which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 20, 1969.

IN THE NAVY

The nominations beginning George E. Balyeat, to be captain, and ending Daniel F. Kenney III, to be ensign which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 7, 1969;

Cmdr. Charles Conrad, Jr., Cmdr. Richard F. Gordon, Jr., and Cmdr. Alan L. Bean for permanent promotion to the grade of captain in the Navy;

Lt. Cmdr. Donald W. Stauffer for appointment to the grade of commander while serving as leader of the U.S. Navy Band; and

The nominations beginning James Robert Abbey, to be lieutenant commander, and ending Sarah A. Zalesky, to be lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on December 1, 1969.

IN THE MARINE CORPS

The nominations beginning Barbara J. Lee, to be lieutenant colonel, and ending Harriet T. Wendel, to be captain, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 7, 1969;

The nominations beginning James A. Albright, to be 2d lieutenant, and ending Larry A. Sunn, to be 2d lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 17, 1969; and

The nominations beginning John E. Ailes, to be chief warrant officer (W–4), and ending Frank C. Zubiate, to be chief warrant officer (W–2), which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on December 1, 1969.

HOUSE OF REPRESENTATIVES—*Thursday, December 11, 1969*

The House met at 10 o'clock a.m.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

God is the strength of my heart.—Psalm 73: 26.

Eternal Father, from whom we come and unto whom our spirits return, we bow our heads in adoration and gratitude before Thee. We thank Thee for every gift of Thy grace which lifts us and guides us, making us better men and better women.

We need Thy strengthening presence to support us through these troubled days, to keep our hearts free from the bitter spirit of hate and resentment, and to keep them filled with the happy spirit of love and good will.

We pray for our Nation and for the nations of the world. May the angels' song of good will among men be heard again and may the earth send back the song which now the angels sing. Led by Thy spirit, help us to live together in peace and with good will in all our hearts; through Jesus Christ, our Lord. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

REQUEST FOR PERMISSION FOR HOUSE COMMITTEE ON BANKING AND CURRENCY TO SIT DURING GENERAL DEBATE TODAY

(Mr. PATMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PATMAN. Mr. Speaker, I ask unanimous consent that the House Committee on Banking and Currency may sit today during general debate to continue marking up H.R. 15091.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mr. GROSS. Mr. Speaker, reserving the right to object.

The SPEAKER. The gentleman from Texas is proceeding under his 1-minute request. Will the gentleman from Texas read his request, please.

Mr. PATMAN. Mr. Speaker, I will finish the statement and then I will repeat the request.

Mr. Speaker, this is a vital piece of legislation which, if enacted, would help to lower interest rates and fight inflation, and would provide significant assistance to the homebuilding industry and the home mortgage market so that our people can secure adequate housing.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. PATMAN. Mr. Speaker, I will appreciate it if the gentleman will wait until I have finished a sentence.

Mr. Speaker, this bill will be of significant importance to the small businessmen of our country since it would provide funding for small businesses through the Small Business Administration, and would provide the President with the necessary discretionary authority to curtail unnecessary business investment and consumer expenditures. Portions of this legislation expire December 22 and, unless the committee can finish its work in marking up this legislation, we can look for serious and severe disruptions within the financial community.

Mr. Speaker, I ask unanimous consent that the Committee on Banking and Currency may sit today during general debate.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mr. GROSS. Mr. Speaker, reserving the right to object, I am sure everything the distinguished Committee on Banking and Currency does is important, but the question I wanted to ask is: Has this request been cleared with the minority?

Mr. PATMAN. We have not had an opportunity to do so.

Mr. GROSS. Then, Mr. Speaker, I ask that the gentleman withdraw his request at this time, or I will object.

Mr. PATMAN. Then the gentleman will just have to object. If the request is withdrawn it would not be possible to get another one granted in time to permit the Committee on Banking and Currency to meet today, as requested during general debate. There is only 1½ hours of general debate remaining. The Committee of the Whole House will go into general debate almost immediately and another request cannot be made until it is over.

Mr. GROSS. Mr. Speaker, I object.

The SPEAKER. Objection is heard.

PERMISSION FOR SUBCOMMITTEE ON COMMERCE AND FINANCE, COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, TO SIT DURING GENERAL DEBATE TODAY

Mr. MOSS. Mr. Speaker, I ask unanimous consent that the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce may be permitted to sit during general debate today.

The SPEAKER. Is there objection to the request of the gentleman from California?

Mr. GERALD R. FORD. Mr. Speaker, reserving the right to object—and I apologize for being a little late—let me look at a note. Is the request to permit the two subcommittees of the Committee on Interstate and Foreign Commerce to sit during general debate?

Mr. MOSS. Mr. Speaker, this is a request for one of the two subcommittees, yes.

Mr. GERALD R. FORD. Mr. Speaker, according to my note, I will say to the gentleman from California, the ranking Republican on the full committee has no objection to this request.

Mr. MOSS. Mr. Speaker, that is correct. I have just been informed of that.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

PERMISSION FOR SUBCOMMITTEE ON COMMUNICATIONS AND POWER, COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, TO SIT DURING GENERAL DEBATE TODAY

Mr. ALBERT. Mr. Speaker, I ask unanimous consent that the Subcommittee on Communications and Power of the Committee on Interstate and Foreign Commerce may be permitted to sit during general debate today.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

PERMISSION FOR SUBCOMMITTEE ON ADVANCED RESEARCH AND TECHNOLOGY, COMMITTEE ON SCIENCE AND ASTRONAUTICS, TO SIT DURING GENERAL DEBATE TODAY

Mr. ALBERT. Mr. Speaker, I ask unanimous consent that the Subcommittee on Advanced Research and Technology of the Committee on Science and Astronautics may be permitted to sit during general debate today.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

CALL OF THE HOUSE

Mr. GROSS. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. ALBERT. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 314]

Anderson, Tenn.	Gaydos	Pepper
Ashley	Giaimo	Powell
Baring	Green, Pa.	Pryor, Ark.
Blatnik	Hays	Reifel
Byrne, Pa.	Hébert	Riegle
Cabell	Hosmer	Rivers
Cahill	Howard	Rosenthal
Casey	Hull	Ruppe
Clark	Karth	Ryan
Conyers	Keith	St. Onge
Cunningham	Kirwan	Sandman
Dawson	Kyl	Scheuer
Edwards, Calif.	Landrum	Steiger, Ariz.
Eilberg	Lipscomb	Stratton
Fascell	Long, La.	Tunney
Flood	McClure	Udall
Ford, William D.	Mailliard	Ullman
Fountain	Miller, Calif.	Utt
Frelinghuysen	Moss	Van Deerlin
Fulton, Tenn.	Murphy, N.Y.	Vander Jagt
Gallagher	O'Hara	Whalley
	O'Neill, Mass.	
	Ottinger	

The SPEAKER. On this rollcall 368 Members have answered to their names, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

PERMISSION FOR COMMITTEE ON PUBLIC WORKS TO FILE REPORT ON H.R. 15166, AUTHORIZING ADDITIONAL APPROPRIATIONS FOR FLOOD CONTROL, NAVIGATION, AND OTHER PURPOSES

Mr. JONES of Alabama. Mr. Speaker, I ask unanimous consent that the Committee on Public Works may have until midnight tonight to file a report on the bill (H.R. 15166) authorizing additional appropriations for prosecution of projects in certain comprehensive river basin plans for flood control, navigation, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

Mr. GROSS. Well, Mr. Speaker, reserving the right to object, what is this bill?

Mr. JONES of Alabama. Mr. Speaker, will the gentleman yield?

Mr. GROSS. I yield to the gentleman from Alabama.

Mr. JONES of Alabama. I want to say to the gentleman that this is a bill authorizing additional appropriations for the prosecution of projects in certain comprehensive river basin plans for flood control, navigation, and other purposes.

Mr. GROSS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

PERSONAL EXPLANATION

Mr. FUQUA. Mr. Speaker, on rollcall No. 312 I was inadvertently absent. Had I been present I would have voted "nay."

WINNINGEST COACH IS NOT BRYANT, VAUGHT, HOWARD—IT IS GAITHER

(Mr. FUQUA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FUQUA. Mr. Speaker, an article by United Press International this morning concerning the retirement of Clemson's coach, Frank Howard, carried a very serious error in accuracy.

I am calling this to their attention in this fashion, for quite often this error is made. It concerns the winningest football coach in the land.

The article listed the three winningest coaches as being Bear Bryant, of Alabama, 193; Johnny Vaught, of Mississippi, 177; and Frank Howard, of Clemson, 165.

I am not getting into any arguments about the No. 1 team in the Nation, but I do claim the title of the winningest coach in football to be Alonzo S. "Jake" Gaither.

He has garnered 203 victories.

Now in all fairness, the UPI and all others covering sports should recognize that achievement.

Here is the man who has produced sensational Rattlers' teams with stars such as Willie Gallimore and Bob Hayes. Floridians are proud of our school and more than proud—boastful about "Jake" Gaither.

This in nowise is a discredit to Coaches Bryant, Vaught, or Howard. They are a credit to the game and I admire each of them for their contributions to college football and to young people. Rather than being a discredit to them, it only emphasizes that much more what an accomplishment the Gaither record really is.

But, in this centennial year of college football, let us get one thing straight.

The winningest coach in football—and he has held the title for some time—is "Jake" Gaither of Florida A. & M. University of Tallahassee, Fla.

EXCELLENT PROGNOSTICATING

(Mr. WRIGHT asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. WRIGHT. Mr. Speaker, I understand that one or more Members have raised some question today as to the efficacy of the choice by the President of the United States in awarding a plaque to the No. 1 football team in the Nation, the University of Texas Longhorns. Modesty forbids my responding at great length upon that matter, and modesty, of course, is a virtue for which all of us who ever attended the University of Texas are well and widely known, but I should like to call the attention of the membership to the fact that the President is, in his own right, a very noteworthy and demonstrably able football prognosticator.

Prior to the Texas-Arkansas game on last Saturday, the President, in attempting to analyze what might happen, told a group of Members of the House from Arkansas and from Texas that, first, he did not believe any points were warranted between the two teams. As you will recall, the score was separated by 1 point only.

He said, second, that he believed Arkansas might have a faster team, and that he would expect they would score, and probably would score first. This happened precisely in that fashion.

And finally the President predicted that in his judgment if Texas should win the game it would have to do so in the fourth quarter. It was uncanny, the accuracy of President Nixon's predictions prior even to the start of the game.

So I suggest to those who have some doubts as to the President's ability to pick the No. 1 team, that this is further proof of the fact that in his own right Mr. Nixon is a great football prognosticator. He knows a No. 1 team when he sees it.

PROJECTED PRIZEFIGHT BY CASSIUS CLAY AN INSULT TO PATRIOTIC AMERICANS

(Mr. MICHEL asked and was given permisison to address the House for 1 minute and to revise and extend his remarks.)

Mr. MICHEL. Mr. Speaker, Cassius Clay is in the news again. Members will recall that on June 20, 1967, he was convicted and sentenced to 5 years in prison and fined $10,000 for willfully failing to submit to the draft. His case was appealed, sent back to the district court for a hearing to determine whether his conviction had been secured as a result of evidence by electronic surveillance. On July 14, 1969, the district court found that the monitored conversations bore no relation to any evidence used by the Government in securing Clay's conviction. He was resentenced, and released on $5,000 bond, pending an appeal to the Fifth Circuit Court of Appeals.

Now I see, Mr. Speaker, where he has been given the green light to enter the ring in Florida and resume his pugilistic career. I consider it an affront to every GI in service to allow Mr. Cassius, who had feet of Clay, when faced with the prospect of serving his country, to drag down another fat paycheck of some $300,000 or more from the ring. It is another black eye for professional boxing and a "low blow" from the promoters of the fight. I think it is disgraceful.

It should be recalled that Mr. Clay gave as one of his "excuses" for not wanting to be drafted that he was in reality a minister and that even boxing was antagonistic to his religion. Apparently he is willing to fight anyone but the Vietcong.

Clay has been stripped of his heavyweight title for dodging the draft, and I consider it an insult to patriotic Americans everywhere to permit his reentry into the respected ranks of boxing.

THE NO. 1 TEAM

(Mr. KLUCZYNSKI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KLUCZYNSKI. Mr. Speaker, I am very much impressed with the remarks made by the gentleman from Texas (Mr. WRIGHT). Texas is a heck of a good team, and I have seen the cream of the crop

yesterday when the Texas delegation had the football players here at a reception.

However, I understand they are going to meet with the Fighting Irish, and they had better look out for themselves with all those Poles, Lithuanians, and Bohemians on that Irish team.

Mr. PICKLE. If the gentleman will yield, how does this Irishman spell KLUCZYNSKI?

Mr. KLUCZYNSKI. It is easier to spell KLUCZYNSKI than it is to spell PICKLE backward.

LEGISLATION EXTENDING THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

(Mr. MAYNE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MAYNE. Mr. Speaker, the President's message to Congress asking for a 3-year extension of legislation creating the National Foundation on the Arts and the Humanities shows his keen awareness of the Foundation's great potential for stimulating and improving America's cultural life. The President has very accurately stressed the urgent need for protecting and improving our cultural environment and has realistically defined the Federal role in attaining this objective as supportive rather than primary. The substantial additional funds requested for the Foundation in the message prove that this administration is not just working for our country's material progress which is, of course, very important, but also has a deep concern for things of the spirit. I was particularly impressed by the statement that culture is not the exclusive property of big cities, but belongs to all Americans in every region and community.

The President made a most propitious beginning in this area last September by naming the highly capable and experienced Nancy Hanks, president of the Associated Councils of the Arts, as the new Chairman of the National Council on the Arts. In his message yesterday he demonstrated that Miss Hanks will have his full backing in developing an effective program. I believe this message will meet with the country's approval and the Congress should move promptly to implement it.

TRIBUTE TO JAMES FREE

(Mr. BEVILL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BEVILL. Mr. Speaker, for a number of years, Mr. James Free has served as Washington correspondent for the Birmingham News, of Birmingham, Ala. Prior to this, Jim served as Washington correspondent for the Chicago Sun, and staff writer for the Washington Evening Star and Richmond Times Dispatch. Throughout this time, Jim Free has distinguished himself as a journalist of the highest caliber.

Mr. Speaker, I would like to take this time to offer a well-deserved tribute to Jim.

In an age when the volume of legislative work before Congress is staggering, Jim Free continues daily to effectively come up with the most important happening in the Nation's Capital. He has an instinctive gift for sifting through the mass of material and turning out informative, interesting articles. His ability and thoroughness undoubtedly place him among the most talented correspondents in Washington, D.C.

Needless to say, many awards and tributes have come his way. But Jim continues his steady course, keeping his perspective and objectivity.

Today our society needs, indeed must have, a truthful, comprehensive and intelligent account of the days' events in a form that gives them meaning and understanding. Thanks to correspondents like Jim Free, this is possible.

Through the efforts of these dedicated journalists, the press today remains a vigorous and vital institution. They are helping to forge a better understanding between the people and their government. And for this we should all be grateful.

PROVIDING FOR PRINTING OF PROCEEDINGS INCIDENT TO PRESENTATION OF PORTRAIT OF SAMUEL N. FRIEDEL

Mr. DENT. Mr. Speaker, by direction of the Committee on House Administration, I submit a privileged report (Rept. No. 741) on the resolution (H. Res. 744) providing for the printing of the proceedings in the Committee on House Administration incident to the presentation of a portrait of the Honorable SAMUEL N. FRIEDEL, and ask for immediate consideration of the resolution.

The Clerk read the resolution, as follows:

H. RES. 744

Resolved, That the transcript of the proceedings in the Committee on House Administration of October 6, 1969, incident to the presentation of a portrait of the Honorable Samuel H. Friedel to the Committee on House Administration be printed as a House document with illustrations and binding in such style as may be directed by the Joint Committee on Printing.

SEC. 2. In addition to the usual number, there shall be printed two hundred and fifty copies of such document for the use of the Committee on House Administration.

The resolution was agreed to.

A motion to reconsider was laid on the table.

AUTHORIZING PRINTING OF MANUSCRIPT ENTITLED "SEPARATION OF POWERS AND THE INDEPENDENT AGENCIES: CASES AND SELECTED READINGS"

Mr. DENT. Mr. Speaker, by direction of the Committee on House Administration, I submit a privileged report (Rept. No. 742) on the Senate concurrent resolution (S. Con. Res. 44) to authorize printing of the manuscript entitled "Separation of Powers and the Independent Agencies: Cases and Selected Readings," as a Senate document, and ask for immediate consideration of the Senate concurrent resolution.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 44

Resolved by the Senate (the House of Representatives concurring) That the manuscript entitled "Separation of Powers and the Independent Agencies: Cases and Selected Readings", prepared for the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary by the Legislative Reference Service of the Library of Congress, be printed as a Senate document.

SEC. 2. There shall be printed for the use of the Senate Committee on the Judiciary one thousand additional copies of the document authorized by Section 1 of this concurrent resolution.

With the following committee amendment:

Strike out section 2 and substitute in lieu thereof a new section 2 as follows:

"SEC. 2. There shall be printed six thousand additional copies of the document authorized by Section 1 of this concurrent resolution of which one thousand shall be for the use of the Senate Committee on the Judiciary, and five thousand shall be for the use of the House of Representatives."

The committee amendment was agreed to.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

AUTHORIZING THE PRINTING OF A REPORT ENTITLED "HANDBOOK FOR SMALL BUSINESS" AS A SENATE DOCUMENT

Mr. DENT. Mr. Speaker, by direction of the Committee on House Administration, I submit a privileged report (Rept. No. 743) on the Senate concurrent resolution (S. Con. Res. 46) authorizing the printing of a report entitled "Handbook for Small Business" as a Senate document, and ask for immediate consideration of the Senate concurrent resolution.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 46

Resolved by the Senate (the House of Representatives concurring), That a publication of the Senate Select Committee on Small Business entitled "Handbook for Small Business, 3rd Edition, 1969," explaining programs of Federal departments, agencies, offices, and commissions of benefit to small business and operating pursuant to various statutes enacted by the Congress, be printed with illustrations as a Senate document; and that there there be printed twenty-eight thousand two hundred additional copies of such document, of which twenty-three thousand two hundred copies shall be for the use of the Senate Select Committee on Small Business, and five thousand copies shall be for the use of the House Select Committee on Small Business.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

EXTENSION OF VOTING RIGHTS ACT OF 1965

Mr. CELLER. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for further consideration of the bill (H.R. 4249) to extend the Voting Rights Act of 1965 with respect to the discriminatory use of tests and devices.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for further consideration of the bill H.R. 4249, with Mr. BOLLING in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on yesterday, the gentleman from New York (Mr. CELLER) had 59 minutes remaining, and the gentleman from Ohio (Mr. McCULLOCH) had 1 hour and 1 minute remaining.

The Chair recognizes the gentleman from Ohio.

Mr. McCULLOCH. Mr. Chairman, I yield myself 20 minutes.

Mr. Chairman, let us not tamper with success.

The Voting Rights Act of 1965 is the most effective civil rights law on voting rights enacted in our history. It has proven itself seven times as effective as our three prior attempts combined. Under its protection, between eight hundred thousand and a million blacks have registered to vote.

No one can deny that the Voting Rights Act of 1965 works. No one can deny that there was and still is a glaring need for this legislation. No one can deny in view of South Carolina against Katzenbach, that the Congress has the power to enact such legislation.

In 1965, the House overwhelmingly adopted this legislation. The vote was 328 to 74.

Today, we consider H.R. 4249 which would extend sections 4 and 5 of the Voting Rights Act for an additional 5 years. The bill would thus restore the Voting Rights Act to its original legislative form. When the act was originally introduced as H.R. 6400 of the 89th Congress, it was thought that 10 years would be needed to overcome the effects of centuries of discrimination. No evidence was offered to contradict the 10-year estimate of the Justice Department. However, in order to gain the votes necessary for cloture in the other body, a compromise was reached and "10 years" was changed to "5 years."

Experience has proved that the original estimate was correct.

The South has not to any appreciable extent suffered a change of heart. Progress has been made only by impact of Federal law and not through generosity of spirit. In hearings before the Judiciary Committee, the Civil Rights Commission testified:

> The history of white domination in the South has been one of adaptiveness, and the passage of the Voting Rights Act and the increased black registration that followed has resulted in new methods to maintain white control of the political process.

What are these new methods by which the South achieves an old goal? Here are just a few:

Boundary lines are gerrymandered to dilute black voting strength;

Elections are switched to an at-large basis;

Counties are consolidated;

Elective offices are abolished where blacks have a chance of winning;

The appointment process is adopted in lieu of the elective process;

Polling places where a large turnout of black voters is expected are changed at the 11th hour;

Election officials suddenly decide to "go fishing" when blacks come to file or to register; and

Economic and physical intimidations are employed. Yes, it is still happening down South.

Will all this be put to an end by simply abolishing literacy tests? I ask the supporters of the administration bill in all sincerity, how can we solve the problem of discrimination against the southern black voter by doing less?

Our goal is full enjoyment of the right to vote for all Americans. That goal is not secured by outlawing only one method of discrimination while allowing the other hundreds of ways to take their toll.

Every day in the South we witness a new way to discriminate. But the administration bill would attack only one—the use of literacy tests. All the rest is retreat.

If a dam has a hundred holes and you fix one, the water still comes through. That is why the attorney general of Mississippi prefers the administration bill to the committee bill.

Whereas the administration bill attacks literacy-test discrimination, the committee bill attacks all methods of discrimination.

Section 4 of the act attacks the discriminatory use of literacy tests. Section 5 of the act attacks all the other ingenious methods of discrimination in voting.

The administration bill would ban literacy tests whether or not employed to discriminate on the basis of race or color. Under section 4 of the act, any jurisdiction covered by the formula can prove that it does not discriminate and be removed from coverage. The administration criticizes the act because the burden of proof is placed upon the local jurisdiction. But ironically, the administration bill would not even allow such a jurisdiction the opportunity to prove its innocence. Rather, the administration bill irrefutably presumes guilt.

Thus, while the act permitted Wake County, N.C., for example, to prove that its literacy test was not employed in a discriminatory manner and thus escape coverage, the administration bill would force Wake County to stop using literacy tests, even though they were constitutionally proper. The same would be true for counties in Idaho and Arizona as well as the entire State of Alaska, all of whom have been exculpated by court decree. Constitutional State laws constitutionally applied would be outlawed. Why?

I ask you, Why?

Is this an example of the new federalism? Where does Congress get the power to strike down valid State laws for no reason? What is the Federal interest that is being vindicated?

Section 5 of the act is a remedy aimed at all the other forms of discrimination in voting. The administration bill—as Father Hesburgh, Chairman of the Civil Rights Commission, said—would "gut" this key provision of the act. It would be, he said, "a distinct retreat."

Section 5 now requires that a jurisdiction covered by section 4 must clear new voting laws and practices with the Attorney General as the district court in the District of Columbia before they become effective. The administration bill would in effect repeal section 5 and replace it with a remedy already proven to be a failure in the South, that of case-by-case litigation.

First. The turtle pace of litigation is simply too slow to catch up with rapid changes in voting laws and practices that regularly occur in the South, especially just before elections. Section 5 would not allow the rules of an election to be changed at the last minute, for it delays the effective date of a new change for 60 days unless the Attorney General or the district court previously approve the change. As the Supreme Court said in *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966):

> After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims.

Second. Without section 5, the Justice Department would not be promptly and regularly apprised of changes in voting laws and practices. This would be particularly unfortunate because under the administration bill the Justice Department would be responsible for finding discrimination and suing to enjoin it.

Third. The preclearance procedure—and this is critical—serves psychologically to control the proliferation of discriminatory laws and practices because each change must first be federally reviewed. Thus section 5 serves to prevent discrimination before it starts.

