourth, the utility and wisdom of promoting local solution to these problems and decreasing the need for federal regulation.

These criteria were employed in the bill submitted by the President and introduced by the Chairman. It was confined to those business establishments which on the basis of current experience have proved to be the most important sources of discrimination and, therefore, the focal point of most demonstrations.

That bill specified hotels and motels, restaurants and lunch counters, retail stores and gasoline stations, movie houses and similar places of public amusement. The coverage was quite explicit. We did not include other establishments which were constitutionally within the reach of federal regulation, either because they do not customarily discriminate or because we felt that -- given a solution to the major problems -- removal of these discriminatory practices could be voluntarily induced. We were reluctant to extend federal power beyond those areas where it was clearly needed to meet existing problems.

The subcommittee has added to this coverage a catchall which prohibits discrimination in any business operating under state or local "authorization, permission, or license." (Section 201 (c)(4)). This addition meets none of the criteria we thought important. Rather it represents an effort to go the full limits of the Constitutional power contained in the 14th Amendment.

What businesses are covered by this provision are unclear. It would seem to extend federal regulation to law firms, medical partnerships and clinics, private schools, apartment houses, insurance companies, banks, and, potentially, to all businesses which a state does not affirmatively ban. And its application, if a narrower interpretation is proper, is in any event uneven to the extent that it depends upon widely divergent state licensing practices to determine its coverage.

I want to make it clear that I have no objection to broadening the bill's reliance upon the 14th Amendment or broadening its scope if the Congress so desires. But invoking the 14th Amendment generally is no substitute for specifying the establishments which Congress, enacting national law to solve a national problem, intends to cover.

Surely the first step in federal legislation is to determine which public establishments present the significant kinds of problems with which federal power should be concerned. Once that decision is made, all relevant sources of constitutional authority should be drawn upon to support the legislation.

TITLE III

I should like to discuss next the new Title III which the Subcommittee added to H. R. 7152. This Title would authorize the Attorney General to file injunction suits to enforce all the rights covered by Section 1983 of Title 42 -- that is, to restrain the denial of any right, privilege, or immunity secured to any individual by the Constitution or laws of the United States. It would also permit the United States to intervene in any suit brought by a private person to vindicate those rights.

It may be helpful to put this new Title in some perspective.

The Title goes back to the civil rights bill proposed in 1957. It was included then to give the federal government a responsibility and power to give effect to substantive constitutional rights denied American citizens -- particularly the right of Negro children to an equal educational opportunity in accordance with the School Cases of 1954. But since 1957 the concept of a Title III provision -- broad authority in the Attorney General to enforce individual rights -- has become a symbol for those favoring faster federal action to end racial discrimination.

There should be no doubt in anyone's mind of the commitment of this Administration to legislation dealing with injustices which have been inflicted for years upon American citizens because of their race -- primarily the denial of the right to vote, the denial of equal access to places of public accommodation, and the denial of equal education and employment opportunities.

Title III is not concerned with these matters. Rather it is intended to protect the demonstrations and protests which have drawn attention to problems which have been ignored far too long. But it must be remembered that these demonstrations and protests are, after all, only means, not ends.

The end we all seek is freedom from discrimination and segregation and equality of opportunity for all Americans, regardless of race or color. Other provisions in H. R. 7152 are designed to achieve that end directly -- by providing for the acceleration of school desegregation, by outlawing discrimination in places of public accommodation, by laying down a firm policy of non-discrimination in programs supported by the Federal Government, and by assuring the basic right to vote.

The 1957 proposal dealt specifically only with voting, and Title III then represented an effort to protect other substantive rights. The rights then contemplated -- primarily those relating to schools -- are now expressly included in the President's bill.

Accordingly, Title III in the Subcommittee print must have a purpose quite different from that of 1957.

As I have said, I am sure Title III is included in the bill now in the belief that it will be an effective means of dealing with police excesses which have occurred during racial demonstrations in some cities. These excesses have included the use

of police dogs, cattle prods, and even tear gas bombs on peaceful demonstrators, and have, quite frankly, set white policemen against Negro demonstrators in a way that is an affront to the conscience of the nation.