Fourth. The burden of proof under section 5 is rightfully placed upon the jurisdiction to show that the new voting law or procedure is not discriminatory. As in tort law, when circumstances give rise to an inference that there has been misconduct, the party that has access to the facts is called upon to rebut the inference and show that its conduct was proper. Under the administration proposal the burden of proof would be taken from those who knew most and shifted to those who knew least. It would be taken, to paraphrase the Court from the perpetrators of evil and shifted to their victims.

Fifth. Under section 5 it is the district court for the District of Columbia that hears the case. This is not unusual, for the defendant, the United States, resides here. Beyond that, there are certain definite advantages:

The decisions reflect an attitude friendly to the cause of civil rights;

The decisions are rendered without unnecessary delay; and

The decisions are uniform. Under the administration bill all these advantages are lost.

Sixth. Section 5 now permits private citizens to police the local jurisdictions. This was not clear until last March when the Supreme Court handed down the Allen decision. Thus, if the State government and the Federal Government forget that section 5 exists, an interested citizen can compel the jurisdiction to obey sec-

tion 5 and enjoin the new law or practice, not because it is discriminatory but because it was not cleared under section 5.

The Supreme Court in Allen perceived the need for private enforcement. The Court said:

> The achievement of the Act's laudable goal would be severely hampered, however, if each citizen were required to depend solely on litigation instituted at the discretion of the Attorney General.

The Attorney General testified that the administration bill would not authorize private suits under section 5.

Upon analysis, the administration bill sweeps broadly into areas where the need is slight and retreats from areas where the need is great. On the one hand, it bans literacy tests in States from which neither the Justice Department nor the U.S. Commission on Civil Rights, nor the NAACP, nor the ACLU have yet received a single complaint. On the other hand, it drastically relaxes the Federal attack on discrimination in States where the evidence shows that there is unflagging dedication to the cause of creating an ever more sophisticated "legal" machinery for discriminating against the black voter.

This is the heart of the issue. The administration bill—as I advised the Attorney General when he testified before the committee—creates a remedy for which there is no wrong and leaves grievous wrongs without adequate remedy. And I ask you now as I did ask him then, what kind of civil rights bill is that?

It is a weaker bill. It is a retreat. I do not know and I do not care what motives generated the administration bill. I simply read the language and judge its effect. As one who has fought long and hard for civil rights and human rights over the years, I must say that the administration bill is a bad bill. It is advertised as a strong civil rights bill. But actually, it is a sheep in wolves' clothing.

The Voting Rights Act of 1965 does not affect all States and all localities and all people equally. No remedy ever does. The act does attempt to secure the right to vote on a uniform basis. The standard is the same for all: Section 2 forbids discrimination in voting on the basis of race in every nook and cranny of this country. Section 3 establishes a judicial remedy equally applicable in all parts of the country. However, experience with the judicial remedies legislated in 1957, 1960, and 1964 has made clear that they are far too weak to achieve the goals in certain parts of the country. In those areas, to secure the goal of equal voting rights, a stronger remedy was needed. Sections 4 and 5 of the act reflect that need.

There is nothing in reason or authority which requires that a remedy treat all alike. We do not put all men in jail because some commit a crime. We do not give flood relief to everyone because one locality experiences a flood. We do not give food stamps to everyone because some are poor.

Likewise, we should not suspend all literacy tests on evidence that some discriminate on the basis of race. Likewise, we should not require every jurisdiction to clear its voting laws and practices with the Attorney General because some jurisdictions have shown a pattern of racial discrimination.

No, we should aim the remedy at the need, as we have always done. The Voting Rights Act of 1965 is in that tradition.

H.R. 4249 is founded on the facts stated by the Attorney General in his testimony—the undeniably crying need for strong remedies in the covered States and the total absence of complaints in the noncovered States.

Renew or retreat—that is the choice. Let us move forward together.

The CHAIRMAN. The time of the gentleman from Ohio has expired.

Mr. ROGERS of Colorado. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. CORMAN).

Mr. CORMAN. Mr. Chairman, I am pleased and honored to follow the gentleman from Ohio (Mr. MCCULLOCH).

Mr. WAGGONNER. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count.

Seventy-one Members are present, not a quorum. The Clerk will call the roll.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 315]

Ashley	Gallagher	O'Konski
Baring	Giaimo	Ottinger
Buchanan	Griffiths	Powell
Byrne, Pa.	Gubser	Pryor, Ark.
Cahill	Harsha	Rees
Carey	Hawkins	Reid, N.Y.
Celler	Hays	Reifel
Chamberlain	Hébert	Riegle
Chisholm	Hosmer	Rivers
Clark	Hull	Ruppe
Clay	Keith	Scheuer
Conyers	King	Sikes
Daniel, Va.	Kirwan	Sisk
Dawson	Kyl	Stokes
Dickinson	Landrum	Teague, Tex.
Diggs	Lipscomb	Thompson, N.J.
Edwards, Calif.	Long, La.	Utt
Eilberg	Mailliard	Vander Jagt
Evins, Tenn.	Marsh	Waldie
Fascell	Moorhead	Weicker
Fisher	Moss	Whalley
Flood	Nedzi	Wilson, Charles H.
Foreman	Nichols	
Fulton, Tenn.		

Accordingly the Committee rose; and the Speaker having resumed the Chair, Mr. BOLLING, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill, H.R. 4249, and finding itself without a quorum, he had directed the roll to be called, when 364 Members responded to their names, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

The CHAIRMAN. The gentleman from California (Mr. CORMAN), is recognized.

Mr. CORMAN. Mr. Chairman, I am pleased to follow the gentleman from Ohio (Mr. MCCULLOCH). It has been my privilege to follow his leadership in civil rights legislation for the past 7 years.

This matter is of the utmost importance to this Nation. There is no greater problem than that which has plagued us for all of our time as a nation; a lack of equal justice for all Americans. There have been many important legislative steps taken in the past 12 years to end racial injustice. They have always been bipartisan. They have always been the handiwork of the gentleman from New York (Mr. CELLER), and the gentleman from Ohio (Mr. MCCULLOCH), and supported by a broad cross-section of concerned Americans on both sides of the aisle. And that is as it should be.

After all, the Republican Party was founded out of racial crisis by Abraham Lincoln. Turning to my own party, starting with the Presidency of Franklin Delano Roosevelt, a new dimension was given to American equality, and that dimension has grown consistently under four Democratic Presidents. And no one will ever be able to overstate the great contribution made in this area by President Eisenhower when he appointed the Republican Governor from my State, Earl Warren, to serve as Chief Justice. So it is fitting that today on a bipartisan basis, we continue a very important part of civil rights legislation for another 5 years.

We have a new element to consider today. We have a new Attorney General, and he opposes continuing this legislation. He has a counterproposal. I have been interested in the Attorney General, and I have read a little bit about him. I read in the New Yorker magazine that a lawyer who heard the Attorney General at the ABA convention said he wondered how the Attorney General could continue to describe himself as a moderate. I quote the lawyer who observed him:

> Apparently he just puts himself down as being in the center and then places everyone else to the left or to the right.

Mr. Chairman, I think I have found the Attorney General's position in civil rights. There are some folks who say that Negroes ought to ride in the back of the bus, and there are others who say that Negroes should be allowed to vote, and the Attorney General apparently rejects both of those extremes. His proposal would effectively deny to well over 1 million Americans needed protection of their right to participate in their Government.

If we are to work our way out of the abrasive conflicts of our time with any degree of peace and tranquillity, every American is going to have to understand that he has an equal right with each other American to participate in public decisions.

Mr. WIGGINS. Mr. Chairman, will the gentleman yield?

Mr. CORMAN. I yield to the gentleman from California (Mr. WIGGINS).

Mr. WIGGINS. Mr. Chairman, to help my understanding of the arguments raised by my distinguished colleague from California (Mr. CORMAN) would the gentleman be specific in telling me and the other Members of the body in what way the Attorney General's proposal would deny other Americans the right to vote.

Mr. CORMAN. Yes, sir. The key part of the Voting Rights Act is that States may not change their voting laws without submitting them first to the Attorney General and making them public, and the Attorney General then has 60 days to—in a real sense—veto them.

One need only review the record of the Civil Rights Commission to see the great ingenuity of those of the Deep

South who have prevented Negroes from voting for a century, to see that they can easily devise new methods if this safeguard is removed. This is the bar against denying the Negro in the South the right to vote. Just remove that bar, and we remove the Negro from the registration roll and we remove him from the polling place.

Mr. DENNIS. Mr. Chairman, will the gentleman yield?

Mr. CORMAN. I yield to the gentleman from Indiana.

Mr. DENNIS. Mr. Chairman, I was wondering if the gentleman has any concern at all for another principle of our Federal Government, known as our federal system, in passing a law which requires that before a State law can go into effect, whether it has been challenged or not, the State must come here and get Federal permission.

Mr. CORMAN. I understand the question.

Yes, sir. I have no concern at all, considering what was being done in the Deep South, what unconstitutional, un-American, and immoral conduct was used in the South to deny Negroes the right to vote. It does not bother me a bit that the Federal Government has stopped that conduct.

I would like to say to those who question whether there is any real difference in these two bills, all I ask is for them to look at the players today. Look at who is supporting the administration bill and look at who is supporting the continuation of the existing voting rights law. One cannot in good conscience have any question left about what he will do if he believes in protecting the rights of American citizens.

Mr. FLYNT. Mr. Chairman, will the gentleman yield?

Mr. CORMAN. I yield to the gentleman from Georgia.

Mr. FLYNT. Did I correctly understand the gentleman to say if this law were made applicable to all 50 States that certain Southern States could pass laws denying citizens the right to vote?

Mr. CORMAN. I understand the gentleman's question.

Mr. FLYNT. Did I understand the gentleman correctly?

Mr. CORMAN. There is no real similarity between these two bills. They are completely different in the key point. The key point is whether or not Federal power can effectively stop the States from changing their voting laws for discriminatory purposes. That is the only issue. That is not being proposed by the Attorney General to be extended to all the States. That is to be repealed by the Attorney General's proposal that will end the rights of hundreds of thousands of Negroes to vote.

Mr. FLYNT. I wonder if the gentleman would answer my question: Did he make the statement as I understood him to make it?

The CHAIRMAN. The time of the gentleman from California has again expired.

Mr. ROGERS of Colorado. Mr. Chairman, I yield the gentleman 1 additional minute.

Mr. CORMAN. Yes, sir; that is my position.

Mr. FLYNT. Would not the law applying to those six States and parts of three other States still apply to them?

Mr. CORMAN. No, sir; it would not. That is my great concern. That one effective barrier which is the real protection of the Negro's right to vote would be gone.

Mr. ROGERS of Colorado. Mr. Chairman, I yield 5 minutes to the gentleman from Alabama (Mr. FLOWERS).

Mr. THOMPSON of Georgia. Mr. Chairman, will the gentleman yield in order that I may answer the gentleman who just preceded him on a very important point as to whether the Government has the right to come in and enjoin any unfair voting laws?

Mr. FLOWERS. I have only 5 minutes. If the gentleman would allow me to yield at the conclusion of my remarks I would be happy to do so then.

Mr. Chairman, I trust my distinguished and able committee chairman, the gentleman from New York, will not think me ungrateful or discourteous if I refrain from the usual commendations to him for his effective and, up to this point, highly successful work on this particular bill.

And the same goes for the distinguished gentleman from Ohio, the ranking minority member.

The mountain of civil rights legislation that we already have is recognition enough, and it is no small wonder that many citizens of the South wonder when the shackles will be removed.

The committee bill asks for another 5 years. It might as well seek a perpetual existence so far as its damage to the rights of the seven Southern States is concerned.

Some may ask, when is the South going to come back into the Union? I would pose the question differently: When are you going to let us back in?

At the beginning I wish to make crystal clear my determination to defend and protect the right of every qualified voter in the United States to cast his ballot freely for the candidates of his choice and to have that ballot counted exactly as cast.

If the pending legislation went only to the protection of such rights and applied equally to all States throughout the Nation, then I would not be here in opposition today. However, Mr. Chairman, the bill presently under consideration is not molded with such a noble purpose in mind. It seeks to double the life of one of the most discriminatory and prejudicial laws ever enacted or conceived in the Halls of Congress.

The Voting Rights Act of 1965 was directed at seven Southern States and is a glaring example of political expediency at its worst. Once again the South has become the favorite whipping boy.

It seems odd to me that some who can feel so strongly about an extension of this 1965 act yet can be so adamant and sanctimonious in their opposition to a national application of the same principles.

If such legislation is so good for one section of our great Nation, why should not all sections be allowed to drink from the same cup? To extend this act at the present time will only further compound its inherent inequities in several specific areas.

Mr. MIKVA. Mr. Chairman, will the gentleman yield for one question?

Mr. FLOWERS. First permit me to finish my statement and then I shall yield to the gentleman.

Mr. Chairman, a mere extension of the Voting Rights Act of 1965 predicated upon statistics compiled in the 1964 presidential election would, in my judgment, place this Congress in the position of knowingly disregarding the 1968 election to the detriment of at least five States presently covered by the act. The use of outdated statistics cannot be justified by any system of logic. In 1965, Congress said that the act should apply only in those States where less than 50 percent of the voting age population turned out for the 1964, the most recent, presidential election. Continuing the existence of this act for an additional 5 years while retaining a base which is already 5 years old would be completely irresponsible. The fact that five of the seven States originally covered and included under this oppressive section of the act have now passed the 50-percent requirement is completely overlooked.

It would seem to me that any new voting rights law that is passed should recognize the progress in voter participation occurring between the 1964 and 1968 presidential election. Here, again, is where the bill before us fails. Alabama had 343,000 more people voting in 1968 and yet it would give them no credit. Georgia had 97,000 more people voting in 1968 and they would be ignored. Louisiana had some 201,000 more people voting in 1968 and it would push them aside. Mississippi had some 245,000 additional persons participating and the bill says they should not be considered; South Carolina had 142,000 additional people casting ballots and they would not be given recognition. Virginia had 317,000 more electors participating and it would ignore them. North Carolina had an additional 162,000 electors participating and yet they would be treated as if they did not exist.

Second, the Voting Rights Act of 1964 requires that States covered by said act must submit every proposed change in their election process to the Attorney General or the Federal district court in Washington for prior approval. This is a particularly onerous burden because the 1970 census and recent Supreme Court rulings will probably require the passage of reapportionment and redistricting acts in all seven States. It would be difficult, if not impossible, to effect the required changes in district lines if the legislators must attempt to perform their duties while shuffling teams of attorneys back and forth to the Nation's Capital in order to make certain that it is permissible to use the left bank of a particular river instead of a certain section line in redefining the boundaries of one of their State's districts. I should

think that even the least advocate of States rights would prefer to take their chances in this regard with their own internal State processes instead of in the Federal district court in Washington, D.C.

Mr. Chairman, in my judgment, an extension of the 1965 Voting Rights Act would be unconstitutional.

The CHAIRMAN. The time of the gentleman from Alabama has expired.

Mr. ROGERS of Colorado. Mr. Chairman, I yield the gentleman 2 additional minutes.

Mr. FLOWERS. Mr. Chairman, I am aware of the fact that the act has been upheld in the courts and the probability certainly exists for a similar stamp of approval for an extension. However, I do not believe that the Supreme Court alone is charged with the duty of interpreting the Constitution. Our oaths of office make it abundantly clear that Members of Congress should not vote for legislation which, in their judgment, is unconstitutional. The treating of any one State or any one region in a manner different from that of other States and other regions is not permitted under the Constitution; yet the passage of this bill will continue to single out and oppress one section of our Nation, the South, in a manner that is patently unconstitutional and discriminatory. Whatever happened to the rights of our States?

Mr. Chairman, in conclusion, I wish to make it clear once again that I feel deeply that this Congress should defend and protect the right of every qualified voter in the United States to cast his ballot freely for the candidates of his choice and have that ballot counted exactly as cast. However, this legislation is not so designed and cannot be so construed. Therefore, I urge the defeat of H.R. 4249.

Mr. MIKVA. Mr. Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from Illinois.

Mr. MIKVA. Would the gentleman show me where in the bill, where in the original act, any States are mentioned by name?

Mr. FLOWERS. They might as well have been mentioned by name because they are mentioned by percentages that are listed in the 1964 voter registration in each State as the gentleman well knows. It is public knowledge now as to which of our States are covered by the discriminatory sections 4 and 5 of the bill.

Mr. McCULLOCH. Mr. Chairman, I yield 10 minutes to the gentleman from Virginia (Mr. POFF).

Mr. POFF. Mr. Chairman, I support the substitute in the Committee of the Whole. If it loses in the Committee of the Whole I shall support the substitute in the motion to recommit. If it prevails in the motion to recommit, I will support the substitute on passage.

Mr. Chairman, I believe in the Constitution. I believe in all parts of the Constitution and that includes specifically and precisely the 15th amendment of the Constitution. It is a part of the supreme law of the land. The language is unequivocal and it means what it says.

What it says is that citizens will not be denied the right to vote and that right will not be abridged on account of race, color or previous condition of servitude.

Congress has decided that the appropriate legislation to enforce the 15th amendment was the Voting Rights Act of 1965. That is a fact. Moreover, the courts have decided that what Congress did was appropriate legislation, and that the Voting Rights Act of 1965 is constitutional. That is a fact. And it profits nothing to try to gainsay these facts.

So, really, what is involved in this debate Mr. Chairman, is if we agree that the Congress has the power and has exercised the power, and the exercise of the power has been approved by the courts—then is it wise for the Congress to continue to exercise its power in this manner for another 5 years?

In order to answer that question I suggest that it is important that we understand what is in the law which the committee bill proposes to extend.

Parenthetically, I think it should be made clear at the outset that the word "extension" is a malapropism, and does not quite fit the situation here. It is more accurate to say that on August 5, 1970, without further action by the Congress, the functional utility of two sections of the Voting Rights Act will come to an end, because at that point 5 years will have passed in which the States that were triggered under section 4 did not use a literacy test, and therefore upon petition to the court can escape coverage of section 5.

It is not quite accurate even to say that, because when the State which is covered today brings the lawsuit in August, as it is required under the present law to do, the act provides further that the court will retain jurisdiction of that suit for an additional 5 years. That means that upon motion of the Attorney General it is possible for the court to reopen the case without benefit of additional pleadings, except a motion by the Attorney General.

So it is fair to say that while a State now covered may escape coverage, it will remain under probation—it will not be able to change its voting laws and apply them in a discriminatory fashion, and the court would have the power promptly to disapprove the law which the State has passed.

I think it is critically important that we understand that.

What is in the act? The act contains 19 sections, 17 of which are permanent law and apply in every jurisdiction in all 50 States. Only two sections are not permanent. Those are sections 4 and 5.

Section 4 is the so-called automatic trigger section, which has already been explained, and I shall not consume time by repeating that.

Section 5 is the section which is triggered and spells out the consequences which flow from coverage under the trigger. The consequence is that the State covered by the trigger, a trigger which is mathematical, and which requires no determination of discrimination by the court or any other person, cannot change any part of its constitution or its statutory law that concerns elections without first getting the approval of the Attorney General or, in the alternative, the approval of the District Court of the District of Columbia.

This means that a State which is covered today cannot pass a redistricting statute following the 1970 census without the prior permission of the Attorney General of the United States or the District Court in the District of Columbia. These are the consequences of coverage under the automatic trigger.

Now, is it wise to extend such a law for an additional 5 years? I most earnestly submit that it is unwise. It is unwise to impose a legal presumption of guilt simply because a particular State has a lower voter turnout than a sister State.

I suggest that it is unwise to base such an absolute legal presumption upon election returns that are 5 years old. To do so simply ignores the dramatic progress that these States have made—even though under the lash of this law—and this amounts to a penalty rather than a reward for progress.

I think it is unwise to offer State sovereignty by requiring prior Federal approval of new State laws. The danger is not only in the area with which we are concerned today. If viewed as a precedent, it could be extended to other areas of law in the future.

Finally, I suggest it is unwise to regionalize this country, because whatever regionalizes this country divides this country.

Now I think it is proper to consider what is in the substitute to be offered by the distinguished minority leader. I shall not take the time to describe the contents definitively at this point. But I will try by summary to explain its essential components.

The substitute would make nationwide a temporary suspension, as distinguished from a permanent ban on literary tests.

It would make nationwide residence standards for voting in presidential elections in order to protect those who may move from one State to another.

Third, it would make nationwide the authority of the Attorney General to station both examiners and observers in any precinct in any jurisdiction in any State in the Union.

It would make nationwide the authority of the Attorney General to bring preventive injunction suits in any jurisdiction in any State upon the proper legal predicate.

Finally, it would establish a nationwide commission which would study the true impact of literacy tests upon minority voter participation and the impact of voter fraud.

Now, Mr. Chairman, I suggest that the vice of sections 4 and 5 in present law is not so much that it suspends literacy tests. The vice is that it is promiscuous in its application. It covers some States that are innocent and it fails to cover some States which are guilty.

If I may be permitted to cite as an ex-

ample my own State. Although Virginia is covered and presumed guilty, every report of the Civil Rights Commission has found Virginia innocent of voter discrimination in the period covered by this study. Since Virginia has been covered under the 1965 act, not a single Federal registrar has been sent into a single precinct, in a single election anywhere in the State of Virginia.

The same is true of Federal observers.

It is also interesting in that regard, I think, to understand that although Virginia has changed several of her voting laws since she has been covered under the act, none have been disapproved.

The CHAIRMAN. The time of the gentleman has expired.

Mr. McCULLOCH. Mr. Chairman, I yield the gentleman 2 additional minutes.

Mr. POFF. So you might properly ask, Why does not Virginia simply bring a lawsuit and escape coverage?

Let me explain, and I consider this to be vitally important to a proper understanding of the effect of sections 4 and 5—and every lawyer understands it is almost impossible to marshal evidence necessary to establish a negative—and that is particularly true when that negative is "not guilty."

For Virginia to establish that negative, it would be necessary for her to assemble verbal or documentary evidence from 765 general and precinct registrars in over 2,000 precincts, and to show by that evidence that there has not been any substantial racial discrimination on account of race in voting in any election—State, Federal, national, general or primary, in any precinct in the State of Virginia.

I say that this is a physical and practical impossibility. That is why we cannot escape.

Now you might also ask, if Virginia is innocent, why should Virginia be under the coverage under the act for another 5 years? My colleagues, that is just a little difficult to articulate.

You know, it has been said by someone—I cannot recall who—that Virginia is not so much a State as a state of mind.

Virginians are proud—they are independent—and we are shamed by the status unfairly thrust upon us by a Federal law which presumes us to be guilty when all of the evidence is to the contrary.

Virginians take offense at the fact that we are not entrusted to amend our own constitution. It was in Virginia where the first democratic legislature in the New World convened. It was sons of Virginians who contributed so much to the deeds and the documents of independence and the Union.

It is, I say, painful that we are not permitted to change our own voting laws without the prior approval of a Federal official or a Federal court.

Mr. Chairman, my plea then is for Virginia. My plea is for her sister States. But in a larger and more meaningful sense, my plea is for the Nation. I think it is time that we laid aside the old shibboleths and subdued the old passions and understood the new realities, discard the old discrimination, and began again to live together as one nation—all under the same law.

Mr. CELLER. Mr. Chairman, I yield 5 minutes to the gentleman from Illinois (Mr. MIKVA).

Mr. MIKVA. Mr. Chairman, literacy tests are not the issue.

Residency is not the issue.

Regionalism is not the issue.

The question is whether enough black people have been registered and are now voting in those States that used to keep them from voting. Some say too many are voting and we ought to reverse the trend. Some are more tolerant and say, "No, we have just the right amount—but no more."

And what the substitute really does is put the Federal Government back where it was for 100 years in the voting business—playing the futile game of "chase the legislature." And that is like chasing the rabbit at the dog races. The purpose of the game is to chase—but never to catch. And a whole series of cases in the thirties and forties established the rules of the game beyond any peradventure—chase but never catch. One series of such cases were known as the Nixon cases.

And if the substitute is adopted, forget about literacy or residency—those are the biggest set of falsies ever put upon a civil rights bill. The game will be played thusly: Let us impose a filing fee of $1,000 for everybody who wants to run for a local city council. The Attorney General will then file a case and 5 years later action will strike it down. In the meantime, back at the statehouse, they will pass a new law changing the filing fee to $995 or if it is a progressive legislature, it will abandon that route and say instead that you need 25,000 signatures on a nominating petition—or that all petitions must be filed at the State capitol—or that some offices are abolished—or you name it.

I did not make this game up. It has been played for 100 years in this country. Those cases I referred to earlier proved that in every instance, the legislature can run faster than the Attorney General. By removing the plenary jurisdiction of the Attorney General to review all changes in the election laws of those States found to have discriminated by the then in vogue format of literacy tests, we set the rabbit free to outrun us again.

It has been said that the Attorney General will be required to again go after the States which do discriminate one by one. That is not accurate; he will go after them none by none.

Then there is a related game which the administration substitute asks us to play. It is called "let us study the problem a little longer." In this case I am not sure why it is necessary to establish a National Advisory Commission on Voting Rights, since the assumption underlying its alternative is that there are no voting problems anyway. But section 7 of the administration substitute does put us back in the study commission game. What makes this new game particularly confusing is that title VIII of the 1964 Civil Rights Act already authorizes a Commission to study voting registration and statistics. But this authorization has never been funded. In fact, this administration—which wants to play the "study the problem" game—did not even ask for appropriations this year to fund the voting study which has been authorized since 1964. So it might appear to some skeptical players of the "study the problem" game that this new proposal is not even a good faith invitation to play. Two authorizations are not the equivalent of one appropriation.

If this substitute is adopted, this will be known as the "Too Many Blacks Are Voting Act of 1969." That is the way it will be interpreted, because that is the way it is going to work.

Mr. WIGGINS. Mr. Chairman, will the gentleman yield?

Mr. MIKVA. I yield to the gentleman from California.

Mr. WIGGINS. One of the significant features of the substitute is the right of the Attorney General to obtain injunctive relief. I am sure the gentleman is aware of that. If that right is used, and I would expect it to be used, this problem of chasing the legislature could be solved.

Mr. MIKVA. The point is that he has had the injunctive relief provision in the cases I am talking about. There was an injunction issued against the Texas registrar to keep him from enforcing that law.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

Mr. CELLER. Mr. Chairman, I yield the gentleman an additional 5 minutes.

Mr. MIKVA. The difference, if I may pursue this with the gentleman from California, is that one cannot enjoin all conduct unless he wants to give that power which was given to the Attorney General in the 1965 act—plenary power to say that where the States fall within a certain category by the mathematics of the 1965 act; at that point, all the voting laws of an offending State will be subject to review by the Attorney General.

I would put it to the gentleman from California: Do you not trust the Attorney General?

Mr. WIGGINS. Yes; I do trust the Attorney General in his faithful enforcement of the law, including section 3 of the present law, which does give the court the power to review prospectively any changes in any State that might work to the discrimination of any voter.

I really think that the argument historically has been sound, but in practical effect the States, if they seek to make changes in their laws to discriminate against Negroes, have never yet come to the Attorney General to present their laws for his approval.

The Attorney General now must proceed on a case-by-case basis to test the laws.

Mr. MIKVA. I would respectfully disagree with the gentleman from California. We heard complaints, in fact, by the distinguished gentleman from Virginia and others, that in fact they cannot make the changes now.

I did not make up the rules of this

game. The cases I referred to earlier prove that in every instance the legislature can run faster than the Attorney General.

The substitute would put the Attorney General back in the bag of chasing such laws one by one in those cases where the courts must find as an affirmative fact that the State has in fact used the law to discriminate; most of the laws in the 1930's and 1940's had some degree of fairness on their face. It was the way the laws were being applied, or the peculiarities of their application, which made for an unfair voting procedure.

I say to you, it is not a case of putting the Attorney General back in the bag of catching them one by one; it is catching them none by none; because during the 20 or 30 or 40 years of attempted enforcement of the Constitution and the statutes of the United States to protect black people in their voting down South we did not register and vote a bag full of voters down South. The gentleman knows it.

In the 5 years since this bill has been passed hundreds of thousands of black people have been made eligible to vote and have voted.

I suggest, what is wrong with that?

Mr. DENNIS. Mr. Chairman, will the gentleman yield?

Mr. MIKVA. I am glad to yield to the gentleman from Indiana.

Mr. DENNIS. The first thing I wanted to suggest to the gentleman was that a minute ago here in some of his illustrations he was referring to matters which came up in the State of Texas. I am sure the gentleman is well aware that the formula under sections 4 and 5 is so drawn that it does not apply to the State of Texas and would not affect that.

Mr. MIKVA. It does not apply to the State of Texas.

Mr. DENNIS. Is that correct?

Mr. MIKVA. That is correct.

I talked about the Nixon progeny because I was struck by the name and the fact that this one poor voter was caught for 10 years in the toils of that legislature and never did get the right to vote.

Mr. DENNIS. To pass from that, will the gentleman yield further?

Mr. MIKVA. I yield for a question.

Mr. DENNIS. The gentleman, I know, is aware that all we are talking about is extending sections 4 and 5 of the 1965 act. The rest of the sections remain in force. The gentleman is also aware, of course, that under section 3 in any court proceeding brought by the Attorney General of the United States the court as a part of its judgment may suspend literacy tests and, retaining jurisdiction, the court, again, may require this prior approval of new laws. Is that right?

Mr. MIKVA. May I say to the gentleman from Indiana, if you want to suggest that somehow we have acquired a new wisdom which we did not have for the last 50 years, I disagree. The courts can do something they have always had the power to do, and the Attorney General has always had the power to do—but when you go on the ad hoc basis, one by one, you cannot keep up with the game.

I decline to yield further at this time.

The substitute also has another gamesmanship feature in it. There is not any problem, but the substitute says "We ought to study the 'no problem.'"

Now, I find that fascinating because you know what? Since 1964, as I recall, we have had a commission which was supposed to study the voting rights and laws of the various parts of the country.

Title VIII of the 1964 Civil Rights Act specifically authorized the Commission to study voting rights but you know what? We never funded that Commission, and the current budget does not fund that Commission. So, we have another kind of game now going on with reference to the funding of the Commission, which represents a new way of playing the appropriations game.

But, Mr. Chairman, we are not going to make any progress by studying the problem because about 100 years of Supreme Court literature shows that the offenders will avoid facing up to the situation until the Attorney General forces them to correct it.

Mr. McCULLOCH. Mr. Chairman, I yield 6 minutes to the gentleman from Illinois (Mr. McCLORY).

Mr. McCLORY. First, Mr. Chairman, I want to say quite frankly that I do not impung the motives of those who are sponsoring and supporting the substitute bill, I do not impute to the administration or to my leader any aim or desire to accomplish any retrogression or other dire effects which might flow from the legislation which he is proposing.

However, I want to comment upon the inadequacy and ineffectiveness of the proposed substitute bill and I want to urge strongly that the Members of this body—primarily I am addressing myself to members of my party on this side of the aisle—give strong support to the extension of this law as you did in 1965 to the original enactment of this law.

Mr. Chairman, my primary interest in the Voting Rights Act is to help assure equal voting rights for all citizens of our Nation without discrimination because of race or color. The 1965 Voting Rights Act—which passed the House of Representatives by the overwhelming margin of 328 to 74, and in the other body, by a margin of 79 to 18—reflected then the purpose and determination of the Congress to end the discrimination against voters solely on the basis of their race or color.

There is no question but that the provisions to summarily strike down the literacy tests and all other local and State laws which might be interpreted as tests or devices for discrimination—was both a harsh and a courageous step for the Congress to take. The 1965 act did not name any specific States, but by establishing a measure or standard for determining discrimination, the act became applicable to only six Southern States—namely, Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, and 26 counties in North Carolina.

Of course, the arguments that were made to this legislation when enacted in 1965 may be presented again at this time and they seem to be the same arguments directed against this simple extension of the law. Perhaps those arguments will seem more persuasive now because of the progress in increased Negro registrations in the areas affected by the 1965 law. I am generally satisfied with the benefits which have been derived under the 1965 act. Indeed, I think it was too much to hope that the registering and voting by Negroes would equal that of whites at the end of the 5-year period—August 1970.

It is my understanding that, when originally proposed, the Voting Rights Act contemplated a 10-year life, and the 5-year term was a compromise.

I have gone over the testimony in the other body and the testimony there was with reference to a 10-year period. The only reason that period of time was reduced from 10 years to 5 years was in order to bring about in the other body a favorable vote on the subject of cloture and there was no objection which indicated that the objectives of the Act would be fulfilled at the end of the 5-year period.

There was no consideration given to the point that the 5-year period was adequate or that the 10-year period was too long, but solely that reduction of the period in which the bill would be effective would enable the sponsors to secure a cloture vote and consequently a consideration of the Voting Rights Act at the 1965 session.

It seems to me that this militates strongly against abandoning the existing Voting Rights Act at this time and substituting an untried and clearly less effective tool in its place.

Let us recognize—as the Attorney General himself has recognized—that substantial progress has occurred under the 1965 law. Indeed, in recent months the validity of the 1965 act appears to have had a particular impact. Consider section 5 of the present law which requires that in those States and counties where literacy tests and other practices are nullified, all statutes and ordinances are required to be submitted by the chief legal officer of the State in question to the Attorney General with the proviso that if the Attorney General shall interpose an objection within 60 days, the State or local requirement shall not be effective unless a declaratory judgment in the district court in the District of Columbia shall first be obtained—section 5.

With regard to this part of the bill, it is noted in the hearings that up to June 30, 1969, 313 such enactments have been submitted to the Attorney General, 283 resulted in no objection whatever. However, of the 10 enactments to which objections have been filed, six of the objected to changes have occurred this year. Also there were 32 such enactments pending at the time this summary was made, page 308 of the hearings.

In other words, the measure which we are seeking here to extend has immediate and current application. The requirements of the law are needed now and in the immediate future. For how long I do not know, I cannot say with certainty. However, I am satisfied to rely on the original judgment expressed at the time the Voting Rights Act was passed in 1965,

and I will say with all candor that if the progress at the end of an additional 5 years is as good as the progress we have made during the original 4 years, I see no reason whatsoever why the statute should not be permitted then to expire, but not now.

Mr. GUDE. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Maryland.

Mr. GUDE. Mr. Chairman, I thank the gentleman for yielding, and I want to commend the gentleman for the statement he has made. I support the extension of the Voting Rights Act of 1965, without amendments. I would like first to commend the fine work of the Judiciary Committee and especially the leadership of its distinguished ranking Republican member, the gentleman from Ohio (Mr. McCULLOCH), the gentle knight in the battle for human rights. Judge Higanbotham, a member of the Eisenhower Commission on Violence, recently praised Mr. McCULLOCH's deeds as "great profiles in courage to all men interested in equal justice under law." I could not agree more. No Member of Congress has a better grasp of the legal and human problems of civil rights enforcement, and no Republican better embodies the historic commitment of the Republican Party to protecting the human rights of all.

My position on the extension of the act may be stated in a sentence: The act is working, but the job is not done. Sections 4 and 5, which provide special remedies for the denial of voting rights in certain States, seem to me to have the considerable merit of commonsense. It is not unreasonable discrimination to provide special solutions for special problems. Great progress in the area of voting rights has been made, to be sure, but there has not been enough to refute the continued need for a regional remedy. The real issue in the Voting Rights Act is first-class citizenship, not second-class States.

And so I conclude with Mr. McCULLOCH, that we should not "tamper with success." Let us not clutter up good legislation with amendments that are either ill-considered or downright superfluous distractions from the real task at hand.

Mr. CELLER. Mr. Chairman, I yield 5 minutes to the gentleman from New York (Mr. RYAN).

Mr. RYAN. Mr. Chairman, the right to vote is fundamental to our democracy. Yet for almost 100 years after the adoption of the 15th amendment, which provided that the right to vote should not be denied or abridged on account of race, color, or previous condition of servitude, millions of black American citizens were denied that previous right. Finally, in 1965 after the conscience of the Nation had been aroused by violence, brutality and murder perpetrated upon those who sought to register and vote, or to help others to do so, the Voting Rights Act of 1965 was enacted.

Previous legislative attempts in 1957 and again in 1960 to protect the right to vote had failed to end racial discrimination in the electoral process in the Southern States because in the earlier legislation it depended upon case-by-case litigation, which was costly, time consuming and produced insignificant results.

Selma dramatized not only the extent of the deprivation of the right to vote but the unconscionable methods used to disenfranchise Negroes in the South.

In 1965 the Congress overwhelmingly adopted the Voting Rights Act. The House passed the bill by a 328-to-74 vote; the Senate by a 79-to-18 margin.

H.R. 4249 extends the key remedies of the act for an additional 5 years beyond August 1970 at which time States subject to its coverage would otherwise be able to obtain exemption. It is similar to H.R. 7510, which I introduced.

The Voting Rights Act of 1965 provided three essential remedies for enforcing the right to vote in jurisdictions covered by the statutory formula. States or political subdivisions in which fewer than 50 percent of the voting-age population were registered for or voted in the 1964 presidential election.

First, the suspension of literacy tests and devices.

Second the appointment of Federal examiners and observers. The act gave the Attorney General the power to certify to the Civil Service Commission for the appointment of Federal examiners and observers in those jurisdictions covered in order to insure full voter participation. The duty of examiners is to prepare lists of qualified voter applicants. The observers have the task of monitoring the casting and the counting of ballots.

Third, the prohibition against the enforcement of new voting rules or practices without Federal review to determine whether their use would perpetuate voting discrimination. Section 5 of the act requires either that a determination be made by the U.S. District Court for the District of Columbia that the new rules or procedures are not racially discriminatory in purpose or effect or, that the new proposals have been submitted to the Attorney General and not objected to, by him, within 60 days.

As the 1968 report of the U.S. Commission on Civil Rights, entitled "Political Participation," and reports gathered by the Southern Regional Council show, substantial progress has been made as a result of the 1965 legislation. Six States are covered in full by the Voting Rights Act—Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. And 39 counties in North Carolina are covered.

During the period between August 1965 and the summer of 1968, registration of black voters in these six States increased from 856,000 in 1965 to 1,596,000. These figures in themselves demonstrate the progress which has been made under the provisions of the Voting Rights Act.

As has been pointed out in the testimony of the U.S. Civil Rights Commission, not all of this increase can be attributed to the Voting Rights Act alone. Extensive voter registration drives by civil rights groups and other citizens' organizations have significantly aided in the achievement of this increase. Nevertheless, it is clear that the efforts of these groups and the resulting increase in black registration would not have been possible without the protection and provisions of the 1965 legislation.

Before the Voting Rights Act was adopted, only 31 percent of the voting-age blacks in the 13 States of the old Confederacy were registered to vote. As of the summer of 1968, 62 percent were registered.

A significant disparity still remains between white and black political participation.

According to figures compiled by the voter registration project of the Southern Regional Council, while 62 percent of voting-age blacks are now registered to vote in these 13 States, 78 percent of the white voting-age population is registered, a difference of 16 percent. In the six States directly covered by the 1965 act, only 57 percent of the black voting-age population is registered, as opposed to 79 percent of the white voting-age population, a difference of 22 percent.

The following is a breakdown of the increases in the six States, which are fully covered, and also North Carolina:

In Alabama, before the passage of the act, 69.2 percent of the eligible white voters were registered, but only 19.3 percent of the eligible black voters were registered. In 1969, white registration rose to 94.6 percent; black registration to 61.3 percent.

In Georgia, 62.6 percent of the eligible white voters were registered before the act; 27.4 percent of the black eligibles were registered. This figure increased to 88.5 percent for whites and 60.4 percent for blacks in 1969.

Louisiana's white registration of eligible voters, before the act's passage, was 80.5 percent the black registration was 31.6 percent. In 1969, white registration rose to 87.1 percent; black registration to 60.8 percent.

In Mississippi, before the act, white registration was 69.9 percent of the eligible voters, while black registration was 6.7 percent. In 1969, white registration increased to 89.8 percent; black registration to 66.5 percent.

In North Carolina, white registration before passage of the act was 96.8 percent of those eligible to vote; the black registration was 46.8 percent. In 1969, white registration was 78.4 percent; black was 53.7 percent.

In South Carolina, before the passage of the act, 75.7 percent of the whites eligible to vote were registered; 37.3 percent of the blacks were registered. In 1969, white registration was 71.5 percent; black registration was 54.6 percent.

And in Virginia, before the act, 61.1 percent of the white eligibles and 38.3 percent of the black eligibles were registered to vote. By 1969, white voter registration was 78.7 percent; black registration was 59.8 percent.

I include at this point in the RECORD tables showing the statistics on the registration of black and white voters before and after the 1965 act:

TABLE I

State	Negro voter population [1]	Negro Preact registration	Percent registered	Fall 1969 Negro registration	Percent registered
Alabama	481, 220	92, 737	19. 3	295, 000	61. 3
Arkansas	192, 629	77, 714	40. 4	150, 000	77. 9
Florida	470, 261	240, 616	51. 2	315, 000	67. 0
Georgia	612, 875	167, 663	27. 4	370, 000	60. 4
Louisiana	514, 589	164, 601	31. 6	313, 000	60. 8
Mississippi	422, 273	28, 500	6. 7	281, 000	66. 5
North Carolina	550, 929	258, 000	46. 8	296, 000	53. 7
South Carolina	371, 104	138, 544	37. 3	203, 000	54. 6
Tennessee	313, 873	218, 000	69. 5	289, 000	92. 1
Texas	649, 512			475, 000	73. 1
Virginia	436, 718	144, 259	38. 3	261, 000	59. 8
Total	5, 015, 933	1, 530, 634	35. 5	3, 248, 000	64. 8

[1] Source of population data is the 1960 census.

Source of preact figures—U.S. Commission on Civil Rights, Political Participation, Washington, D.C., May 1968.

Source of 1969 figures—Voter Education Project, Southern Regional Council, Atlanta, Ga., December 1969.

TABLE II

State	White voter population [1]	White preact registration	Percent registered	Fall 1969 white registration	Percent registered
Alabama	1, 353, 122	935, 695	69. 2	1, 280, 000	94. 6
Arkansas	848, 393	555, 944	65. 5	694, 000	81. 6
Florida	2, 617, 438	1, 958, 499	74. 8	2, 465, 000	94. 2
Georgia	1, 796, 963	1, 124, 415	62. 6	1, 590, 000	88. 5
Louisiana	1, 289, 216	1, 037, 184	80. 5	1, 123, 000	87. 1
Mississippi	751, 266	525, 000	69. 9	672, 000	89. 8
North Carolina	2, 005, 955	1, 942, 000	96. 8	1, 572, 000	78. 4
South Carolina	895, 147	677, 914	75. 7	640, 000	71. 5
Tennessee	1, 779, 018	1, 297, 000	72. 9	1, 637, 000	92. 0
Texas	4, 884, 765			3, 020, 000	61. 8
Virginia	1, 876, 167	1, 070, 168	61. 1	1, 476, 000	78. 7
Total	20, 097, 450	11, 123, 816	73. 4	16, 169, 000	80. 4

[1] Source of population data is the 1960 census.

Note: Source of preact figures—U.S. Commission on Civil Rights, Political Participation, Washington, D.C., GPO CR1.2:P75/3, May 1968.

Source of 1969 figures—Voter Education Project, Southern Regional Council, Atlanta, Ga., December 1969.

As the statistics indicate, much remains to be done before the barriers of 100 years are completely eliminated and all citizens are free to participate in the political process on an equal basis.

Another measure of the progress attained under the Voting Rights Act is the increase in black elected officials in the South. Before 1965, there were approximately 78 elected black public officials in the South. Today there are 528. However, much remains to be done in this area also. While 19 black legislators now have been elected in the legislatures of the covered States, no black legislator has yet been elected in Alabama or South Carolina, and only two have been elected in Virginia and one has been elected in Louisiana, Mississippi, North Carolina, respectively.

I include at this point in the RECORD a table prepared by the Southern Regional Council showing black elected officials in the Southern States:

BLACK ELECTED OFFICIALS IN THE SOUTHERN STATES

	Alabama	Arkansas	Florida	Georgia	Louisiana	Mississippi	North Carolina	South Carolina	Tennessee	Texas	Virginia	Total
Legislators:												
State Senate				2					2	1		5
State House			1	12	1	1	1		6	2	2	26
Total												31
City officials:												
Mayor	4	4	1		3	3	2	2				19
City council-vice mayor	37	9	28	15	19	30	43	22	8	10	18	239
Civil Service Board			1									1
Total												259
County Officials:												
County governing board	6		1	5	10	4	1	4	6		2	39
County administration	2			1		1						4
Election commission						15						15
Total												58
Law enforcement officials:												
Judge, District Court							1		1			2
Sheriff	1											1
Coroner	1					2						3
Town marshal			1		4	1						6
Magistrate								4				4
Constable	6		1		9	6			3			25
Justice of the peace	19	4			9	9			1		6	48
Total												89
School Board Officials: School Board Members	7	37	1	7	9	6	10	2	3	9		91
Total	83	54	35	42	64	78	58	34	30	22	28	528

Source: Voter Education Project, Southern Regional Council.

An additional factor to be noted is that most of the black public officials elected in the South are concentrated in small communities, where the majority of the population is black. In Mississippi, for example, only two black public officials have been elected in communities where blacks constitute a minority of the population, and in those communities the black population in 1960 was over 40 percent.

Beyond the work which needs to be done to bring black voter registration into conformity with white registration and to enable black citizens to share political power in communities where they do not constitute an absolute majority, there are other obstacles to the securing of equal voting rights which must be rooted out and eliminated. Intimidation of potential black voters, while perhaps less drastic than it was 4 years ago, remains an all too common barrier to full political participation by blacks. The Southern Regional Council, which has sponsored over 100 voter registration drives in several areas of the South, has received numerous reports that Negroes still fear economic reprisal if they register to vote, including being fired, evicted from their homes, or removed from the welfare rolls.

There is also the threat of physical retaliation as well as other coercive tactics used to discourage registration.

Reports filed with the voter education project also tell of irregular election maneuvering in several counties covered by the Voting Rights Act, including registrars maintaining short or irregular hours, or arbitrarily closing their offices without notice. Other reports tell of various sorts of chicanery being used to keep Negroes from voting, and of Negroes being treated contemptuously by local white registrars.

Although many of these incidents are less dramatic than the mass arrests and blatant disregard of rights which created headlines a few years ago, nonetheless they reveal that the struggle for equal rights is far from won. Much has been done to erase long standing obstacles to full political participation by black voters

in the political process; but much remains to be done before the last vestiges of discrimination and inequality will be rooted out.

Although I believe that the Attorney General should have used his power to cause the appointment of Federal examiners more often than he has, nevertheless Federal examiners have been effective where they have been assigned.

According to the Civil Rights Commission:

As of March 1, 1969, examiners had been sent to 58 counties in five Southern States. Examiners in these counties had listed to vote a total of 167,364 persons, including 157,567 nonwhites and 9,797 whites. (Hearings before Subcommittee No. 5 of the Committee on the Judiciary on H.R. 4249, H.R. 5538 and H.R. 7510).

Greater and more effective use should be made of Federal examiners and observers. While 740,000 Negroes had been registered as of the summer of 1968, only 158,000 of these were registered by Federal examiners.

Federal observers had been appointed to monitor elections in five states, as of December 1968: Alabama, Georgia, Louisiana, Mississippi, and South Carolina.

In Alabama, five elections have been covered by Federal observers. In Georgia, two elections have been monitored by Federal observers. In Louisiana, the number of elections to which Federal observers have been appointed are nine. In Mississippi, 10 elections have been covered by Federal observers. And in South Carolina, five elections have been covered by Federal observers.