If Title III is in fact an effective and appropriate means of dealing with this problem, it should be enacted. But I think it fair to say that no hearings before this Committee -- and, indeed no prior hearings on other civil rights bills -- provide a basis for a hard analysis of what the passage of this Title would entail.

Title III should be considered not as a symbol, but in terms of what it really means. This is particularly true since civil rights demonstrations and the law enforcement problems -- federal as well as local -- which flow from them were not considered in 1957, and were not the reason for the original Title III proposal.

There are two pertinent questions: Would Title 3 in fact reach effectively what we wish to accomplish in the field of civil rights? What other problems would be involved for our Nation and for the structure of our Government as a result of its enactment?

One assumption of the proposal is that federal court injunctive processes can eliminate or at least curtail in some way official opposition to racial demonstrations and the abuses that such opposition at times creates. First this does not go to the heart of the problem which is the elimination of the injustices demanding the demonstrations and is our major task for the future. But I think further that the Committee should consider first the problems that this assumption raises.

Title III would not be effective to prevent or punish sporadic acts -- such as bombings by terrorists or isolated acts of brutality by individual police officers. Injunctions cannot prevent crimes by unknown persons.

Second, before Title III could be used, it would have to be clear that a federally protected right has been or is about to be violated. It would be a mistake to assume that all demonstrations are protected because their aims are consistent with national policy and are supported by the vast majority of the American people -- like peaceful protests against racial discrimination. Limitations may be constitutionally imposed upon the time of demonstrations, their duration, their place and the number of people. Not all demonstrations are protected by the First and Fourteenth Amendments. Thus, no matter how bitterly they may be resented, not all offensive police conduct in connection with civil rights demonstrations would be within the reach of Title III.

These factors would necessarily involve the federal courts in determinations, historically made by local police officials, as to how many people should be allowed to protest, in what manner, and at what time of day. This use of the courts to control demonstrations might well be as unsatisfactory to the demonstrators as to the police. In addition, a federal court would have considerable difficulty anticipating what police

action might or might not be justified in the fast changing conditions which frequently accompany demonstrations and counter-demonstrations.

These difficulties point to the basic danger of relying on injunctions to control in advance the actions of local police. One result might be that state and local authorities would abdicate their law enforcement responsibilities, thereby creating a vacuum in authority which could be filled only by federal force. This, in turn -- if it is to be faced squarely -- would require creation of a national police force. This is a step which is historically, and with good reason, abhorrent to our federal system. I am sure all members of the Committee would be opposed to such a drastic development unless all means of dealing with the underlying injustices fail.

Although aimed at police abuses against racial protests, Title III is not so limited. Under the bill, the Attorney General could bring suit for any official deprivation of any federally protected right.

Title III would extend to claimed violations of constitutional rights in state criminal proceedings or in book or movie censorship; disputes involving church-state relations; economic questions such as allegedly confiscatory rate-making or the constitutional requirement of just compensation in land acquisition cases; the propriety of incarceration in a mental hospital; searches and seizures; and controversies involving freedom of worship, of speech, or of the press.

Obviously, the proposal injects federal executive authority into some areas which are not its legitimate concern and vests the Attorney General with broad discretion in matters of great political and social concern.

To illustrate: Which types of disputes should the Attorney General make a matter of federal concern? Should he exempt disputes involving reading of the Bible in classrooms? If so, on what basis? What criteria should he adopt to determine whether to intervene in a particular case of an arrest for investigation, for example, or the banning of a movie as obscene, or a claim that the rate set by a state public utilities commission is unreasonably low?

I do not mean to suggest that these problems are insoluble. Nor do I mean to say that there do not now exist in some communities in the United States police practices and systematic repression of Negro rights which could be dealt with more effectively and quickly by federal action if Title III were enacted into law. The question which must be asked, however, is whether, on balance, these situations are so prevalent and so menacing as to justify creation of such broad federal discretionary authority.