The numerous incidents of local harassment of blacks attempting to register and discrimination against black poll watchers documented in the "Political Participation" report of the Commission on Civil Rights clearly points out the continued need for Federal examiners and observers. As long as fear and memories of past discrimination make black citizens reluctant to register with local officials, the presence of Federal officials will be required. As long as local officials continue to harass and intimidate potential black voters, it will be necessary for the Federal Government to insure that all citizens—regardless of race—have an equal opportunity to participate in the political process.

If the Voting Rights Act of 1965 is not extended, the covered States will be able to escape after August 1970. They will be freed from the three key provisions of the act which have made possible the dramatic increase in black registration—the suspension of tests and devices, the appointment of Federal examiners and observers, and Federal approval of any changes in election laws.

If section 4 of the Voting Rights Act is allowed to expire, a State could resume the use of literacy tests and other devices. None of the States covered by the act has repealed its literacy test.

If section 4 is allowed to expire, Federal examiners and observers could not be sent into a State by direction of the Attorney General.

If section 5 is allowed to expire, a State would not be required to obtain the approval of the U.S. district court, or the acquiescence of the Attorney General before putting into effect changes in voting laws or precedures.

Mr. DENNIS. Mr. Chairman, will the gentleman yield?

Mr. RYAN. I yield to the gentleman from Indiana.

Mr. DENNIS. That is a point which gives me concern. Like the gentleman from New York, I come from a State where we have no problems about voting and color and race is irrelevant, and I certainly subscribe to that doctrine, as the gentleman from New York does.

The question is as to the method of approach—whether we use the triggering procedure of sections 4 and 5 or whether we use the more normal procedure of having the Government go into court and prove a case of discrimination.

Now on this point, where a State has to go, ahead of time before there is any complaint at all, and get the Federal Government to approve a law—as a lawyer, and I know the gentleman is a good lawyer—that troubles me.

I wonder what the gentleman's comment would be on this statement that Mr. Justice Black made in his opinion in the case where this act was before the Court.

Justice Black said:

Certainly if all the provisions of our Constitution which limit the power of the Federal Government and reserve other power to the States are to mean anything, they mean at least that the States have power to pass laws and amend their constitutions without first sending their officials hundreds of miles away to beg Federal authorities to approve them * * *. I cannot help but believe that the inevitable effect of any such law which forces any one of the States to entreat Federal authorities in faraway places for approval of local laws before they can become effective is to create the impression that the State or States treated in this way are little more than conquered provinces. And if one law concerning voting can make the States plead for this approval by a distant Federal court or the U.S. Attorney General, other laws on different subjects can force the States to seek the advance approval not only of the Attorney General but of the President himself or any other chosen members of his staff.

I will say to the gentleman that I am concerned about this not only in this field of voting rights, but as to what is going to be done in cases, perhaps under the 14th amendment, as to the powers of our States—your State and mine—in various fields—to pass legislation without prior Federal approval.

I would like to hear the gentleman comment on that.

Mr. RYAN. I believed that section 5 was constitutional when it was adopted by this Congress; and it has been held constitutional in South Carolina against Katzenbach, the case from which the gentleman quoted the words of Mr. Justice Black.

Mr. Dennis. That is not my question. I know that the 1965 act has been held constitutional. But what about the philosophy of it?

Mr. RYAN. Let me finish—it was adopted by this Congress in order to meet a very specific problem and that was the fact that the States of the South which sought to disenfranchise black voters had resorted continually to all kinds of ingenious devices to prevent people from registering and voting, to dilute their vote, if they were permitted to vote, and to prevent black candidates.

It was essential for the Congress to act—and the Congress did act. I believe that section 5 should be continued.

Mr. DENNIS. What the gentleman is saying, in effect, is that he feels the situation was so bad that even if the remedy may be bad, that we should do this.

Mr. RYAN. I do not agree that it is a bad remedy. I believe it is an appropriate remedy, which has been effective, and it should be continued.

If the Voting Rights Act of 1965, as presently written, is allowed to expire, the evidence is convincing that State legislatures will change or consolidate districts, dilute the strength of the black vote, abolish offices, and use other methods to prevent black candidates from running for office. That is going to happen just as sure as I am standing here.

Mr. DENNIS. Does the gentleman have any concern at all about the potentials of this as a precedent, in other than the field of voting rights, as to the rights of the States to legislate without coming down here to get permission to do so?

Mr. RYAN. Throughout the history of the civil rights struggle, the States rights argument has been used as the rationale to forestall effective Federal action—both legislative and executive. What should be of concern is the enforcement of constitutional guarantees and the protection of human rights. Section 5 was designed to prevent States from adopting new voting procedures for the purpose of denying the vote. Without this requirement of advance Federal review, a voter could be deprived of his vote without a remedy, for after an election it would be of little avail to obtain a court decision in his favor. Time is of the essence in voting rights, and that factor, among others, justifies the requirement.

Under the 15th amendment Congress has the power to enact appropriate legislation. That is what we should continue to do.

Mr. SCHEUER. Mr. Chairman, will the gentleman yield?

Mr. RYAN. I yield to the gentleman.

Mr. SCHEUER. Mr. Chairman, I would like to ask the gentleman from Indiana who was just asking some questions of the gentleman from New York (Mr. RYAN) about States rights—whether he was concerned by the intervention of the Federal Government into areas normally controlled by the States when the Congress passed the flag bill—and when Congress passed the bill mandating the colleges and universities to deal punitively with students who were involved in demonstrations. Did the gentleman from Indiana exhibit any heartfelt concern about the invasion of States rights then on those two occasions?

Mr. DENNIS. May I state for the gentleman's information that the gentleman from Indiana always has a heartfelt interest when it comes to States rights, although I do not recall that I took the floor on those occasions.

Mr. SCHEUER. I thank my colleague.

Mr. RYAN. I was pointing out the possible consequences if the act is not extended.

A State which escapes from the act would be able to require the re-registration of all voters, disenfrancising the thousands of black voters who secured the right to vote under the Voting Rights Act of 1965. The painful process of registration would have to be repeated in the face of renewed threats of economic or even physical retaliation and without the presence of Federal examiners. Black political participation could well return to its former low levels.

To be sure there would be court challenges. But a return to the former case-by-case method would be intolerable. Elections would come and go during the course of litigation.

Without section 5 of the 1965 act which requires Federal approval of any change in voting qualifications, standards, practices, or procedures different from those in effect on November 1, 1964, there is little doubt that the States and localities would resort to various ways to dilute the black vote and to defeat black candidates. The U.S. Commission on Civil Rights has documented a number of changes already attempted.

One example is switching from district elections to at-large elections. By doing this, districts which contain a high density of black voters are combined with white districts which can numerically out poll them. This device has been used for local elections in Alabama and Mississippi.

Another manner used to dilute the black vote is the consolidation of counties which have black voting majorities with counties which have white voting majorities. Mississippi also made use of this method, through the introduction and passage of an amendment permitting the legislature by a two-thirds vote to consolidate adjoining counties. Previously, this could only be done if a majority of voters within the counties to be consolidated approved.

Reapportionment and redistricting measures have been another method for diluting the black vote in the South. This device has been used in the past by both Alabama and Mississippi.

In addition, the full slate voting requirement has caused a weakening of black vote. This requires a voter to cast a vote for each position to be filled. If the voter does not vote the full slate, his ballot is void. Thus, the black voter may have to vote for a white candidate in order for his vote for a black candidate to count or his ballot will be void. Either way, his vote is diluted.

A variety of discriminatory tactics have been used to harass and obstruct black voters—refusal to assist or permit assistance to illiterate voters, giving inadequate or erroneous instructions, disqualification of black ballots on technical grounds, denial of equal rights to vote absentee, discriminatory location of voting places, and segregated voting facilities and voter lists.

In Mississippi, Alabama, Georgia, Louisiana, and South Carolina the names of black registrants were either excluded from the official voter lists or they were listed with incorrect party designations.

Then there are the methods used to prevent blacks from either becoming candidates or obtaining office.

One very simple way is to abolish the office. On several occasions, the office of justice of the peace has been "reevaluated" when a black candidate has filed for the office, and the decision has been that the office is no longer necessary.

Another way to keep blacks from being elected to public office has been to extend the terms of incumbent white officials. Such an extension of terms was made in Bullock County, Ala., 2 weeks before the passage of the Voting Rights Act. The law has since been declared unconstitutional by a Federal court.

Substituting appointment for election is another method used to prevent the election of blacks. This device has been primarily used to keep in office superintendents of education in counties in Mississippi.

In Alabama an increase in filing fees has been used to preclude blacks from running for office. For example, the fee for sheriff was raised from $50 to $500; for member of the board of education from $10 to $100.

In Lowndes County, Ala., where 80 percent of the population is black, and the per capita income is $507 a year—it is virtually impossible for any black to run for either office.

Still another method is not to provide adequate polling facilities, such as in Louisiana, where in 1966 a candidate for alderman was defeated because one polling place was provided in the precinct with a black majority.

The State of Mississippi had added requirements to the qualifications for candidates in order to prevent blacks from running for office, including increased signatures for nominating petitions, a requirement that each elector personally sign the petition and include his polling place and county, a requirement that independent candidates file their petitions on the day before or the day of the primary, and the disqualification of anyone who has voted in a primary election from running as an independent in the general election.

In several Southern States, including Alabama, Arkansas, Georgia, and Mississippi, blacks have been prevented from running for public office because public and party officials have either failed or refused to provide them with pertinent information about the offices and elections involved.

In Mississippi, another method used to prevent prospective black candidacies or to harass prospective candidates has been to withhold or delay the necessary certification of the nominating petition.

And if all else fails and a black candidate is elected, there is always the last ditch effort of imposing barriers to his assuming office. In Mississippi, this has been achieved because of the difficulty black electees had in obtaining the bonds necessary to cover any losses they might incur.

It should be obvious that the white power structure does not intend willingly to relinquish its control. If the Voting Rights Act is permitted to expire, the Federal Government will no longer have the authority to help make the 15th amendment a reality for millions of black Americans.

The experience of the past 4 years under the Voting Rights Act has shown the voting potential which existed in the South, but which had been untapped because of 100 years of discrimination.

If our Nation had lived up to the Constitution and the 15th amendment, if human rights had been placed ahead of States rights, then the act of 1965 would have been unnecessary.

But it was necessary, and it has been effective. It must not be permitted to lapse, for it protects the precious right to vote without which "other rights, even the most basic, are illusory," as the U.S. Supreme Court stated in Wesberry against Sanders.

The CHAIRMAN. The time of the gentleman has expired.

Mr. McCULLOCH. Mr. Chairman, I yield to the gentleman from Virginia (Mr. BROYHILL) for whatever time it requires to make a unanimous consent request.

Mr. BROYHILL of Virginia. Mr. Chairman, I rise in opposition to H.R. 4249, to continue in full force and effect the provisions of the so-called Voting Rights Act of 1965. That act is a perfect example of a practice we have seen all too frequently during the last decade, of attaching a glorifying name to a bad bill to disguise its true purpose.

The purpose of the Voting Rights Act of 1965, and of the bill to extend it today, quite simply is to force Federal registrars upon Southern States, including my own State of Virginia. It arbitrarily assumes that racial discrimination exists and suspends tests and devices as conditions for voter registration in States or counties where fewer than 50 percent of persons of voting age are registered or have voted, then assigns Federal examiners to supervise the registration of voters and the conduct of elections in those States.

Article I, section 2, of the Constitution, and the 17th amendment, vest in the States the right to establish the qualifications of voters. The 15th amendment requires that whatever standards are established be not racially discriminatory and that such standards be uniformly applied. Thus, while Congress has authority to enforce the 15th amendment by appropriate legislation, it has no authority to do so by denying certain States their right to set qualifications and permitting others to do so. It cannot be proper to enforce one right guaranteed by the Constitution by taking away from a select group of States another right also guaranteed.

The indicators of racial discrimination in the 1965 act which were used to trigger the suspension of tests and other voting requirements and open the way for appointment of Federal examiners, were that fewer than 50 percent of age-eligible persons were registered or voted in 1964. They did not by any means constitute conclusive evidence of discrimination. Fewer than 50 percent of age-eligible persons vote in Virginia, but the U.S. Commission on Civil Rights has

reported that there is no evidence of racial discrimination in Virginia's voting process. Further, in the absence of any complaints, not a single Federal registrar has been sent into a precinct, county, or city of Virginia, nor have Federal observers been dispatched to oversee our elections. Yet, under provisions of the act my State stands year after year under threat that the provisions of the act may be invoked, and in such event we would be forced to seek a judgment in the Federal District Court for the District of Columbia to prove that any tests or devices utilized as requirements for voting eligibility have not been used as a means of racial discrimination during the previous 5 years. This means that our States are presumed guilty, on the basis of arbitrary criteria, until they prove themselves innocent, in contradiction of a fundamental principle of justice. Further, by requiring these few States to seek approval of the Federal District Court for the District of Columbia before making any change in qualifications or procedures for voting we not only deny them the right to set qualifications but also violate the principle of separation of the legislative and judicial powers.

Finally, the 1965 act is most remarkable for the many kinds of voting fraud and abuse it ignores throughout the Nation in a determined effort to penalize a small section for imagined discrimination. I would be the first to support election reform which would guarantee that every would-be voter can cast his vote without fear or intimidation; and which would also guarantee that his vote would not be diluted by fraudulent votes cast by others. We do need guarantees against election fraud. We need stronger and more consistent prosecution of those who perpetrate fraud when they are discovered. But the 1965 act does not carry these guarantees, and we only attempt to fool the American people if we pretend we provide these guarantees by passing a 5-year extension of an unfair and discriminatory measure. Mr. Speaker, I urge defeat of this legislation unless it is amended by the substitute, H.R. 12695, which will be offered later today.

If it is fitting and proper to abolish literacy tests as a qualification in six or seven States of this Union, then why is it not fitting and proper to abolish these tests in all 50 States?

I do not think literacy tests are bad. On the contrary I think literacy tests are essential to help assure an informed and responsible electorate. But if we are to impose any law on any State, on any subject, we must make certain that such law is equally applicable to all States and all citizens. How can we abolish one form of alleged discrimination by enacting a new law which is even more discriminatory?

Mr. Chairman, my State of Virginia is in the process of updating and improving our voting laws. We are planning to do this by two approaches. One would require an amendment to our State constitution which must be approved by two sessions of the State legislature and then by the voters of the State. The other approach would simply require the approval of one session of the legislature and the Governor similar to any other change in State law.

The irony of this, Mr. Chairman, is that after all this planning and work has been completed we will have to come to Washington, hat in hand, and ask the U.S. Attorney General or the Federal courts for their approval. How degrading can we get? Are not the people of Virginia capable of determining for themselves how they want their voting laws changed?

In order to show the Members of the House how ridiculous this can be, I should like to list what we have proposed as changes in the voting laws of the State of Virginia and the status of the situation under both methods.

First the list of proposed changes which would require a constitutional amendment:

A. Reduce residency requirement for all elections from one year to six months.

B. Remove all reference to requirement that capitation tax be paid—although voided by court the language is still in Va. constitution.

C. Provide that a person who does not vote once within four calendar years shall be *automatically* purged from registration books.

D. Gives legislature right to further reduce by law at a later date the residence requirement for Presidential elections.

E. Requires a person to have both a legal residence and a domiciliary residence in order to vote by absentee ballot from out of state.

The list of changes proposed by the Legislative Advisory Committee of our State legislature which requires only the approval of the State legislature and the Governor are:

A. Moves primary for all except city elections to September. Requires conventions to be held within 30 days in advance of primary.

B. Require strict reporting of campaign contributions including a person who might spend money for candidate without candidates permission or knowledge. All contributing over $50 must be listed individually—those below may be lumped.

C. Requires a computerized voter list including central state office master tape.

D. Requires voting machines to be used throughout state.

E. Requires every county and city to have a central registrar with an office open at regular office hours.

The proposed constitutional amendments have been approved by a special session of our legislature this past summer and will be submitted to the January-February 1970 session for final legislative action before submission to voters for approval in the November 1970 election.

The second proposal will be submitted to the January-February 1970 session of the legislature for approval and adoption.

These proposals do not discriminate against anyone on the basis of race, color, creed, or religion, and it should not be necessary to get permission of the Federal Government to adopt them.

The defeat of H.R. 4249 or the adoption of the substitute, H.R. 12695, will make such prior approval of the Federal Government unnecessary. I again urge the defeat of H.R. 4249 and the adoption of H.R. 12695.

Mr. McCULLOCH. Mr. Chairman, I now yield to the gentleman from Michigan (Mr. HUTCHINSON) 2 minutes.

Mr. HUTCHINSON. Mr. Chairman, the constitutional basis of the Voting Rights Act of 1965 was the 15th amendment. The constitutional basis for the proposed substitute to be offered by the gentleman from Michigan (Mr. GERALD R. FORD) troubles me, frankly.

Apparently the constitutional basis of the substitute is a much broader construction of constitutional power than even the courts have yet definitely accepted. Every provision of the Voting Rights Act of 1965 is based upon the theory of implementing the 15th amendment. As I read the substitute, on the other hand, all of these tests and devices are to be suspended nationwide, not on any basis of implementing the 15th amendment, not on any basis of protecting the people's right to vote regardless of race or color, but rather on the theory that whatever the Congress deems to be appropriate legislation in the field of voting rights can supersede admittedly constitutional State law on the qualifications to vote on the idea that the Federal power is supreme over the State power, and so if legislation is appropriate, it can be upheld even though it supersedes otherwise constitutional State power.

This disturbs me. Particularly am I disturbed because this theory is being applied to set aside the residency requirements of the State so far as voting for the President and Vice President is concerned.

The idea is that we can set aside all these residency requirements as an appropriate use of the enforcement power of Congress under the 14th amendment or the 15th amendment or any other of the several amendments relative to voting rights in the Constitution.

I say if the Congress may by statute suspend residency requirements of the States, we can by statute provide how old a citizen must be to vote for the President or Vice President, and we can go further and say that in order to vote for President or Vice President, every election board in every precinct shall be composed in a certain way, and the vote shall be tabulated in a certain way.

The end result is that we will be simply creating a national election system, completely destroying the powers of the States in the election process.

Mr. CELLER. Mr. Chairman, I yield 5 minutes to the gentleman from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. Mr. Chairman, I think I have the credentials as a southerner with respect to geography, heritage, and vernacular. I do not think there is any particular ideology which is the single southern orthodoxy, however.

I wish to comment on this bill and the amendment which is to be offered in the form of a substitute and also to comment about legislation of this general type.

Two faults have marked penal social legislation, in my opinion. One is that it too frequently shoots at old and infirm inequities when new and virulent ones are emerging. The second is that it applies its principle of law a case at a time.

Thus the wolf is caught, flayed, its hide taken in, and the bounty collected, while whole herds of sheep are being devoured.

I am speaking from some experience. It happens to have been in the State of Texas where both of the Nixon cases, that is, Nixon against Herndon and Nixon against Condon, and where Smith against Allright all arose between the years 1927 and 1943. It was during this long drawn-out period that Negroes in my State were seeking their rightful participation at the polls.

Fortunately, by the time of the passage of this act, Texas did not fall in the category of having less than 50 percent registered or 50 percent voting in the 1964 election. It was not because Texas was not in the South or because Texas was a border State. It was because of the rule of the act, which has nothing to do with geography, that Texas escaped inclusion in sections 4 and 5 of the act. The formula of the act is not regional. It is with respect to performance.

I am tired of hearing the attack that this statute is regional. It is not regional if a State in the region has escaped the formula for inclusion. I want to say quite frankly one of the reasons Texas escaped that formula is because approximately one-third of the population belongs to two minorities.

About one-fifth of the population is Mexican-American.

About one-sixth of the population is Negro.

Those proportions have changed from the one side to the other in the last 10 years.

But we have not had the deep-seated prejudices in my State with respect to the Mexican-American minority. Beside that, the Mexican-American minority in some counties, as is quite notable from some elections in the past, had an actual majority and had to be listened to politically. Therefore, it formed a bridge to ward recognition of minority rights and we escaped because of that bridge and because of that performance.

Mr. McCULLOCH. Mr. Chairman, will the gentleman yield for an observation?

Mr. ECKHARDT. I am glad to yield to my distinguished colleague.

Mr. McCULLOCH. I am very glad to hear the statement which is being made. I should like to make a statement for the RECORD. The summer-fall 1969 figures showed that 73.1 percent of the black people in Texas are registered to vote.

Mr. ECKHARDT. I thank my colleague. I am proud of that record.

Mr. McCULLOCH. And 61.8 percent of the white people are registered to vote. More of the black people are registered than whites in Texas.

Mr. WATSON. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I am delighted to yield to my colleague from South Carolina.

Mr. WATSON. The gentleman knows the high regard I have for his ability.

With reference to the discussion as to whether or not this is a regional measure, if it is not a regional measure, then, at the end of the 5-year period, next year in August, why would not the proponents of this measure allow those five Southern States which have met the 50-percent requirement to come out from under the law? Why would not the proponents let them get out from under?

Mr. ECKHARDT. I am glad the gentleman made that comment at this time, because it does lead into the rest of my remarks.

The situation is simply this: that when the presumption of discrimination with respect to race fell upon those States which had not accomplished the 50-percent level it became necessary to give a period of time in which those States could have Federal surveillance exercised over them in order to be assured that the electorate would sufficiently grow so that ultimately the vote and the political pressure in the State would protect the honesty of the electorate in that State and the control of that State.

Here is what happened in my State, and here is how this thing was ultimately cleared up. Here are the dangers that can exist today if this law is not continued.

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. CELLER. Mr. Chairman, I yield the gentleman 1 additional minute.

Mr. ECKHARDT. Though we had met these needs at an early date we had not met the standards of the Brown decision of 1954.

I recall my courageous colleague in this House, the distinguished gentleman from Texas (Mr. GONZALEZ), conducting the longest filibuster in history attacking nine of the same type of laws which are used in order to defeat voting rights which were then proposed to defeat the rights of Negro citizens and children to attend the schools.

If we should permit an attack on an old inequity to be substituted for a bill which effectively attacks a continuing inequity, we would abolish that protection, that continual surveillance, over those legislatures which have infinite innovative capacity to devise processes of foot-dragging against putting into effect voting rights.

Mr. CELLER. Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. FARBSTEIN).

Mr. FARBSTEIN. Mr. Chairman, the amendment we have before us is based upon the recommendations made by the Attorney General, John Mitchell, before the Judiciary Committee, and represents the administration alternative to a simple 5-year extension of the 1965 Voting Rights Act. It would appear to me that this proposal is strictly political in its motivation and that the administration is less concerned about voting rights than it is in wooing the South as part of its grand southern strategy. This proposal would serve to retard the progress in black voter registration that has come about as a result of the 1965 act. For that reason, I shall vote against it and vote for a simple 5-year extension of the current law.

The Voting Rights Act of 1965 includes provisions suspending literacy tests and devices used by Southern States to prevent black voter registration. It empowers the Attorney General to appoint Federal examiners and observers in areas where there is evidence of violation of the 15th amendment due to manipulation of the registration system. The examiners prepare lists of eligible voter applicants whom State officials are required to register. The act also prohibits States and political subdivisions, in which literacy test suspensions are in effect, from enforcing new voting procedures which have the object of preventing black voter registration.

It has been the most effective piece of civil rights legislation in our Nation's history. Since enactment of the 1965 act, in the five States where Federal examiners have been appointed, black registration has jumped from 29 percent to 52 percent. More than 2 million have been enfranchised and 463 Negroes have been elected to public office. Despite this success, black voter registration is still low in numerous counties within these States. The voting problems at which the 1965 act were directed have not been fully solved. With key provisions of this act due to expire in August 1970, it is feared that September 1970 will see massive reregistration drives to deny voting rights already won, as well as deprive the relief still denied thousands in States and localities now covered.

The Nixon substitute would dissipate the effectiveness of the Voting Rights Act by applying standards irrelevant to the civil rights issue and by shifting the focus of enforcement away from those States where abuse exists. The black citizens of the five Southern States now covered would be left to their own devices as Federal enforcement officials were pulled out. I can see no reason for not passing a simple 5-year extension of the act as it is now constituted especially in view of the fact that it has performed the functions with great efficacy. Certainly the proposed substitute does nothing to improve upon the law.

Mr. CELLER. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. COHELAN).

Mr. COHELAN. Mr. Chairman, I would like to express my firm support for extension of the Voting Rights Act of 1965 as is, without amendments. I feel that this is not the proper time for considering change of this very important law, for the suggested changes are not as immediately pressing as extending the act in its present form.

The enactment of the Voting Rights Act of 1965 was a milestone in positive legislation designed to assure equal rights to all of our citizens. It was a long, hard-fought battle here in Congress and outside in the southern battlefields. We all remember the controversies and heated debates on the floor in securing passage of this act. We should never forget the violence, terror, bloodshed, and sacrificing of human victims that accompanied enforcement of this law. Medgar Evers was gunned down by an assassin; Vernon Dahmer, a local worker in voter registration drive was murdered by arsonists who firebombed his home and grocery store; Viola Liuzzo and Jonathan Daniels, civil rights volunteers, were shot and killed by terrorists. These are but a few who come to mind immediately. We

all know there are countless others who were victims of shootings, burnings, and other terrorists activities.

We paid a very high price to guarantee "freedom and justice for all" and we are now beginning to see some of our efforts. Recent statistics indicate that there are now over 1 million Negroes newly registered to vote in the South, a notable increase since 1965. We also see 400 Negroes who were elected to public office in the several southern regions covered by the present law.

These statistics are heartening, but let us not be misled by them. The strides made in increasing Negro voter registration and in the number of Negroes holding public office are only the result of a strictly enforced law. We would be naive to think otherwise. The 4 years that have elapsed since the enactment of the Voting Rights Act of 1965 is certainly no length of time in which deep-rooted, century-old attitudes of prejudice and hate can be erased forever. Other civil rights legislation which has been on the books long before 1965 is proof of this fact. This is the main reason why we cannot seriously consider any changes to the Voting Rights Act at this time.

The proposed nationwide ban on literacy tests would perhaps lend a more equitable and juridical character to the Voting Rights Act. There can be no doubt, however, of the very strong need for this legislation in the southern region of our country. That need should not be jeopardized by grandiose extension now.

The administration's proposed amendment which would eliminate the requirement that all States and counties automatically submit changes in their voting laws to the Department of Justice and which would subsequently place authority and responsibility for these matters with State governments is an idea of some merit. However, I am not convinced that the Justice Department is unable to handle this reviewing and screening process nor am I convinced that the States covered by the present legislation did not adhere to the requirement of prior approval of voting law changes by the Department or Justice. It may well be that their compliance with this section of the law was not voluntary. In any case, there is evidence which indicates that there have been over 400 instances in the past 4 years where voting law changes were enacted in State legislatures and some, upon submission to the Justice Department, were found to be discriminatory in nature and were vetoed as proscribed by law.

These are just two instances which underscore the necessity of long and thoughtful study of these questions before any change is attempted. They also indicate the extreme and heated controversy that will undoubtedly ensue should the administration press for adoption of these amendments. There is a real possibility that the proposed administration changes might weaken the present law. We cannot let this happen.

Mr. Chairman, I urge our immediate attention to this most critical matter. We must do all that we can to assure the extension of the Voting Rights Act without change. Only then, when we are certain that the present law is out of danger, can we begin reasoned consideration of the administration's proposals.

Mr. McCULLOCH. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois (Mr. RAILSBACK).

Mr. RAILSBACK. Mr. Chairman, the Voting Rights Act of 1965 was intended to effectively end the practice of racial discrimination in voting in this Nation. There has since been an awakening of the public to the fact that civil rights, voting rights, and human rights are not a local or regional matter—they are both constitutionally and practically a concern of all parts of the country.

The bill H.R. 4249 was sent to the Congress simply to extend the present law's provisions for another 5 years. The application of the law to only a few areas of the entire Nation was retained. I believe that the law needs improvement and it certainly should be applied to any area where there is constitutionally improper discrimination, not just in the handful of States and counties presently covered.

Particularly with respect to literacy tests, the scope of the law should be nationwide. Why voter-hampering literacy tests should be permitted in some parts of the country and not in others is a distinction which fails to stand the test of logic. There has been a skyrocketing of Negro voter registration in all Southern States since the enactment of the Voting Rights Act. It is not necessary to single out any particular States, but Negro voter registration has doubled, tripled, and increased tenfold, and, in this regard, the Voting Rights Act is an unquestioned success. I am convinced it could be successful nationwide, not just in seven States.

I do not want to weaken the current law that now applies to the seven Southern States, and in my opinion the administration substitute that I expect will be offered does dilute the effectiveness of the present law. It shifts the initial responsibility of the presently covered States from those States in seeking relief from coverage under the act and imposes a duty on the Attorney General to initiate action against States that he believes to be discriminatory. It further would change the forum in such cases from the district court in the District of Columbia to other Federal district courts. There have been cases delayed in other civil rights matters.

The United Auto Workers' Union has testified in support of a nationwide literacy test ban and in support of the effective protections of the 14th and 15th amendments to our Constitution. The American Civil Liberties Union supports eliminating literacy tests throughout the country and eliminating residency requirements which bar voting in presidential elections. The U.S. Commission on Civil Rights has recommended that Congress forbid the application of literacy tests nationwide. These and the comments of many others are documented in the hearings of the Judiciary Committee. With support such as this, I was disappointed when the amendment which I offered in committee to add a literacy test ban in addition to the present provisions of the Voting Rights Act was defeated. I shall continue to press for the same treatment nationwide with respect to literacy tests and other devices which disenfranchise voters.

President Nixon and Attorney General Mitchell offered some suggested changes in proposed legislation, sent to Congress as a substitute for the simple 5-year extension of the present localized law. In brief, the Nixon administration had suggested a nationwide ban on all literacy tests or devices, not in just a few States, but in all States. The committee's recommendation does not contain it. Second, the President suggested abolition of State residency requirements for voting in presidential elections. My colleague, CLARK MACGREGOR, has championed such a proposal, but again, the committee bill contains nothing of the sort. Third suggested was power for the Attorney General to dispatch voting examiners and observers anywhere in the Nation where voter disfranchisement was suspected, but this also was deleted. Also refused were suggestions to give nationwide authority to the Attorney General to start voting rights suits and to create a Presidential commission to study voting discrimination and other corrupt practices.

I support these recommendations in principle, and I hope they can be effected without weakening the present law or by separate legislation initiated and acted upon in the near future. I am aware that the chairman has indicated his willingness to hold separate hearings early next year. This may be the proper vehicle. I am also aware that my friend the distinguished ranking Republican, the gentleman from Ohio (Mr. McCULLOCH) has been pushing for comprehensive election and vote reform. Obviously these equalizing suggestions are more complicated than their mere recital would indicate. However, I feel that the subject is of such importance that the committee should devote the necessary time and energy to a thorough study of these proposals. I sincerely hope that such action can be undertaken by the committee as soon as possible.

Mr. CELLER. Mr. Chairman, I yield 5 minutes to the gentleman from Louisiana (Mr. WAGGONNER).

Mr. WAGGONNER. Mr. Chairman, the Voting Rights Act of 1965 became Public Law 89–110 on August 6, 1965. It was then I believe actually intended to be discriminatory legislation against the South under the guise of providing equal protection under the law. It is indeed today discriminatory legislation, because it does not provide equal protection under the law for all our citizens. It is the most vindictive, unfair, and unconstitutional legislation passed by the U.S. Congress since Reconstruction days and you know it.

I said at that time if this Congress could agree on reasonable legislation which had equal application to all our people that I could in good conscience support such legislation. I believe every qualified citizen should be a part of the democratic process.

I was very much amused yesterday, having heard the arguments in 1965,

when Mr. MADDEN, the ranking member on the Committee on Rules handling the rule here on the floor began his remarks by saying that changes enacted in the Federal laws to eliminate discrimination in voting procedures in certain areas, primarily in the South, had failed to carry out protection for these disenfranchised citizens.

Now, in his use of the word "primarily" the connotation is to me that he himself was admitting that disenfranchisement had occurred in other parts of the United States than just the South, and you know it has.

I was further not just amused, but surprisingly amused, when he said something that he did not intend to say, and perhaps yet does not even realize that he said it, because if he meant what he said yesterday then he would walk down in this well and he would say "I am going to support the substitute, or some change to the proposed law and its continuation," because he said on page 38124 of the RECORD, and listen to me, please:

States that have in good faith eliminated discrimination in voting—as evidenced in 1968 results, compared to those of 1964—should no longer be punished for past wrongs.

Now this simply said that where no discrimination exists today, this law as it is presently written should not apply. He was and is absolutely right.

I defy and I challenge anybody in this House of Representatives to take a position otherwise—to deny that his statement means anything else or that what he advocates should not be done.

Now I have had some firsthand experience in discrimination as provided for in the existing law. Time does not permit me to talk at length about this bill, so I want to tell you about something that actually happened after we passed this law. No law has ever been more abused.

On March 25, 1967, the then Attorney General—and thank God he is not the Attorney General of the United States any more—Ramsey Clark who is not qualified to practice divorce law or get out of the rain sent Federal registrars into three parishes in my Fourth Congressional District in Louisiana. The parishes of Bossier, Caddo, and De Soto.

I called Mr. Clark from Louisiana during Easter recess on the telephone about having sent these registrars there, and I later met with him, I believe it was on April 4, just a few days later in 1967 about this matter.

At the time of our meeting, which I arranged, in attendance at this meeting there was—Mr. Clark; an assistant of his, Mr. Doar; and the two Senators from Louisiana, Senator ELLENDER and Senator LONG, and myself.

I asked Mr. Clark then if he had complied with the law in sending Federal registrars into Louisiana—that is, had he received the 20 complaints which were required. He said, "No."

I said, "Have you had complaints about discrimination in voter registration and in voting in these parishes in Louisiana?"

He said, "No." Do not go away yet.

I asked then why on earth he had sent Federal registrars to Louisiana and what justification he had. I then proceeded with factual records to show him that there was no discrimination.

I was then amazed to have the Attorney General say to me:

Look, I do not even allege discrimination in any phase of the voting machinery or the voting process in the three parishes to which you refer and where I sent Federal registrars.

He said:

I know that anybody who wants to register and vote can register and vote without fear of discrimination or being coerced in any way.

I said:

Then, Mr. Attorney General, why on earth have you sent Federal registrars into these parishes?

He said, and please listen to me:

I want to register more Negroes.

He wanted, he said, to make it convenient.

How brazen can you be? He used Federal employees, Government automobiles, and tax dollars for this purpose. I asked further if he was going to accommodate and register any whites under any circumstances and his answer was "No, I am only going to register more Negroes." He also made these amazing statements to the Governor and attorney general of Louisiana by telephone and the attorney general of Louisiana has sworn affidavits from each of us on file to attest to this.

Well, I do not know how many of you really know what the voting rights law of 1965 says under section 6 which was his verbally stated and written authority for sending them there. Let me read it to you. It is as follows:

SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section (3) (a), or (b) unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fifteenth amendment,

In other words, he admitted that nobody had complained. He had admitted that it was not necessary to send the examiners there because nobody was being denied the right to register and to vote. So he went beyond the intent of the law. He abused the law. He abused the people of Louisiana. He should have been trying to do something about election fraud. The law requires it but, oh no—too much of the fraud in our elections occurs outside the South. It is even worse to not count a vote after it is cast than it is to hinder registration and voting.

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. WAGGONNER. I am happy to yield to the distinguished chairman, the gentleman from New York (Mr. CELLER).

Mr. CELLER. Is it the gentleman's intention to support the so-called Mitchell-Ford substitute?

Mr. WAGGONNER. Absolutely, because it is better. It has its faults with which I disagree but it is at least fair. What has been "sauce for the goose" will now be "sauce for the gander."

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. WAGGONNER. I yield to the gentleman.

Mr. ECKHARDT. Is the distinguished gentleman in the well familiar with the fact that section 6 of the Voting Rights Act, the one that provides for the registrars or examiners, exists also in the Nixon substitute?

Mr. WAGGONNER. Section 6?

Mr. ECKHARDT. Yes.

Mr. WAGGONNER. Yes, it does, but this triggering device that the present law uses does not exist in this substitute in the same manner as it exists in the present bill.

Mr. ECKHARDT. Furthermore, the gentleman I believe has mentioned here that the law is regional in effect. Is the gentleman familiar——

Mr. WAGGONNER. Yes, I am familiar with it and let me tell you, I know this law.

Mr. ECKHARDT. May I complete my question.

Mr. WAGGONNER. Your question was—am I familiar with the regional effect—yes—and that is my complaint.

Mr. ECKHARDT. But also in section 3 of the act which provides for triggering this law can apply in Chicago or Detroit or anywhere.

Mr. WAGGONNER. That is not what I am talking about. He wrongly sent these people under section 6 into Louisiana. I am not talking about section 3, I am talking about section 6. The law has not been violated by anyone but Ramsey Clark.

Mr. ECKHARDT. But section 3 activates section 6.

Mr. WAGGONNER. The gentleman has had his time, I refuse to yield further.

Mr. Chairman, the Attorney General admitted that there was no discrimination in voting procedures in Bossier, Caddo, and De Sota Parishes, La.

The ranking member on the Committee on Rules on the Democratic side says that if there is no discrimination, this law should not apply. But you intend for it to apply.

My friends, there was no discrimination in a single one of these parishes, I do not have the time to go into all three fully. But on July 31, 1965, before this act became law, there were 4,306 Negroes registered in Caddo Parish.

When Ramsey Clark sent Federal registrars into Louisiana, there were in this same parish 12,329 Negroes registered. There was no discrimination. There is no discrimination. They all were complying with the law and still are.

Whipping a dead cat does not accomplish anything in this country. You

have to quit whipping the South. What else am I talking about? Do not tell me the South is not still being whipped. I have here an article from the Paterson, N.J., newspaper of November 20, last, in which there is an article which quotes the superintendent of schools there. He says they will never in that school district hire a teacher with a southern accent. Now, this is discrimination too. I know the Members abhor my saying it, but the South is still being discriminated against for something for which there is no justification and it is continued vindictively. What other basis exists for your actions? The answer, of course, is none and you know it. You ought to hang your head in shame.

Mr. McCULLOCH. Mr. Chairman, I yield the gentleman from Connecticut (Mr. MESKILL) 2 minutes.

Mr. MESKILL. Mr. Chairman, first I would like to make a remark in answer to an insinuation by the gentleman from California (Mr. CORMAN), when he referred to the substitute and what its real purpose was by saying we should notice who the players are and then make up our own minds. I would like to consider myself as one of the players in favor of the substitute. I know the gentleman from California (Mr. WIGGINS) is another one of the players, as is the gentleman from Michigan (Mr. GERALD R. FORD). None of us are what could be called southerners, and none of us are from States which would be adversely affected by sections 4 and 5 of the act, which is what is before us today.

Mr. Chairman, we are not debating the extension of the Voting Rights Act of 1965 today, we are only debating the extension of two of the 19 sections of the Voting Rights Act of 1965.

The other 17 sections of the act will remain law fully and indefinitely without any further congressional action. The two sections we are concerned with are sections 4 and 5. These are the temporary sections. These are the sections which will expire on August 5, 1970, unless extended.

In order to make an intelligent evaluation on the need to extend the temporary sections, we must fully understand the content of the permanent provisions of the Voting Rights Act of 1965.

Under the permanent provisions of the Voting Rights Act: First, when the Attorney General brings a suit under the 15th amendment to protect voting rights against racial discrimination, the court is empowered to enter either an interlocutory order or a final judgment requiring the Civil Service Commission to appoint Federal examiners to register voters; second, in such suit, the court is empowered to suspend the use of literacy tests "for such period as it deems necessary"; third, in such suit, the court retains jurisdiction "for such period as it may deem appropriate" and during that period, the State cannot implement any change in its voting laws until the court determines that the new law will not have the purpose or effect of racial discrimination or until the Attorney General of the United States has filed, within 60 days after submission, to object to the new law; fourth, when Federal examiners have been appointed under such suit, the Attorney General may require the Civil Service Commission to send Federal observers to the local voting precinct to oversee the process of voting and the tabulation of votes; fifth, no State may enforce a literacy test with respect to a registrant who has completed the sixth grade in a non-English-speaking school; sixth, criminal penalties of 5 years in jail or a $5,000 fine, or both, can be imposed upon anyone convicted of depriving, attempting to deprive, or conspiring to deprive any person of his voting rights on account of race or for destroying, defacing, multilating, or altering ballots or official records; and, seventh, the Attorney General is empowered to bring a suit for an injunction when he has reasonable grounds to believe that any person is about to engage in any act prohibited by the Voting Rights Act.

Two facts should be remembered with respect to these permanent provisions of the Voting Rights Act: First, all are permanent law; and, second all apply to all jurisdictions in all 50 States.

The only provisions which are temporary are sections 4 and 5. The only provisions which apply to less than all the States are sections 4 and 5.

Section 4 applies to those States with literacy tests where less than 50 percent of the voting-age population was registered or less than 50 percent voted in the 1964 presidential election. This mathematical formula also covers individual counties in States with literacy tests, even when statewide figures exceed 50 percent registration of voter turnout. Section 4 triggers section 5. If a State or county falls within the provisions of section 4, section 5 automatically applies.

Section 5 provides that such a State cannot legislate new voting laws until it has either: first, brought a suit in the district court for the District of Columbia and proved that the new law does not have the purpose or effect of racial discrimination; or second, submitted the new law to the Attorney General of the United States and persuaded him for a period of 60 days not to interpose an objection. The thrust of sections 4 and 5 are based on two hypotheses: first, an arbitrary 50-percent voter registration or voter turnout has been determined to indicate that racial discrimination exists which denies qualified citizens the right to vote; and second, literacy tests are the vehicle for the discriminatory practices. While there may be some logic in these hypotheses, they have not been tested to my satisfaction. As sections 4 and 5 are written, they are not even consistent. Texas only had 44-percent voter participation.

If the mathematical formula is valid, one could conclude that discriminatory practices exist, and yet Texas is exempt from the provisions of sections 4 and 5 because Texas does not have a literacy test. Virginia falls below the 50-percent figure and is subject to the provisions of section 5, even though the Civil Rights Commission has stated that the absence of complaints to the Commission, actions by the Justice Department, private litigation, or other indications of discrimination lead it to conclude that Negroes appear to encounter no significant racially motivated impediments to voting in Virginia.

The escape clause mechanism of section 4 and escape coverage of section 5 offer little help. It is practically impossible to conclusively prove an absolute negative.

I represent a State which has a literacy test as a qualification for voting. I feel certain that in Connecticut the literacy test is not a racially motivated impediment to voting. Nevertheless, under the permanent provisions of the Voting Rights Act, the literacy tests could be suspended for such period as the court deems necessary if the Attorney General were to bring a suit under the 15th amendment to protect voting rights against racial discrimination. This is as it should be. This is evenhanded treatment. I must agree with the dissent of Mr. Justice Black in the case of *South Carolina* v. *Katzenbach*, 383 U.S. 301, 358:

> Section 5, by providing that some of the States cannot pass State laws or adopt State constitutional amendments without first being compelled to beg Federal authorities to approve their policies, so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between State and Federal power almost meaningless. One of the most basic premises upon which our structure of government was founded was that the Federal Government was to have certain specific and limited powers and no others, and all other power was to be reserved either to the States respectively, or to the people. Certainly if all the provisions of our Constitution which limit the power of the Federal Government and reserve other power to the States are to mean anything, they mean at least that the States have power to pass laws and amend their constitutions without first sending their officials hundreds of miles away to beg Federal authorities to approve them * * *. I cannot help but believe that the inevitable effect of any such law which forces any one of the States to entreat Federal authorities in faraway places for approval of local laws before they can become effective is to create the impression that the State or States treated in this way are little more than conquered provinces. And if one law concerning voting can make the States plead for this approval by a distant Federal court or the U.S. Attorney General, other laws on different subjects can force the States to seek the advance approval not only of the Attorney General but of the President himself or any other chosen members of his staff.

Mr. Chairman, I will support the substitute which will be offered by the gentleman from Michigan (Mr. GERALD R. FORD), which provides for evenhanded treatment of all States, instead of extending until 1975 a ban on literacy tests in States, five of which have made sufficient progress by 1968 so that under the criteria of the original act, would no longer be covered by the trigger provisions.

It provides—

First, a nationwide ban on literacy tests and similar devices until January 1, 1974;

Second, nationwide authority for the Attorney General to assign Federal examiners to register voters and to send Federal observers to monitor the conduct of elections;

Third, establishment of a Presidential Commission to be known as the National Advisory Commission on Voting Rights,

to study the effects of literacy tests and the impact of fraud or corrupt practices on voting and to report and make recommendations to the President and Congress by January 15, 1973;

Fourth, establishment of uniform residency requirements for voting for President and Vice President of the United States; and

Fifth, in lieu of the present provisions of section 5 of the act, nationwide authority for the Attorney General to initiate voting rights lawsuits to challenge discriminatory voting laws and practices.

I believe it is time we stopped fragmenting our country. It is time we stopped presuming that one section of the country is innocent until proven guilty and another section is guilty until proven innocent. The Civil War is over. Let us get on with the business at hand.

Mr. McCULLOCH. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. WIGGINS).

Mr. WIGGINS. Mr. Chairman, before I get into my remarks which are prepared, I want to comment on a couple items which are misconceptions and which should be straightened out.

One misconception, which has been mentioned in the remarks of several previous speakers, is to the effect that the administration substitute bill creates a remedy for which there is no wrong, and other speakers have said it is much like building a dam in Idaho to prevent a flood in Mississippi. The implication is that the present strictures applicable to some of the Southern States would under the administration's bill be extended nationwide. That, of course, is not true. The administration bill does not treat the rest of the Nation like the South, but rather it treats the South like the rest of the Nation. So if there are any gentlemen on either side of the aisle who are fearful of the administration bill for the reason that it would impose these very stringent and in many ways discriminatory rules on their States, fear not, for that is not the purpose of the administration bill.

A second item I wish to comment on particularly is the dramatic increase in the number of registered black voters in the South which is attributed to sections 4 and 5 of the Voting Rights Act. I doubt if that is true. I think that much credit has to be given to the Voting Rights Act for this dramatic increase in registration, but not through the triggering paragraph, not to paragraph 5, which requires a prior approval of voting procedures. In my view the increase in registration is caused primarily as the result of the intensive registration drives conducted by civil rights groups throughout the South and by the aggressive use of observers and examiners under section 6 of the act. Indeed, there has been, I might say, a dramatic increase in black registration in States other than the six in the South. Texas, for example, is a State in which there has been a dramatic increase in registration notwithstanding the fact that it is not covered under sections 4 and 5.

A third point I wish to make is this, and I ask Members to please listen to me well on this point.

There is no doubt that a case-by-case approach to the problem of equal voting rights has not worked in the past. It is the realization of that fact which triggered the Voting Rights Act of 1965. But do not be misled. The Voting Rights Act of 1965 has eliminated the case-by-case approach to the solution of problems.

Let me tell the way it works according to the testimony. If a State covered by the act, one of the Southern States, wishes to change a voting procedure, it is supposed to go to the Attorney General or file an action before a three-judge district court in the District of Columbia. Many States have presented innocuous, innocent little changes in their voting procedures to the Attorney General, and the Attorney General has consented to them in all cases but 10.