There is one final point. It is quite possible that the objections will cause concern not only to those who are opposed to any civil rights legislation, but also to those

who sincerely believe in civil rights and the substantive provisions of H. R. 7152. This might well jeopardize all civil rights legislation. The Committee is in a better position than I to judge this danger, but it is a factor that I urge be considered.

For all these reasons, and after careful reconsideration, I continue to believe that the Administration should not seek at this time the broad injunctive authority set forth in Title III, but should continue to concentrate on solutions to the substantive racial injustices that are involved.

TITLE IV

The Subcommittee has made a number of unobjectionable changes in Title IV and generally clarified its application. Several matters are worthy of mention, however.

As introduced, the bill gave the Attorney General limited power to institute or intervene in actions seeking desegregation of public educational facilities. The Subcommittee extends this authority to suits involving other state or municipal facilities. This addition is consistent with the basic purpose of the bill and raises no special enforcement problems.

Technically, however, it makes the definition of "desegregation" contained in section 401(b) inadequate and somewhat troublesome. Desegregation of non-educational public facilities, such as libraries, public parks or municipal golf

courses, obviously cannot mean simply "the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin" - the definition now contained in Title IV.

Section 407(a)(3), in effect, contains a definition of "desegregation" adequate to cover both schools and other public facilities. In any event, the term by now has a well understood legal meaning. The courts have used it many times in applying the Constitution to public schools, state colleges and universities, parks, beaches, golf courses, zoos, playgrounds, and other public facilities. It can be expected that they will be able to continue to do so without further statutory guides. Therefore the prefatory definition of "desegregation" can be eliminated.

Sections 403, 404, and 405, as they appear in the Committee Print of October 2, authorize the Commissioner of Education to offer various forms of assistance to schools having desegregation problems. Sections 403 and 404, in addition, refer to "special educational problems occasioned by desegregation."

The language of the Subcommittee version might be taken to suggest that assistance is available only when desegregation was undertaken pursuant to court order. Obviously, it would be undesirable to encourage resistance to desegregation by making a court order a condition to assistance.

Moreover, it is not clear from the bill in its present form that the Commissioner may offer assistance to local agencies seeking to deal with the variety of special educational problems which arise as a result of the often divergent educational backgrounds and experiences of pupils attending integrated schools.

For example, a prior lack of availability of equal educational opportunities to Negroes will sometimes create curricular, grading, classroom, and other difficulties in racially integrated schools serving children of varied scholastic backgrounds. Such problems exist wholly apart from whether such schools were ever previously segregated, or whether, if they were, desegregation is pursuant to court order or a judicially approved plan.

Thus, it would be helpful if the bill would make it clear that assistance may be given with respect to such problems.

These suggestions would in no way alter the manner in which assistance is to be provided. The Commissioner would still make aid available only when asked by State or local authorities, who would remain fully responsible for selection and implementation of measures adapted to their own local situations.

TITLES V - VII

In Title V, the Subcommittee has provided that the Community Relations Service may have no more than six employees. This limitation should not be retained in the bill. While it is not expected that the Service will have a large staff, the exact number of its employees cannot be precisely determined beforehand and an express limitation on its size is inappropriate in permanent legislation of this sort.

The Service may prove ultimately to be one of the most useful creations of this legislation. Certainly, it ought not to be prematurely and unintentionally limited because of a lack of clarity with respect to the available size of its staff. In any event, the Congress will always be able to control its size through use of the appropriations power.

The Subcommittee revision of Title VII - originally Title VI - will, I believe, accomplish its purpose with adequate protection to the recipients of Federal assistance.

TITLE VIII

In Title VIII, the Subcommittee has substituted for the President's original equal employment proposals, a fair employment practices provision identical to H. R. 405, which had been reported by the House Education and Labor Committee and which has been pending before the Rules Committee for several weeks.