But do Members know what has happened? When States wish to enact insidious discriminatory practices such as removing an office or changing voting boundaries, when they really intend to discriminate, they do not go to the Attorney General at all, and the Attorney General then must revert to a case-by-case attack upon these discriminatory practices. That is the truth.

What I am saying is that if we seek a blanket approach to the problems of ending discrimination wherever it may be found we are not going to achieve it by a simple continuation of sections 4 and 5.

Mr. McCULLOCH. Mr. Chairman, I yield 3 minutes to the gentleman from Indiana (Mr. DENNIS).

Mr. DENNIS. Mr. Chairman, the issues we face today on this matter before us are very important and very fundamental, and they are issues which are charged with very genuine emotion on both sides of the case.

I may say that as far as I am concerned I respect that feeling and emotion on the part of all concerned.

For me personally, the issues posed here are very difficult to vote upon because to my way of thinking we have one of these hard cases where two good principles collide. On the one hand we have the principle that every man should be able to vote regardless of race and color. I subscribe to that as firmly as anybody in this House. And I know that right has been denied him in some cases in this country, and I object very strongly to such denial. I did not grow up under those circumstances. Everybody votes where I come from.

On the other hand, I also believe in our federal system of government. As a lawyer, and as an American, it is exceedingly hard for me, even in order to reach a concededly bad situation, to support a law which actually requires one of the States of this Union to come down here to Washington and get prior permission before it can put its own legislation into effect.

Therefore, these two good principles clash here. A man just has to resolve the problem by his own individual decision. I do not quarrel with anybody who resolves it one way or the other in good faith.

I have already indicated my difficulties with the committee extension of sections 4 and 5 of the act of 1965, and the fact that I tend to prefer the more conventional legal approach, through the courts and applied equally all over the country, of the administration substitute. But I do not want to give the impression that I believe the substitute is perfect.

In addition to that approach, which I believe is sound, it has been loaded down with various provisions unnecessary to the main thrust of the bill to which I personally object. I agree with my distinguished chairman, the gentleman from New York, that the provision abolishing literacy tests all over the country is in all probability unconstitutional. It has been so held in the Northampton case by the Supreme Court of the United States, and I do not believe that case has been overruled. So I do not believe that the nationwide ban of literacy tests is a valid, constitutional provision in the administration bill. Because I do not, at the appropriate time I am going to offer an amendment here to take that provision out of the administration bill. I believe it would be a cleaner bill and one I could vote for with a better conscience if that provision were removed.

Mr. McCULLOCH. Mr. Chairman, I yield the last 4 minutes on this side to the gentleman from New Jersey (Mr. SANDMAN).

Mr. SANDMAN. Mr. Chairman and my colleagues, what I see happening here today reminds me to a large extent of what we do back in my party in my State back home. We seem to follow a policy there that, whenever we do something that succeeds and is worth while, we stop doing it. This has led to a catastrophe from time to time.

Mr. Chairman, in this case we have a law which has been successful. In this case we have a law which has allowed some States that have been accused of doing things that are not what we like to see done rectified. I think it is to the credit of those seven States while this law has been in effect during these last 5 years that there have been great strides made to stop discrimination in the field of voting rights and I think those States deserve a great deal of credit. I do not see any harm done to those States or any other States, if this law is extended and I think it should be extended. I do not think we are going to do any damage to those States. I do not think we are being unfair to those States. I think it is altogether wrong, as my friend from Virginia said, that, in Virginia, which is the cradle of all the good things that have happened to this country, that as a State it cannot enact a law as a matter of State law unless it is first approved by the Federal Government. This I think is wrong and he is right when he says that it is wrong. I would like to see that done away with. I believe eventually it will be done away with.

Mr. Chairman, I listened to my friend, the gentleman from Louisiana, and there is no man for whom I have more regard than the gentleman. I can understand his feelings. I do not believe it is right that the Federal Government should have a right to give the Attorney General such vast powers. I think it is far better for the States to decide for themselves what the States want to do. For a lifetime I have supported the home rule theory that the States should be

able to do those things, and I would like to see that done.

Mr. Chairman, I think it is altogether wrong that there should be a Federal law which imposes a residency requirement upon all 50 States. I think it is best decided by the State and I would like to see it decided by the State. But, correspondingly, I can hardly believe it is right for the State of Mississippi, for example, to require a 2-year residency in order to vote for the President of the United States or anyone else. I think 2 years is a little too long. In that State you have to be a resident of the precinct and county for 1 year. If you moved during that period of time you could not vote for anyone. This I do not think is right either and in some way we have to reach a medium and I think the committee bill is the best vehicle we have, to reach that medium.

I hope that in the extension of this bill all of these things of which none of us approve will be rectified. I think this is our best opportunity and for this reason as a member of the Committee on the Judiciary—and I heard all the testimony and studied it for hours as our chairman has and as our ranking Republican leader on that committee has and I support the committee position. It is the only sound position that we can take today.

Therefore, Mr. Chairman, I urge an overwhelming vote in support of the committee bill.

Mr. REID of New York. Mr. Chairman, will the gentleman yield?

Mr. SANDMAN. I yield to the gentleman from New York.

Mr. REID of New York. I thank the gentleman for yielding and I rise in support of H.R. 4249, the extension of the Voting Rights Act of 1965, without amendment, and in opposition to the substitute which in my judgment would represent a tragic and devastating backward step.

To fail to extend the Voting Rights Act as is would be an invitation to a number of States to resume and step up certain discriminatory practices which are repugnant to all men of conscience.

To fail to extend the Voting Rights Act as is would be to betray the principles for which many Americans fought and for which some died—Martin Luther King, Jr., Medgar Evers, Mickey Schwerner, James Chaney, Andy Goodman, and others.

The purpose of the Voting Rights Act of 1965 was to secure full enfranchisement and the right to participate fully in political activities for all citizens. Considerable progress has been made toward that goal in the Southern States, but there is indisputable evidence that as one type of discrimination is eliminated, yet another barrier to political participation is created by the warped imaginations of those who seek to prevent the Negro from assuming an active role in politics.

Rev. Theodore M. Hesburgh, who has served on the Civil Rights Commission for 12 years and is now its chairman, has written that "the administration's substitute is a much weaker bill." He continues:

> I do fear that many Members of Congress feel that the voting problems at which the 1965 Act was directed have been solved. They have not. The Fifteenth Amendment remains to be fully implemented. We cannot retreat on this front. If we do, we run the risk of endangering the faith of many of our people in the ability of our Government to meet the legitimate expectations of its citizens.

There are three central remedies under the Voting Rights Act: First, suspension of literary tests and similar devices, second, prohibition against enforcement of new voting regulations pending Federal review to determine whether their use would perpetuate voting discrimination, and, third, assignment of Federal examiners to list qualified applicants to vote and assignment of Federal observers to monitor the conduct of elections. The statutory formula, which determines those jurisdictions to be covered by these provisions, applies to those States and political subdivisions which, on November 1, 1964, maintained a literacy test or similar device as a prerequisite to registering to vote, and in which less than 50 percent of the residents of voting age were registered on that date or voted in the 1964 presidential election.

The act, therefore, presently applies to the States of Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia; and Yuma County, Ariz.; Honolulu County, Hawaii; and 39 counties in the State of North Carolina.

Under the terms of the act, a covered jurisdiction could obtain exemption from the provisions of the act in August 1970 by obtaining a declaratory judgment in the District Court for the District of Columbia, based on the showing that no test or device has been used in that State or subdivision during the preceding 5 years for the purpose or with the effect of denying the vote, because of race or color. What this means is that covered jurisdictions could use the fruits of the past 5 years in order to obtain an exemption from the act and return to their pre-1965 practices. As Chairman CELLAR pointed out in testimony before the Rules Committee:

> Unfortunately, the record shows that substantial dangers remain, that the accomplishments of the past four years are delicate and will be erased if a continued Federal presence is not assured.

Federal examiners have been appointed in certain counties in Alabama, Georgia, Louisiana, Mississippi, and South Carolina, and in those five States Negro registration has risen from approximately 29 percent of the Negro voting-age population to 52 percent.

Roy Wilkins, chairman of the Leadership Conference on Civil Rights, has pointed out that—

> The Voting Rights Act in less than four years has demonstrated its immense value. It has brought more than 800,000 voters to the rolls in states that have traditionally sought to disenfranchise minority group members. It is directly responsible for the election of about 400 Negro officials in communities that have had no Negro officeholders since Reconstruction.

This is, indisputably, dramatic progress and, some critics of the law would argue, sufficient progress to put those States over the 50 percent triggering mechanism in the statutory formula. I would submit that the job is not yet finished, that Negro registration is nowhere nearly as high as it should be and that as registration goes up, harassments to running for office and voting also go up. This, I believe, is clear evidence that the Voting Rights Act must be continued for another 5 years. To do otherwise will be to permit the States of the South to return to their discriminatory practices, with the resultant waste of years of effort and lost lives.

What is the clear evidence supporting extension of the Voting Rights Act? First, registration figures indicate that Negro registration in Mississippi has increased from 6.7 percent to 59.4 percent since the Voting Rights Act. But 92 percent of eligible Mississippi whites are also registered, and that is a disparity plainly indicating that there are many, many more Negroes in Mississippi who could be voting but are not. There are similar gaps between Negro and white registration in other Southern States, and, especially, in individual counties and political subdivisions. In Alabama, for example, less than 50 percent of voting age Negroes are registered in 27 out of 67 counties.

Second, there continues to be harrassment of Negroes who wish to register and to vote, and several jurisdictions have undertaken new, unlawful ways to diminish the Negroes' franchise and to defeat Negro candidates. A Civil Rights Commission study of May 1968, entitled "Political Participation," details obstacles to Negro participation in the electoral and political processes. The chapter headings speak eloquently for themselves: "Diluting the Negro Vote," "Preventing Negroes from Becoming Candidates or Obtaining Office," "Discrimination Against Negro Registrants," "Exclusion of and Interference with Negro Poll Watchers," "Vote Fraud, Discriminatory Selection of Election Officials," and "Intimidation and Economic Dependence."

Some of the particularly offensive practices discussed in detail include exorbitant filing fees, switching to at-large elections when Negro strength is concentrated in certain districts, abolishing or making appointive offices sought by Negro candidates, and lengthening the terms of incumbents. Sometimes, if a voter does not cast ballots for a number of candidates equal to the number of positions to be filled—as in a school board election, for example—his ballot is not counted at all, thus forcing Negroes to vote for white candidates if they want their votes for Negro candidates to be counted. "Full-slate voting," as this is called, dilutes the effect of their vote for the Negro candidate.

As recently as June of this year, a report by the Civil Rights Commission on the May 13, 1969, municipal elections in Mississippi states that "not one black candidate in a county where Federal observers were present believed the election would have been run in an honest manner were it not for the presence of these observers."

The report recounts incidents in which black citizens feared white economic reprisals if they registered to vote, or situa-

tions in which the city clerk was not available to register voters except at the most inconvenient hours for working people, or, in fact, charges of a county clerk making a crippled black woman stand and walk around for 15 minutes while she was being registered to vote. Polling places were changed without publicity, names on registration lists marked as already voted when in fact they did not, names simply removed from the list, and registration lists made inaccessible in advance of the election in order to discourage challenges of unqualified voters and the legitimate defense of those challenged unjustly.

The Voting Rights Act requires that covered States clear their new voting statutes and practices with the Attorney General or the Federal District Court for the District of Columbia, and, in fact, Attorney General Mitchell disapproved of a number of proposed changes in Mississippi and Louisiana last summer. Yet, as the distinguished ranking minority member of the Committee on the Judiciary (Mr. McCULLOCH) observed on July 2, the administration bill proposes to eliminate that requirement of the law "in the face of spellbinding evidence of unflagging southern dedication to the cause of creating an ever more sophisticated legal machinery for discriminating against the black voter." To give the Attorney General nationwide authority to bring voting rights suits to challenge discriminatory practices and laws, as the administration bill proposes, would move the struggle to obtain electorial justice from the ballot box to the courtroom—with its attendant delays—and thereby vitiate the very success of the Voting Rights Act.

Further, in testimony before the Judiciary Committee, the Attorney General indicated that he did not need additional attorneys in the Civil Rights Division. There is, however, substantial evidence that this division is undermanned now, not to speak of the increase in litigation likely to result from the substitute bill.

Surely, there is ample need for continued and even more vigorous efforts on the part of the Federal Government to insure justice in southern elections. Indeed, the Civil Rights Commission report on the Mississippi elections makes several recommendations about strengthening the effectiveness of Federal examiners and observers. I cannot express more cogently than the distinguished gentleman from Ohio my objections to the administration bill. "As I understand the provisions of the administration bill which pertain to the heart of this controversy," Mr. McCULLOCH said in July, "they sweep broadly into those areas where the need is least and retreat from those areas where the need is greatest."

This Nation made a solemn commitment in 1870 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." Ninety-five years later we passed legislation to implement that promise. It would be the most callous act if we were to mark the 100th anniversary of the 15th amendment by acquiescing in the Southern States' continued pursuit of Negro subjugation and discrimination. There have been no complaints from the 14 other States outside the South which have literacy tests and other devices, yet there continue to be small-minded men in the South who persist in devising ever more subtle forms of voting discrimination. That is where Federal resources must be concentrated; that is where the job must be done.

Mr. Chairman, I urge support of the committee bill and defeat of the administration substitute.

Mr. CELLER. Mr. Chairman, I yield 3 minutes to the distinguished gentlewoman from New York (Mrs. CHISHOLM).

Mrs. CHISHOLM. Mr. Chairman, I think it is very important for us to recognize that many of us have heard the statement before that eternal vigilance is the price that we pay for freedom. I think that until a large segment of our population in this Nation is assured that there will no longer be this type of discrimination but have the assurance of human rights which have been denied them by certain groups that we should extend the Voting Rights Act of 1965.

I think it has already been pointed out how effective this act has been in terms of giving hope to a large number of the black citizens of this country. And until we know by deeds and actions, and not by words and jargon, that there is no need any longer for vigilance, the Voting Rights Act of 1965 must be extended.

I think we do recognize that there is change going on in our Nation, and that those of us who have been speaking about making the world safe for democracy must be quite sure that we make America safe for all of its citizens, regardless of race, color, or creed, within its borders.

I know, Mr. Chairman, that in many instances those of us who have been the beneficiaries of the status quo find it most difficult to realize that in this day and in this age certain voices in America are now saying that we are through with gradualism and we are through with tokenism, and we want our full share of the American dream that everyone so unequivocally speaks about.

So, Mr. Chairman, I ask and urge that we extend the Voting Rights Act of 1965, recognizing that the day has come in America when black and white will be given the fullest privileges. Let us hope that in the very near future we will not have to have any special devices or acts in order to assure a certain segment of our population in these United States that justice is theirs in the fullest sense of the word.

Mr. CELLER. Mr. Chairman, I yield myself such time as I have remaining.

The CHAIRMAN. The gentleman from New York is recognized for 5 minutes.

Mr. CELLER. Mr. Chairman, I want to say at the closing of this debate that great credit is due to those areas that have been affected materially by this bill. I think that we must indeed give an accolade to many of the leaders of those communities, because many, many thousands of Negros have been enabled to be placed on the registration rolls, and have voted, and many hundreds of Negros are now holding public offices.

I think this is a very creditable performance, and I do not think there is any need to castigate anyone or any particular community. On the contrary, I think a great deal of praise is due, and we would be derelict in our duty if we did not offer that praise.

However, despite that cooperation of many local officials, much remains to be done. Prejudices die hard, and prejudice has been the cause of most of the difficulty over the century, ingrown, and endemic, and the law has helped destroy those prejudices. It cannot obliterate them completely, but it does help, and the Voting Rights Act of 1965 undoubtedly has helped. I think an extension of the act will to a greater degree cause the people of those affected areas to in a more material way hearken to the old voice of Leviticus proclaiming liberty throughout the land to all the inhabitants thereof.

See how wise Leviticus was. He did not simply say "Proclaim liberty throughout the land," he emphasized to all the inhabitants thereof.

I believe that the Mitchell amendment that is going to be offered does away with the so-called trigger arrangement and tears the very heart out of the act of 1965. I would like just briefly to refer to a statement made by Father Hesburgh in a recent letter to the Attorney General. He said:

> To eliminate existing protection against manipulative changes in voting laws is in no sense an advance in protection of the voting rights of American citizens. It is a distinct retreat. It is an open invitation to those States which denied the vote to minority citizens in the past to resume doing so in the future, through insertion of disingenuous technicalities and changes in their election laws.

As Father Hesburgh says, this substitute amendment rips out the trigger provisions—heart of the 1965 act. If you do that then you open the door of the past, and you close the door to the future.

I do not think we want to do that.

In addition thereto, another great weakening of the proposals, is doing away with the preclearance provisions dealing with new voting laws or practices. That has been of material value to protecting the vote and of the franchise to the Negro.

It is interesting to note what the record of the South has been with reference to preclearance of new election laws. Of the 421 submissions, 20 have been objected to by the Attorney General. In other words, in general the communities affected have realized that it is essential to make progress and to adhere to the general principles of the 1965 act and submit changes in election laws in accordance with provisions of the act of 1965.

The requirement of preclearance is vital today. It will be essential in the future.

Since May 21, 1969, the Department of Justice has objected to 14 changes in the voting laws of Alabama, Louisiana, and Mississippi.

This record alone in 1969 clearly demonstrates the vital need for section 5 preclearance procedures.

When you consider the thousands of

communities and municipalities and boards and councils in the areas affected that are constantly promulgating new laws and changes in voting statutes that may affect Negroes and other minorities, how in thunder can the Department of Justice police all those changes? It could not possibly do it. Therefore, we provided in the 1965 act that if there are any changes, there should be notice given to the Attorney General.

If he approves the change, well and good. If he disapproves the change, then the municipality or State authority can go to the court and appeal the decision.

This procedure has worked. Now that is all going aglimmering under this Mitchell-Ford substitute.

Mr. Chairman, for these reasons and others, I do hope that the substitute will not prevail.

Mr. BEVILL. Mr. Chairman, I believe that to extend the Voting Rights Act of 1965 for another 5 years would perpetuate a law which is unjust in its terms and unequal in its application. As a nation we are committed to the principle of equal justice under law for all our citizens. The 15th amendment to the Constitution states:

> 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.

It does not say, "The right of citizens of the United States to vote shall not be denied or abridged by the States of Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia, 39 counties in North Carolina, one county in Arizona, and one county in Hawaii, on account of race, color, or previous condition of servitude."

The fact is that the Voting Rights Act of 1965 was drawn making one law for one section of the Nation, and another law for the rest. The criteria by which States have been brought under the jurisdiction of the law were chosen arbitrarily and are largely irrelevant to the basic problem of illegal discrimination in registration and voting. The 1965 act did not seek to ban literacy tests in all States; it did not question the legality of State and county statutes requiring literacy tests for voter registration at all. Only in States and countries in which less than 50 percent of th total voting age population was registered to vote or voted in the November 1964 election were literacy tests to be suspended. And to these States and counties only does the Attorney General have the power to send Federal examiners and election observers. These States and counties only are prohibited from adopting new voting laws or procedures without the approval of the Attorney General or the U.S. District Court for the District of Columbia.

As a matter of public policy, it seems to me that Congress has a duty to assure that all citizens have equal rights to vote and that all State governments have equal rights to impose, or to be prohibited from imposing, certain voting restrictions. Yet we are today faced with a situation in which illiterate citizens in seven States have a right to vote, while illiterate citizens in 34 States can be barred from the polls by literacy tests. Conversely, the State governments of seven States are denied the ability to impose a literacy test while the State governments of the other 43 States have that right.

Mr. Chairman, if the Voting Rights Act is good for Mississippi, Alabama, and Georgia, it is aslo good for New York, Delaware, and Oregon. I do not believe there is a single Member of Congress who would not support a voting rights bill that protects the rights of every American, if that legislation gives preference to none, provides protection for all, and treats each State on an equal basis.

The extension of the present Voting Rights Act completely ignores the substantial progress in voter registration and participation that has been made. It would continue the punishment of my State and the other States affected on the basis of figures from the 1964 presidential elections which today are simply no longer relevant. In fact, the simple substitution of the results of the 1968 presidential election would eliminate from the provisions of this law all but two of the States now affected by it which have not been exempted by court order.

Today, 800,000 Negroes have been registered in the seven States covered by the 1965 act. More than 50 percent of the eligible Negroes are registered in every State covered by the act. Whatever disparities existed in 1965, these no longer provide a valid justification for applying one law to one section of our Nation, and another to the rest.

Today there is very little difference between the percentage of eligible Negroes registered in, say, Louisiana—a State covered by the 1965 act—and Florida, which is not covered. There are 15 counties in Florida where less than 50 percent of the eligible Negro electorate was registered in 1968, but only 13 in Louisiana. There are dozens of counties in Texas where less than half of the eligible electorate voted in 1968, but only nine in Alabama. The total 1968 voter turnout in South Carolina was proportionately higher in the heavily Negro lowland counties than in the overwhelmingly white Piedmont counties. A higher percentage of voting-age Negroes went to the polls in the Deep South than in Watts or Washington. Little more than one-third of the voting-age Negro population cast 1968 ballots in New York City's Manhattan, the Bronx, or Brooklyn, and this amounted to only one-half the local white turnout ratio. 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.

There are large numbers of illiterate members of minority groups in most of the big northern cities, and surely these have just as much right to the protection of a Voting Rights Act as citizens in the seven States presently covered. Surely those who have experienced the segregated, substandard education of northern city ghettos have the same right to the protection of the law as citizens of the Southern States.

Mr. Chairman, it is high time that we should correct the glaring inequities of this law. The evidence clearly demonstrates that it would be unjust to the people and unfair to the States to extend the Voting Rights Act, without change, for 5 years. We cannot pretend to believe in the principles of equal rights and equal justice under law if we pass laws which apply to one section of the Nation, but not to the rest. To do so is to perpetuate the most blatant sort of hypocrisy and injustice.

Mr. MONTGOMERY. Mr. Chairman, I feel compelled to speak out against any extension of the Voting Rights Act. The Voting Rights Act was discriminatory when it was passed, has been enforced in a discriminatory manner for the last 4 years, and will continue to be discriminatory unless changes are made in the law. To provide an extension of this infamous piece of legislation without change will only serve as a mockery of justice.

The extension, as reported by the Judiciary Committee, seeks to single out one section of our great country as a scapegoat for so-called past sins that have been committed throughout the land.

If literacy tests are illegal in one State, why should they not be illegal in all 50 States? If this Congress is supposedly trying to protect the voting rights of people in one specific area of the Nation, why not protect the voting rights of all people in all areas of the Nation?

If this Chamber passes the extension of the Voting Rights Act as recommended by the Judiciary Committee, we will be telling the Nation that voter discrimination can continue to flourish in New York, Chicago, California, and other parts of the country, but this same alleged discrimination will be stamped out with the oppressive heel of the Federal bureaucracy in the South. I realize this might be the politically expedient course to follow for some people, but is this the course of equal justice throughout America?

I would urge my colleagues to answer these questions with truthfulness and honesty before they cast their vote.

Mr. ANNUNZIO. Mr. Chairman, the Voting Rights Act of 1965 has begun to change the political picture in the South. It has made it possible for the Federal Government to give effective protection to black Americans' right to vote which the 15th amendment guarantees.

Congress undertook to protect voting rights by the Civil Rights Acts of 1957 and 1960 and by title I of the Civil Rights Act of 1964. All of this legislation was intended to facilitate judicial protection of voting rights. None of this legislation made possible any significant increase in Negro registration and voting in the Southern States because case-by-case litigation in the courts was too slow and because registration officials had ways of circumventing court orders forbidding discrimination.

Congress undertook a different approach in 1965—the approach by administrative instead of judicial enforcement of voting rights. The Voting Rights Act of 1965 takes away from registration officials the power to use literacy tests and

other devices to prevent Negroes from registering. It empowers the Attorney General to provide for the registration of voters by Federal examiners in counties where Negroes still encounter resistance to the exercise of voting rights despite suspension of tests and devices. It authorizes the Attorney General to send election observers to ensure that registered voters are permitted to vote and that their votes are counted. And it forbids States and counties covered by the Act to put into effect any new voting laws without approval of the Federal district court for the District of Columbia or of the Attorney General.

Since passage of the Voting Rights Act of 1965 about 800,000 black Americans have registered to vote in Alabama, Georgia, Louisiana, Mississippi, and South Carolina. Prior to the act, only 29 percent of Negroes of voting age in these States were registered to vote; 52 percent of them are registered today.

And because thousands of new black voters are going to the polls today hundreds of black candidates have been elected to public office in the Southern States. And at the same time white candidates and officeholders will have to increasingly respond to the needs and just demands of Negro voters if they wish to be elected or to stay in office.

In December 1968, Mr. Vernon E. Jordan, Jr., director of the voter education project of the Southern Regional Council, stated:

> Three years ago, just after passage of the Voting Rights Act of 1965, the Southern Regional Council compiled a list of Negro officeholders in the South. The list totalled just over 70 names.
>
> Today, counting some 80 black candidates elected for the first time in the November fifth general election, the list totals over 380 names. The roster thus is more than five times as large today as it was just three years ago.
>
> This dramatic increase is one of the more significant developments in Southern politics today. Not even the fact that five Southern states gave George Wallace his only electoral votes can overshadow the deepening involvement of black Southerners in the region's political process.

By July of 1969, the number of black elected officeholders had increased again from 380 to 473.

It is imperative, Mr. Chairman, that the most essential provisions of the Voting Rights Act—suspension of literacy tests and devices, required Federal approval of new voting laws, Federal examiners, and election observers—remain in effect.

H.R. 4249 as reported by the Judiciary Committee would extend these provisions for 5 more years. Black citizens in the Southern States urgently need to have this Federal protection of their right to vote continued in effect for another 5 years. In its 1968 report, entitled "Political Participation," the Civil Rights Commission has given us extensive evidence of continuing resistance to Negro voting.

The distinguished chairman of the Judiciary Committee, the gentleman from New York (Mr. CELLER), deserves the greatest praise for rejecting, together with a majority of the committee members, proposed amendments to H.R. 4249. A nationwide ban on literacy tests for voter registration is obviously unnecessary. The Voting Rights Act focuses on the Southern States because they alone have disfranchised the Negro. To no longer require States and counties covered by the act to seek prior Federal approval of new voting laws would surely endanger minority voting rights or the effectiveness of minority votes.

Therefore, I urge immediate enactment of H.R. 4249.

Mr. TUNNEY. Mr. Chairman, I urge the adoption of H.R. 4249 without amendment, to extend the ban on literacy tests and other devices for another 5 years, until August 1975, in States covered by the Voting Rights Act. Continuance of this legislation is essential to assure that the right to vote is not denied any citizen on the basis of race or color.

The success of our institutions is critically dependent on our ability to express grievances, and to effect necessary change at the polls. We must make sure that this power is conferred equally on white and Negro voters.

Since 1965, the Civil Rights Commission reports that an additional 740,000 Negroes had been registered in States covered by the Voting Rights Act by the summer of 1968. The gains have been significant, but there are still 176 counties and parishes in six covered States where less than half the voting-age Negroes are registered. In 79 of these areas, less than 35 percent are registered. There is clearly much more to be done.

The most obvious sign of this is the fact that white registration is a much larger percentage of the voting-age population. The Civil Rights Commission reports that 59.4 percent of the voting-age Negroes in Mississippi are now registered, but for whites the figure is 92.4 percent. The proportion of registered whites is 55 percent greater than the proportion of registered blacks. In Alabama it is 45 percent greater. In Georgia it is 51 percent greater. In Louisiana, the discrepancy is 57 percent. We must continue our efforts to close these gaps.

Several States covered by the act have devised new techniques to forestall the election of Negro-supported candidates, and to prevent Negroes from effectively exercising their vote. Such devices have ranged from increasing filing fees to extending terms of office of white incumbents. They have included making certain offices appointive or abolishing them entirely, to avoid election of Negro candidates. In some instances information concerning election requirements has been withheld. Where Negro voting strength has grown, at-large elections and consolidated districts have been proposed to dilute black voting power. Last spring the Attorney General faced the necessity of objecting to three amendments to the Mississippi election laws which would have made it tougher for independents to run, and which would have permitted appointment or at-large election of certain officials.

The present Voting Rights Act prohibits States and counties from making any changes in their voting laws, without first obtaining the approval of the Attorney General or the District Court for the District of Columbia. The Supreme Court has made clear that private parties can challenge the enforcement of new local voting laws which have not been submitted as required by section 5.

This protection is the crux of the Voting Rights Act. Before 1965, the Attorney General had the power to sue to enjoin discriminatory voting laws. This method of enforcement proved to be a slow, expensive, and ineffective way of extending to Negroes the right to vote which, supposedly, they were given in 1870. Department of Justice attorneys expended as many as 6,000 man-hours in a single case to achieve minimal results.

Modifications in the Voting Rights Act proposed by the administration would scrap section 5. Despite the rhetoric of the administration proposals, emphasizing uniform national standards for literacy tests, residency, and the dispatch of Federal voting examiners, the plain purpose is to eviscerate the Voting Rights Act. If the burden is placed on the Justice Department to identify new forms of discrimination and to send teams of attorneys into the field to litigate a Negro's right to vote, protection will be uneven and slow in coming. I recall the remark of the Assistant Attorney General for Civil Rights to the effect that he did not have the manpower to go out and enforce full and immediate school desegregation, even if the Supreme Court ordered it. If that is the case, the Department of Justice certainly lacks the manpower to take on new responsibilities to attack a host of new voting laws in the South. I believe strongly that we must retain section 5 in its present form, and require States and counties to clear in advance any proposed amendments to election laws.

It is noteworthy that although changes in election laws have been attempted since the passage of the Voting Rights Act, no State has moved to repeal its literacy test, the discriminatory effect of which the act was designed to prevent.

The administration's suggestion that literacy tests be banned across the Nation, and that residency requirements be uniform, may be good ones, but I cannot see how they have a place in the pending legislation. The Voting Rights Act is directed at the eradication of racial discrimination in voting. Use of literacy tests outside the South has not been the subject of complaints of voting discrimination on the basis of race. Similarly, residence requirements have not been shown to be techniques for depriving Negroes of their franchise.

These subjects should be raised and debated in separate legislation. In the meantime, we should not hesitate in reaffirming the purposes of the Voting Rights Act of 1965. I urge others to join me in voting for a simple 5-year extension of that act.

Mr. BRASCO. Mr. Chairman, I rise in support of the extension of the Voting Rights Act of 1965 for another 5 years. This act was designed to enforce the 15th amendment to the Constitution and to alleviate blatant discrimination in our country's electoral process.

Prior to the passage of the Voting

Rights Act of 1965, a succession of legislative and judicial pronouncements had proven totally ineffective to deal with historic and deep-rooted voting denials. The case-by-case litigation approach mandated in the 1957 act was met by massive State and local resistance. Certain States initiated new procedures designed to block any gains made through judicial decision. Most common among these procedures was the racially discriminatory use of literacy tests.

The key provisions of the 1965 Voting Rights Act are—

The suspension of tests and devices as registration requirements in certain covered jurisdictions where there is causal relationship between their use and the denial of the right to vote.

The prohibition against enforcement in covered jurisdictions of new voting regulations without Federal approval.

The assignment of Federal examiners in covered jurisdictions to list qualified applicants for voting and monitors for elections.

Mr. Chairman, the proof of the effectiveness of these provisions lies in the nearly 2 million Negro voters who were added to the election rolls in the South, in the 463 elected Negro officeholders, and in the many changes which have taken place as a result of greater participation by Negroes in the political life of our communities, cities, States, and Nation.

All who shaped and supported the 1965 act can rightfully point with pride to one of the great legislative accomplishments of this decade. The passage of that act was as politically and morally correct then as it is now.

Mr. Chairman, that is why I urge its passage intact, and oppose the administration's substitute bill which I believe to be weaker.

While I do agree with the administration that general electoral reforms are long overdue, I do not believe they should be tied to the extension of the voting rights bill because the effect would be to dilute and confuse the enforcement of 15th amendment rights with general reforms based on other considerations.

Mr. HELSTOSKI. Mr. Chairman, it is my firm opinion that if we fail to approve H.R. 4249, which provides for a 5-year extension of the Voting Rights Act of 1965, we will be doing a grave disservice to our people and their Government.

H.R. 4249 is a good and necessary bill. To the contrary a bill sought by the administration, H.R. 12695, is an unnecessary and weak bill. It would drive us many steps backward in the moving effort to give people in certain areas of the Nation a right so long denied to them. It is the right to vote.

Countless testimony has been given to bear out what I have said and none has been more compelling than that presented to the House yesterday by the Reverend Theodore H. Hesburgh, president of Notre Dame University and Chairman of the U.S. Commission on Civil Rights, through the gentleman from Indiana (Mr. MADDEN).

I expect that all of us have received similar letters from Father Hesburgh, and I would suggest that we all read and reread his views on the legislation we are considering and his report on the good that has come from the Voting Rights Act of 1965.

Father Hesburgh has made a strong and compelling case for enactment of H.R. 4249, and it is my hope that we will approve it by an overwhelming majority.

Mr. THOMSON of Wisconsin. Mr. Chairman, the facts about voting in the cold light of December 1969 are very different from those of the hot summer of 1965 when voting rights was last considered here. The gains have been impressive. Pursuant to the 1965 act the Department of Justice has sent examiners and observers into 64 counties in the South. Since August 6, 1965, when literacy tests were suspended, over 800,000 Negro voters have been registered in the seven States covered by the act. More than 50 percent of eligible Negro citizens are now registered in every Southern State. More than 375 voting laws have been submitted to the Attorney General for approval. Four hundred blacks have been elected to State and local offices throughout the South.

These are all real gains for minority citizens who before 1965 had never had the opportunity to vote or hold elective office. The 1965 act works; more than 4 years of experience with it proves that. But it is not perfect. That is why I resist the effort to simply extend its life until 1975. Why not expand its coverage, strengthen its enforcement machinery, cure its defects? I say there is no reason why not. And that is why I support the amendment now under consideration. It is a carefully considered package which would do all the things I have suggested.

Primarily, it will blanket the Nation with the same protection the present act reserves for one region. Why should minority citizens in Harlem and Watts or Roxbury or Hartford be denied the same protection as blacks in Alabama or Georgia? They should not. No one can argue the opposite. The amendment will see that they are not: Literacy tests will be banned nationwide, voting observers and examiners will be able to function in all 50 States, voting rights suits will be able to be brought in any Federal district court. These are all constructive and desirable reforms that the amendment will accomplish which the committee bill would not.

Now is the time to make these reforms, not 5 or 10 years from now. The 1965 act has started the momentum for action which these amendments will carry out. We are not scraping the tested provisions of the old law as some have suggested, we are adding to them new ones which will guarantee to all the rights set forth in the 15th amendment.

The amendment proposes useful, workable reforms which this Nation needs. The President and the Attorney General have suggested a sound approach to voting rights reform. Those proposals, embodied in the amendment now under consideration, deserve the support of everyone in this body. They have mine.

Mr. RHODES. Mr. Chairman, I urge adoption of H.R. 12695, the nationwide voting rights bill.

This bill would give nationwide protection to the right to vote. Its coverage would not be limited to the States and counties covered by the 1965 act.

I wish to comment specifically on one provision of H.R. 12695, which would make an important change in our national voting laws. Under this bill, no residency requirement could be applied in an election for President and Vice President. A person otherwise qualified to vote who has resided in a State since September 1 of the election year would be permitted to vote in that State. A person changing his residence after September 1 would be permitted to vote in the State from which he moved.

This is a key provision. In my view, there is absolutely no justification for imposing State and local residency requirements with regard to presidential elections. The U.S. Bureau of the Census estimates that in the 1968 presidential election more than 5.5 million persons were unable to vote because they could not meet local residency requirements.

This is manifestly unfair. These residency requirements deprive a large segment of the population of its right to express its wishes as to the man who will lead the country.

I can understand that a residency requirement might be reasonable for local elections. It would give the new resident sufficient time to familiarize himself with local issues. But there is no need for a residency requirement in presidential elections. The issues in presidential elections are nationwide in scope and the issues are widely disseminated on a nationwide basis. The fact that a person moves from one State to another has no bearing as to whether he can intelligently vote for President and Vice President.

The U.S. Supreme Court recently refused to rule in a case challenging the constitutionality of State residency requirements for voting for President. The name of that case is Hall against Beals. Since the Court has not decided the matter, it is up to the Congress to pass legislation which would remove this inequity and give all of the people in this country the right to vote for President.

Mr. BROWN of Ohio. Mr. Chairman, in recent years many efforts have been made to overcome so-called sectionalism in our country. To make us what the pledge to the flag says one Nation under God, indivisible, with justice for all.

But sometimes we lose sight of that goal.

Certainly that was a problem in the otherwise needed Civil Rights Act of 1965 and that will be the case to a greater degree now if we simply extend it.

Mr. Chairman, we cannot make this one nation, indivisible, if we deliberately divide it by saying in some places we will insure the rights of voters, but in other places we will not.

Mr. Chairman, where is the "justice for all" if we say to those who live in the South, "we will insure your right to vote," while we say to those in the North and the Midwest and the West, "your right to vote is not important."

Regardless of the well-meaning intention of those supporters of the judiciary bill to right wrongs in the South, it is equally important to right wrongs elsewhere.

That is what the nationwide substitute

offered by the minority leader, H.R. 12695 seeks to do by insuring nationwide equal voting rights for all our citizens.

Mr. Chairman, in the name of equality and justice we can do no less. We have confidence that the administration will diligently administer 12695 with even-handed justice throughout America.

Mr. DONOHUE. Mr. Chairman, I most earnestly urge my colleagues here to, and I hope they will, promptly and overwhelmingly adopt this measure before us, H.R. 4249, to extend the Voting Rights Act of 1965 with respect to the discriminatory use of tests and devices, without any crippling changes or extended delay.

Mr. Chairman, we all remember the Voting Rights Act of 1965 was designed to enfrancise millions of citizens who had not been able to secure their 15th amendment rights under prior congressional enactments. Congressional efforts in 1957, 1960, and 1964 to banish racial discrimination in voting proved seriously inadequate. Federal remedies took the form of expedited Federal court litigation, but court orders were ineffectual in overcoming massive and widespread violations of the 15th amendment. Intransigence and dilatory tactics largely neutralized the litigating effort of the Federal Government. By 1965, it was conclusively demonstrated to the Congress that exclusive reliance on judicial remedies had cost aggrieved parties an inordinate amount of time and effort. Litigation was time consuming and the progress it yielded in 8 years, from 1957 to 1965, was insignificant. For example, during this period Negro voter registration had only risen 2.2 percent in Mississippi. An effective Federal solution was imperative.

The Voting Rights Act of 1965 was the Federal response. Based upon the experience of the past 4 years, it is my judgment that the act has been a marked success. Over 1 million Negroes have become enrolled voters for the first time.

Four hundred Negroes today hold local and State legislative office in the States of Alabama, Georgia, Louisiana, Mississippi, South Carolina, North Carolina, and Virginia, where 4 years ago the number was insignificant.

Although the act has made dramatic progress possible, the records of the U.S. Commission on Civil Rights indicate that the gains are "fragile" and the protections of th 1965 act must be continued if we are to secure the gains made thus far.

The administration, through Attorney General Mitchell, is now offering an alternative proposal to eliminate the "regional" character of the 1965 act. We should not support efforts to weaken or dilute the effective provisions of the Voting Rights Act. Instead, we should endorse a simple extension of 5 years of the Voting Rights Act as presently constituted.

I am pleased to note that Father Theodore M. Hesburgh, president of Notre Dame University, and Chairman of the U.S. Commission on Civil Rights, similarly endorses an extension of the Voting Rights Act. I share his view that a continuation of the effective voting rights protections contained in the 1965 act remain essential to make the promise of the 15th amendment a reality.

Mr. CLAY. Mr. Chairman, during the debates on extension of the Voting Rights Act of 1965 the Members of this House will hear—and have heard—many arguments for and against this excellent piece of legislation. The Voting Rights Act has been a most effective law in terms of delivering what it promises—the right to register and to vote as guaranteed by the 15th amendment. But, I want to remind the Members that in less than 9 months the 800,000 black voters registered under the 1965 act face the specter of the return of white supremacy at the voting registrar's office.

On August 6, 1970—next summer—the States and counties now covered by the Voting Rights Act will have no further legal obligation to adhere to this law. When that day arrives, Mr. Chairman, if we do not extend the life of this act, we will see the return of Mississippi's infamous constitutional interpretation literacy test—which is still on the books in that State. We shall see the purging of black voters from the rolls through wholesale reregistration of voters. We shall see ingenious State legislatures, county boards, and city councils invent new ways to disfranchise black voters by changing election laws, by developing new procedures, by drawing political boundary lines, by devising new methods of electing various officeholders, unchecked by the powers of the Attorney General as provided in section 5 of the Voting Rights Act.

In 95 years the advocates of white political supremacy have not yet exhausted all the ingenious tricks and devices at their command to keep black folk from voting. The Voting Rights Act of 1965 with all its strong provisions was the only—and I repeat—the only time white supremacy in the registrar's office and at the polling places was stopped and the only time in our history that guarantees of the 15th amendment were given full effect.

We have fought hard for that act. As Federal Judge Leon Higginbotham said last Monday, "When one has been on the receiving end and deprived of rights it gives you a different perspective than one who has not had to fight for them."

The Voting Rights Act of 1965 was the direct result of a great upsurge of moral indignation in this country, 7 years of litigation by the Justice Department had produced only 36,000 new black voters on the rolls. Black people and white people had died attempting to register or for their efforts in urging black people to register. Only after Dr. Martin Luther King crossed a bridge at Selma, Ala., was the act passed. Within weeks, thousands of black voters were on the registration rolls. The numbers grew to over 700,000. Today, over 3 million blacks are registered in the South. There are 463 black officeholders

We cannot permit this progress to be reversed. There are still 3½ million black people in the South not registered. The Voting Rights Act of 1965 must be extended with all of its protective provisions intact for another 5 years.

The Voting Rights Act must not be diluted, must not be confused in its purpose to enforce the 15th amendment where it needs enforcing—in those States and counties covered by the act. I think the Members of the House should be reminded that the people who complain most bitterly about the Voting Rights Act of 1965 are the same people who most bitterly resisted the honest, peaceful, legitimate, efforts of black men and women to register under the laws of those States—as those laws were written. They were willing to interpret Mississippi's infamous constitution. They were willing to demonstrate their literacy, but those States and counties by their perversion of fair democratic process demonstrated their intent to prevent any black man or woman from registering. White grade-school dropouts, serving as registrars repeatedly denied black doctors, black lawyers, and black Ph. D's the right to vote by declaring them illiterate.

Since the courts could not protect the right to vote, Congress stepped in and did the job. History and experience show that the protections of the Voting Rights Act must be continued for another 5 years.

Mr. STEIGER of Wisconsin. Mr. Chairman, today we are debating one of the most crucial questions we have faced all session. If this Nation is to be truly democratic then every one of our citizens must be afforded the chance to choose for himself those who shall govern. Lord Holt, the famous British jurist, once called the franchise "a most transcendent thing." All in this Chamber, I know, agree with him.

To see that the franchise is given to all in this Nation is that task we should set for ourselves today. The 15th amendment made a start toward this goal; the 1965 Voting Rights Act made it a reality in some States. Today we have the opportunity to complete the task. The vehicle for this is the amendment now on the floor. It would extend to all the tested protection the 1965 act reserves for a few.

Basically, this is a nationwide version of the 1965 act. The ban on literacy tests is extended from eight States to 50, the power to send Federal voting examiners and observers is made national not regional, the Attorney General is given nationwide power to institute voting rights suits and void discriminatory voting laws, residency requirements are severely limited, and a Voting Rights Commission is created to look into all the facts on this subject and make recommendations for permanent legislation.

The amendment would provide a package of cures for disenfranchisement rather than simply extending the old law for an additional term. The amendment is constructive and innovative, building on the experience of the 1965 act; the committee bill is static and unresponsive, adding nothing new to the legal ability of the Justice Department to attack violations of the 15th amendment.

While I strongly endorse the entire amendment, I think section 2(b) is of vital importance.

Millions of people in the United States change their residence each year. Any legislation dealing with voting rights must face the problem of insuring that these people are eligible to vote. Accord-

ing to the Bureau of the Census, in 1968 more than 5.5 million citizens were unable to vote because they could not meet residency requirements prior to election day.

A residency requirement may be reasonable for local election to insure that the new voter has sufficient time to familiarize himself with local issues. But such requirements have no relevance to Presidential elections where issues and news coverage is nationwide. How can we permit the stationary citizen his role in national elections, while denying it to those who exercise their right to move freely from one area to another? The answer is that we should not.

Section 2(b) provides that a citizen otherwise qualified to vote under the laws of a State cannot be denied his vote for President and Vice President in that State if he resided in the State since September 1 next preceding the election If he changes his residence subsequent to September 1, his vote is protected in the State from which he moved.

This section—along with all the other portions of the amendment—are vital pieces of legislation which will bring to millions a vote they are not now permitted to exercise. The amendment builds on the 1965 act, it improves, it strengthens it. I support the amendment fully; I hope a majority of the Members of this body agree. This is a good proposal and a fair one. It deserves our approval.

Mr. FOUNTAIN. Mr. Chairman, we are not debating what is described as a 5-year extension of the so-called Voting Rights Act. This is not precisely accurate. The Voting Rights Act of 1965 is composed of 19 sections, 17 of which are permanent legislation. Only two sections of the act—sections 4 and 5—will expire or become inoperative on August 5, 1970.

So what we are really debating is the extension of sections 4 and 5 of the Voting Rights Act.

Equal justice under the law, however difficult to achieve, has always been a high and shining ideal of our land, but if the Ford amendment is not passed, you will ensure that only the same few States in the South will be subject to this law, while the vast majority are not.

Notwithstanding the professed high purpose of extending the act in its present form, allegedly to protect the right of every qualified voter to vote—the result will be discriminatory against most of the Southland.

Let me say that, of course, every qualified voter should have the right to cast his ballot for anyone he chooses. This is a fundamental right, guaranteed by the Constitution. No thinking person would dispute that fact.

However, I am opposed to the extension of this act in its present form. It presumes that we in the South have been guilty of discrimination without even a semblance of a trial. But, the question now is not whether the Voting Rights Act of 1965 was proper and necessary legislation. I do not think it was necessary, but our unusual Supreme Court has said that the act is constitutional. For the life of me. I cannot understand how intelligent and responsible men could have reached such a decision. Nonetheless, they did.

The basic question now before us is whether or not to enact the so-called Ford amendment which would, to a substantial degree, right a terrible wrong done when the existing act, applying primarily to the South, was passed.

The Ford amendment has already been ably explained by a number of speakers ahead of me, including in particular the distinguished gentleman from Virginia (Mr. POFF). It provides for equal treatment of all 50 States under the law. While extending the existing law to all 50 States, it also includes other provisions which place the burden of proof upon the Federal Government to determine whether or not discrimination exists in a specific case. No longer will a State have the impossible task of proving a negative—that it has not discriminated against voters.

In other words, my people will no longer be presumed guilty of discrimination because less than 50 percent of them were registered, or voted in the 1964 presidential election. That so-called triggering device, grossly unfair to the South, will be eliminated. If there is discrimination or election fraud anywhere in the Nation, the Attorney General will have the right to initiate voting rights lawsuits to challenge the so-called discriminatory laws and practices.