This Title, like the voting provisions, deals with one of the most basic and important areas of discrimination. The availability of jobs and of equal economic opportunity in general, without respect to artificial barriers imposed because of race, color, religion, or national origin, is essential to any meaningful resolution of the problem.

This is why, in submitting the Administration's omnibus civil rights proposals to this Congress, the President strongly endorsed Federal fair employment practices legislation applicable both to employers and to unions. Certainly, nothing can be more important or fundamental to equality than to assure that all citizens have a fair opportunity to earn a living.

I feel most strongly that action should be taken now with respect to fair employment practices. The widespread recognition of the need for a Federal measure assuring equality of job opportunity is attested by the many other bills submitted by members of both parties to deal with the problem. I hope that the omnibus civil rights bill will, when enacted, include a strong fair employment practices section of the type recommended by the Labor Committee, supported by the President, and included in the Subcommittee print.

At the same time, I recognize that there are some experienced Members of Congress who feel that the inclusion of this provision in the omnibus bill could make it more difficult to secure a rule from the Rules Committee and could even jeopardize ultimate passage of the omnibus bill. Whether this would in fact be the case obviously depends upon the bipartisan support which a fair employment practices provision can secure in this Committee, in the Rules Committee, and on the floor of the House--judgments which members of this Committee are better qualified to make than I.

Therefore, the Administration will support a fair employment practices act as a part of the civil rights bill as reported out of this Committee, or as an amendment to this bill upon the floor, or as separate legislation to be enacted in this Congress following passage of the omnibus bill.

With bipartisan leadership, support and effort, this Congress can enact an omnibus civil rights bill and legislation of the type embodied in H. R. 405. I am sure the legislative route to these goals can be agreed upon.

TITLES IX - X

The two new Titles incorporated into the bill by the Subcommittee represent useful additions. Title IX provides for a compilation of voting statistics by race, religion, and national origin. Such a survey should prove helpful to the Congress in assessing the dimensions of discrimination in voting and aid in measuring the pace of progress in its elimination. The scope of the survey required, however, may be broader than is necessary to meet current problems. The factor of national origin, for example, has been used as a basis of discrimination in voting with respect only to certain groups. Similarly, religion does not seem to be a source of voting difficulties.

Title X allows an appeal to be taken from federal court orders remanding civil rights cases to the state courts from which they have been removed. While a special statute has long permitted such removal, the non-appealability of an order of remand has made the provision almost useless.

Apart from certain technical suggestions, which I will be happy to supply the Committee later, these then are my major comments.

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Mr. Chairman, all of us are aware that civil rights problems arouse intense feelings and emotions. It is possible for reasonable men to disagree as to the best legislative steps to be taken by this Congress. But it is virtually impossible to take a position with respect to particular problems which will not be strongly attacked by some.

It is for this reason--the fact that these differences are strongly felt--that it will take the highest statesmanship to avoid the morass of partisan politics which could only result in the failure to enact legislation at this session of Congress.

I believe that if legislation modeled upon the President's proposals is passed, it will go a long way toward removing inequities and injustices which are keenly felt by Negroes and, to a lesser degree, by other minority groups.

The legal remedies concern every American's right to vote, to go to school, to acquire a job and to be served in a public place without discrimination.

But the legislation embodies even more than legal remedies. And I believe this may be its most significant contribution. For this legislation has become an article

of faith, testing whether white Americans can put aside sectional and political differences to solve racial problems which can no longer be ignored.

It is a test in the fullest sense of the term--a test which will determine in the eyes of the non-white population here in the United States and indeed abroad whether the white population, which controls the economy and the political life of this country, believes in the Declaration of Independence and the Constitution, or just mouths the hallowed words of these two documents.

This is a national crisis which demands that we put aside partisan considerations and work for passage of the strongest possible bill. If the legislation is not enacted, not only will we not have legal means to hasten the end of discriminatory practices which have been allowed to go on too long, but Negroes will suffer a loss of faith in the ability of their government to redress their grievances. The whole nation will be the loser. And we who are white particularly so, because we will have failed the pledge of our forefathers. We will have failed our country.