Why should we not extend the coverage of the entire act to all 50 States. If the results of the act have been salutary, then let all Americans have the benefit of the same legislation. Otherwise, this Congress will be guilty of the same rank discrimination which it has too long in too many ways, practiced against the people of the South.

If the Ford amendment is not adopted, or if other appropriate amendments making the law applicable to all States alike are not adopted, then it would appear to me entirely reasonable and proper to let sections 4 and 5 of the original Voting Rights Act of 1965 expire in 1970 as per its own terms.

Why should we extend section 4 for another 5 years when it penalizes a State simply because fewer of its citizens chose to participate in the general election of 1964. The 1964 election returns used as the basis for figuring are completely outdated by now.

I would like to point out that many more North Carolinians turned out to vote in 1968's presidential election than they did in 1964—the base year in the original act. As a matter of fact, 162,000 more people voted in North Carolina last year.

Why should 39 counties in North Carolina continue to be forced to remove all reasonable voter qualifications while 61 other Tar Heel counties are unaffected?

Why should we extend section 5 of the act when it serves no other purpose than to center judicial authority for one special law in one place—Washington, D.C.?

Why should States which have already received whatever salutary effects the original congressional backers intended be forced to add more cases to the judicial overload which already exists in the Nation's Capital?

Mr. Chairman, the existing law is punitive and discriminatory against all of the people I represent. It questions their integrity and fairness, and reverses the traditional presumption of innocence provided under our laws. Without a hearing, it finds 39 counties in my State guilty of discrimination and 61 not guilty. Is this really America?

In short, let us make this act applicable nationwide or let us leave it alone and let it expire. Only by so doing will we be taking the proper course. Even the Ford amendment will not make the legislation satisfactory, but it will be treating all States alike. For this reason, and because it is the only way to prevent extension of this law in its present discriminatory form, I support the Ford amendment.

Mr. LEGGETT. Mr. Chairman, the right to vote, the right to select our own leaders, is the most fundamental of all rights in our free, democratic system of government. It is a right which Thomas Jefferson described as the "ark of our safety."

It is a right which indisputably must be extended to every American citizen. The 15th amendment of the Constitution provides:

> The right of the 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.

It directs that—

> Congress shall have the power to enforce this Article by appropriate legislation.

A century after the passage of this amendment many of our fellow citizens are still being unconstitutionally disenfranchised because of their race and color.

Prior to the adoption of the Voting Rights Act in 1965, the Congress passed "appropriate legislation" six times trying to eradicate this deep and unjust flaw in our American democracy. None of these Federal enactments were effective.

The passage of the Voting Rights Act finally gave the Federal Government a good, strong law to help end discrimination in our land. It gave the Federal Government the requisite power to intervene in States, localities, and counties where voting rights have been manifestly denied Americans.

It was designed to deal with the principal means State and local governments had used to frustrate the effective implementation of the 15th amendment.

At the core of the Voting Rights Act—and the key to its effectiveness—is its automatic trigger. These provisions suspend the use of literacy tests and other devices in any jurisdiction in which less than 50 percent of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 percent of such persons voted in the 1964 presidential election.

Such tests and devices were to be suspended unless it could be shown in a declaratory judgment proceeding that, during the preceding 5 years they had

not been used to deny or abridge the right on vote on the grounds of race or color. No such declaratory judgment could issue, however, with respect to any plaintiff for 5 years after the final judgment of any Federal court had been entered—other than the denial of a declaratory judgment—determining that denials or abridgements of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the plaintiff's jurisdiction.

Mr. Chairman, I am satisfied that this Act has passed the important test of constitutionality and stands as a milestone in enfranchising all Americans.

In *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966) the U.S. Supreme Court sustained the Voting Rights Act as a valid means of effectuating the commands of the 15th amendment. Its comments underscore the rationale of the legislation:

> Congress had learned that substantial voting discrimination presently occurs in certain sections of the country, and it knew no way of accurately forecasting whether the evil might spread elsewhere in the future. In acceptable legislative fashion, Congress chose to limit its attention to the geographic areas where immediate action seemed necessary.

Under its terms, the Voting Rights Act presently affects the voting qualifications and practices of the following jurisdictions: The States of Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia; and Yuba County, Arizona; Honolulu County, Hawaii, and 39 counties in the State of North Carolina.

Since enactment in 1965, 64 counties or parishes in five States have been designated for the appointment of Federal voting examiners who are authorized to list qualified applicants to vote. Federal election observers, who can be assigned under the act only in counties designated for examiners, have served in five elections in Alabama, two in Georgia, 10 in Louisiana, 12 in Mississippi, and five in South Carolina. The presidential election of November 1968, the only such election held under the Voting Rights Act, witnessed the assignment of some 530 Federal observers in 24 counties and parishes in Alabama, Georgia, Mississippi, Louisiana, and South Carolina.

Negro registration in the five States where Federal examiners have been appointed—Alabama, Georgia, Louisiana, Mississippi, and South Carolina—has risen from approximately 29 percent to approximately 52 percent of the Negro voting-age population. This rise in nonwhite registration has been accompanied by an increase in Negro voting participation and in the number of Negro officeholders and legislators. Although registration progress has been dramatic under the act, especially when compared to registration gains achieved under earlier voting rights legislation, significant disparities continue between white and nonwhite registration in areas covered by the act.

I urge the renewal of the Voting Rights Act for a period of 5 years. I support the passage of H.R. 4249. Much has yet to be done.

Resistance to progress in enfranchisement of qualified Americans has been far more subtle and far more effective than we have thought possible. An amazingly ingenious arsenal of barriers to circumvent the basic right to vote has been created and perfected:

Legislative districts have been racially gerrymandered.

The terms of office of incumbent white officers have been extended.

Elections have been switched to an "at large" basis.

Counties have been consolidated.

Full-slate voting has been instituted.

Elective offices have been abolished where Negroes had a chance to win.

The appointment process has been substituted for the elective process.

Negro poll watchers have been excluded and interfered with.

There has been a refusal to provide or allow adequate assistance for illiterate Negro voters.

Election officials have withheld necessary information for voting or running for office.

Bonding companies have been reluctant to bond Negroes who had managed to win an election.

There has been discriminatory purging or failure to purge voter lists.

There has been discrimination in the selection of election officials.

There has been disqualification of Negro ballots on technical grounds.

There has been harassment of Negro voters, poll watchers, and campaign workers.

There has been a host of physical and economic intimidations.

In urging the extension of the Voting Rights Act of 1965, I must also urge my colleagues to vote down any and all amendments which will be offered to amend its provisions.

An amendment to substitute a Nixon administration bill will be offered today. It has been characterized as "a sophisticated but nonetheless deadly way of thwarting the progress we have made." This Justice Department bill has not fooled Representative WILLIAM MCCULLOCH, ranking Republican on the House Judiciary Committee and a stalwart champion of civil rights who said he favors a simple extension of the present law.

I also support this simple extension.

Mr. ROTH. Mr. Chairman, it has been said that "the ballot box is the great anvil of democracy, where government is shaped by the will of the people."

The right to vote is an essential right. Under our Government of, by, and for the people, the right to vote is perhaps the most basic right of all.

Many of our citizens, unfortunately, have been denied this right by any number of means. The voting rights bill of 1965 has made tremendous progress in removing these unjust barriers, and has given means of political influence to people too long denied them. It is essential, then, Mr. Chairman, that Congress extend the Voting Rights Act. It would be unconscionable to retreat on the promise of full participation in our political processes, a promise implicit in the Voting Rights Act of 1965.

In addition, I urge that the Congress eliminate residency requirements as a barrier to voting for the President and Vice President. I firmly believe that each State should have the right, within the limits of the Constitution, to establish voting requirements for State and local elections. At the same time, I am concerned that an increasing number of our citizens are disfranchised from voting in the presidential elections because of increased mobilization of our population. It is estimated that approximately 5½ million Americans are denied the right to vote for the President because they have moved from one State to another. There are, of course, good reasons why a new resident might not have familiarity with State or local conditions and candidates, but the same considerations do not apply to a presidential election.

Mr. Chairman, to deny one the right to vote not only limits our democracy but diminishes our concept of citizenship. The sense of belonging and of participating is a vital aspect of such citizenship.

Because the right to vote is so essential to the future of America and for all our citizens, I urge Congress to vote immediately to extend the Voting Rights Act of 1965. Let us do our part to see that all enjoy the full benefits of democracy, for it is through the ballot box that democracy draws its strength, renews its processes, and assures its survival.

Mr. BUCHANAN. Mr. Chairman, I rise in support of the Ford substitute and in opposition to the committee bill to extend the Voting Rights Act of 1965. A simple extension of the 1965 Voting Rights Act would mark the continuation of a double standard of Federal law, against which I testified before the Judiciary Committee prior to its original passage and which I continue to oppose.

It would not be right to use one measuring rod in New York and an entirely different one in Alabama; to have one system of weights and measures in Illinois and another in Mississippi, and to have the above required by Federal law. It is equally wrong to have one standard for the registration of voters required in only seven States with the other 43 exempt from such requirements. As the law now stands a person registered to vote in my district under the requirement of Federal law could well be immediately disenfranchised upon moving to New York because he could not pass the literacy requirements of that State.

The Ford substitute would make the law apply equally to all the States. Under the 1965 act the officials of the seven States affected are in the position of being guilty until their innocence is proven. The Ford substitute would follow the traditional American system of assumed innocence until guilt is proved.

Through the years there have been many instances of alleged irregularities in elections certainly not confined to any region of the country. The President's proposals, as placed before the House by the distinguished minority leader, would provide a means for appropriate Federal action to combat such corruption all across the Nation.

It is strange that anyone can still believe that problems of Negro rights, discrimination, and desegregation are confined to the South in our time. The worst civil disturbances have been in non-

Southern cities. Resistance to open housing is apparently as strong in Chicago as in the South. Resistance to school desegregation apparently exists wherever there is a large concentration of nonwhite population. There is ample evidence of discrimination outside the South in the above, in employment practices, and in other fields. While not as open and above board as the old segregation laws of the South, widespread discrimination has existed in more subtle and sophisticated ways which have had substantially the same end results.

There is evidence that while five of the seven States covered by the 1955 act would no longer fail to meet the standards of voter registration and participation established by that act, were today the effective date on which the formula was applied, there are ghetto areas and in some cases whole counties which could not meet the requirements of the formula should it be applied to the other 43 States. Nor is it to my mind a decisive argument, even if it be true, that the problem of voting rights has been greatest in the South. The problem of organized crime is far greater in Chicago and New York than in Birmingham. Yet when we pass legislation to combat organized crime, I would be the first to oppose a bill which applied only to Chicago and New York and did not attempt to meet whatever problem might exist in the present or future in my own city or State. When it comes to voting irregularities there are those who allege that there have been difficulties even in the great State of Texas, which is exempt from this act in spite of some 16 or 17 counties in that State which failed to meet the requirements of the formula in 1965. Voting irregularities have even been alleged to occur within at least one county of the great State of Illinois. I favor law which would combat this evil everywhere and all the time.

Mr. Chairman, we have on Constitution and one Bill of Rights. The Constitutional rights of a citizen of this Republic cannot lawfully be abrogated by a government at any level in any State of this Union. The constitutional rights of the people compose the very heart of the Constitution. Censequently, it is the duty of the Congress to work toward the protection of these rights in all 50 of the States. The 15th amendment to the Constitution provides that:

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

It further states that—

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

I fully support the purposes of this amendment. If legislation is, therefore, deemed necessary to protect the voting rights of American citizens guaranteed by this amendment let it be truly national legislation which protects all the people and the people in every State.

Mr. BINGHAM. Mr. Chairman, I rise in support of H.R. 4249 as reported out by the House Judiciary Committee, which provides for a 5-year extension of three key provisions of the Voting Rights Act of 1965.

I am strongly opposed to the proposed administration substitute which I believe substantially weakens the three key remedies for abolishing discrimination in voting set up by the Voting Rights Act of 1965. Though on the surface the Administration proposal seems to work toward the lauditory goal of extending the remedy provisions nationwide, upon closer scrutiny it has the practical effect of diluting and even crippling the effort to abolish discrimination in voting where it is needed most.

First of all, the administration substitute proposes a blanket nationwide ban on literacy tests and similar devices until January 1, 1974. The literacy test question is an extremely complex one. In some States such as my own State of New York, a minimal literacy test has been proved necessary in dealing with large cultural groups whose main language is other than English. The literacy test ban question has been hotly debated in the past and should be considered separately on its own merits. Tacking a literacy test ban onto this bill severely jeopardizes the passage of the Voting Rights Act extension.

The literacy test ban provision as it now stands in the Voting Rights Act of 1965 applies only where a causal relationship can clearly be shown to exist between use of a test and low nonwhite voter participation. In seven States in the South, such a relationship has been shown; there is no evidence that this situation exists elsewhere. If evidence were to emerge in the future that use of literacy tests and other devices in other States are discriminatory under section 3 of the Voting Rights Act, the Attorney General has the authority to bring suit to enforce the 15th amendment. So a nationwide literacy test ban is essentially unnecessary.

The administration substitute also proposes to extend the use of observers and examiners nationwide. Again I ask, where is the evidence that there is a need other than in the seven Southern States?

Testimony of Clarence Mitchell of the NAACP, and officials of the voter education project of the Southern Regional Council before the House Judiciary Committee clearly indicates that the problem of disenfranchisement of minority groups in the South still has not been solved. The Votings Rights Act of 1965 went a long way in correcting voting discrimination, but a continued concentrated effort is still needed there. If the administration were sincere about ending voting discrimination nationwide, it would need a great deal of money and manpower to discover the relatively few, minor instances of disenfranchisement outside the seven Southern States. With the Vietnam war and the inflationary situation, those resources are not available. So the ultimate effect of this provision will be to take the pressure off the South and, through lack of examiner and observer manpower, let it drift back to pre-1965 practices. We cannot let that happen.

The administration provision for a Presidential Commission to study voting discrimination and corrupt voting practices can be quickly dismissed by quoting my distinguished colleague, the gentleman from Ohio (Mr. McCULLOCH) who asked at the hearings on this bill why the Civil Rights Commission cannot perform the same task at lesser expense?

The administration substitute proposes uniform residency requirements. Again, this is lauditory on the surface and in principle, but I suggest this is not the proper time to consider the question in light of the residency requirement case now pending before the Supreme Court questioning the constitutionality of such State laws. After the case has been decided will be the proper time to consider this important issue separately. It is a controversial issue affecting long held State perogatives and its consideration now could also jeopardize the passage of H.R. 4249.

Finally, the most damaging provisions of the Administration substitute—the elimination of preclearance requirements. This provision would critically weaken the Voting Rights Act by shifting the burden of proof to the Government in evaluating electoral legislation cleverly designed to thwart Negro voting. It would mean a return to dependence upon the slow litigation process which has shown to be so ineffective and regressive in the past.

In 1965, I enthusiastically supported the original voting rights legislation, noting that "in the achievement of equal opportunities nothing is more important than the guarantee of the franchise." I feel obligated to oppose any amendment to the Voting Rights Act which will subvert this American goal or make it more difficult to achieve.

Mr. GILBERT. Mr. Chairman, I heartily endorse the Judiciary Committee's bill to extend the Voting Rights Act of 1965 by 5 more years. I endorse it because it is right and because it is one of the pieces of legislation enacted during the last administration whose effectiveness has been demonstrated over and again. In the six States fully covered under this legislation, Negro registration has increased from 877,000 in 1965 to 1.6 million today. In the areas covered by the act, nearly 400 black officials have been elected. What these figures demonstrate, Mr. Chairman, is that the democratic process has at last been made available to a substantial body of Americans to whom it was so long denied. We cannot ignore that achievement.

I think it would be highly injurious to weaken the enforcement provisions of the 1965 act, as the administration's bill proposes to do. It would be a step backward in civil rights. Therefore, I am going to vote against the administration substitute bill.

Mr. MANN. Mr. Chairman, may I preface my remarks by stating that I feel that any legislation we enact must encourage as many citizens as possible to vote and must discourage the application of unreasonable legal requirements. As I understand it, this is the position of the administration and, for that matter, was the intent of the Voting Rights Act of 1965.

I must take issue, however, with my fellow Judiciary Committee members in

approving 5-year extension of the Voting Rights Act of 1965. The 1965 act provided for suspension of literacy tests and devices in States and counties where such tests were utilized and where less than 50 percent of the total voting-age population was registered to vote or voted in the November 1964 election. The effect of that legislation was to declare invalid the literacy requirements of Mississippi, Louisiana, Alabama, Georgia, South Carolina, Virginia, and 39 counties in North Carolina. Some 13 States, including Connecticut and New York, which have literacy tests were exempted because they met the 50-percent requirement. Likewise, States such as Arkansas and Texas, which fell short of the 50-percent requirement but had no literacy tests, were exempted. States such as North Carolina, which had an overall average of 51.8 percent but had counties which fell under the 50-percent figure, came under the 1965 act because it had a literacy requirement, whereas States like Tennessee, where 22 out of 95 counties had less than 50 percent, were exempted due to the absence of a literacy test.

Is discrimination on the basis of literacy more acceptable in Connecticut and New York than it is in Louisiana or South Carolina? Or, as my colleague from Alabama (Mr. ANDREWS) inquired:

> If a moron is going to be permitted to vote in Alabama, why shouldn't a moron be permitted to vote in New York?

In 1966, 21 persons in the town of New Haven, Conn., and 574 persons in New York were disenfranchised because they failed to pass literacy tests. Due to the discriminatory nature of the Voting Rights Act of 1965, these same so-called illiterates, having otherwise met local residency requirements, could have registered to vote in Louisiana or South Carolina. While I grant that these figures are not significant quantitatively speaking, they do illustrate a principle; namely, that the Voting Rights Act of 1965 sanctions disenfranchisement for reasons of illiteracy in some States, while condemning it in others. It also implies that the seven affected States are guilty of using their literacy tests to deny nonwhites the right to vote, while the other 13 States having literacy tests are supposedly innocent of any such implication.

I have listened with some amusement to those who argue that this act is not regionally discriminatory. They say that the act is nationwide in scope, and that it just so happens that the statistics of the formula resulted in its application to the seven Southern States. Well, it just so happens that the statistics upon which the formula is based were known at the time the act was passed in 1965. It was equally well known at that time that the formula would result in the regional effect which they now attempt to claim was unintentional. I want to repeat the idea expressed by several here today that whatever regionalizes this country divides this country.

I started these remarks with the statement that I wanted to encourage the exercise of the franchise by as many of our citizens as possible. The Attorney General of the United States in testimony before the House Judiciary Committee, said:

> Little more than one-third of the voting-age Negro population cast 1968 ballots in Manhattan, the Bronx, or Brooklyn, New York City, and this amounted to only one-half the local white turnout.
>
> I consider these statistics to be proof that extension of the voting rights legislation aimed at the entire States of Virginia, South Carolina, Georgia, Alabama, Mississippi, Louisiana, and 39 counties of North Carolina is unreasonable today, however well intentioned it might have appeared in the past.

I suggest to my colleagues that it is unreasonable today to continue to aim this act at the Southern States. Let every American, including the Puerto Rican in New York and the Negro in the North, enjoy the benefits of the 15th amendment. The substitute bill is designed to apply the law fairly to all 50 States of the Nation. I am hopeful that today conscience and reason will prevail over expediency, and that you will support the substitute.

Mr. RARICK. Mr. Chairman, we are asked by the Committee on the Judiciary to extend for another 5 years the travesty on justice called the Voting Rights Act of 1965.

At the same time we will be given an opportunity to make the effects of this law felt throughout the length and breadth of the land—not just in the "conquered provinces" of the South.

As plain political retribution, and in an effort to load the voting rolls of certain Southern States with large numbers of patently unqualified individuals, who would react like puppets to the machinations of the left, this so-called Voting Rights Act was passed.

It cleverly utilized a bizarre formula relating the votes cast in the 1964 presidential election to the voting registration in the jurisdiction, to someone's idea of what the voting registration should have been at the time. And by the time the mystical formula was applied, only the States which had cast their electoral votes for Senator GOLDWATER were placed under Federal supervision.

Now that the act is due to be extended for 5 years, it has been suggested that the formula be applied to the 1968 presidential election, instead of the 1964 election, but the proponents of Federal oversight disapprove, pointing out that most of the Southern States currently penalized would be relieved of their present Federal supervision.

We are told in a carefully worded letter by the Chairman of the Civil Rights Commission that it is responsible for the addition of some 2 million Negro voters in the South. I am personally familiar with some of these additions. As district judge of the 20th Judicial District of Louisiana, the grand jury returned to me the indictments found against two of the newly enfranchised Negroes—one of whom had been led to declare on his oath that he had never been registered elsewhere when he was then and there registered in an adjoining parish, and another who was recognized as a recently released felon from the State penitentiary.

I insert Father Hesburgh's appeal to morality at this point in my remarks, reminding our colleagues that this is the same gentleman who, as president of Notre Dame University, has just added to its board for the supervision of the education of our young people, a convicted sex pervert, a convicted felon, a draft dodger, and an admitted onetime Communist who still travels with the same comrades:

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C.

Hon. JOHN R. RARICK,
House of Representatives,
Washington, D.C.

DEAR MR. RARICK: This week the House of Representatives will vote on the extension of the Voting Rights Act of 1965 for another five years. The Commission on Civil Rights has amply documented the need for a simple extension of the Voting Rights Act with all of its protective provisions intact. The Administration's substitute is a much weaker bill. It is the judgment of the Commission that general electoral reforms should not be tied with the extension of the Voting Rights Act because the effect would be to dilute and confuse enforcement of Fifteenth Amendment rights with general reforms based on other considerations.

I have been a Member of the Commission on Civil Rights since 1957 when the original Commissioners were appointed by our late President Eisenhower. From my perspective of 12 years on the Commission, I think I can say that there has been no more effective piece of civil rights legislation than the Voting Rights Act of 1965. Prior to the passage of that statute, a succession of legislative and judicial pronouncements had proven totally ineffective to deal with historic and deep-rooted voting denials.

The Members of Congress of both parties who shaped and supported the 1965 Act can rightfully point with pride to one of the great legislative accomplishments of this decade. Their proof lies in the nearly two million newly enfranchised Negro voters in the South, in the 463 elected Negro office holders, and in the many changes which have taken place as a result of greater participation by Negroes in the political life of their communities, cities, States and Nation. The passage of that Act was one of political and moral correctness.

I do fear that many Members of Congress feel that the voting problems at which the 1965 Act was directed have been solved. They have not. The Fifteenth Amendment remains to be fully implemented. We cannot retreat on this front. If we do, we run the risk of endangering the faith of many of our people in the ability of our Government to meet the legitimate expectations of its citizens.

Sincerely yours,
THEODORE M. HESBURGH,
Chairman.

An item in yesterday's Washington Post, by-lined and in all probability not published elsewhere, is timely in connection with our consideration of this measure. We have heard the sobs of the left for the poor disenfranchised District of Columbia, despite the fact that the District will always be a Federal dependent. Recently the residents of the District of Columbia—the model city, the shining example for the Nation—for which Congress has unquestioned responsibility, had an election.

This election was an unmitigated disaster to the left, both in the rejection of their candidates and in the sorry performance of their showcase electorate.

About 12 percent of the registered voters bothered to vote. Only about half

of the supposedly eligible voters in the District have bothered to register. This means that about 6 percent of those who might have participated in the only election for local officers took the trouble to vote.

But total disaster overtook the theorists when it turned out that of those who did vote, some 70 percent were white. What can be the explanation for an election, under total Federal supervision, in the Nation's Capital, where the population some 80 percent Negro, and less than 2 percent of the eligible nonwhites voted?

How much more federally supervised can you get?

The chairman of the District of Columbia Democratic Central Committee, an experienced attorney from the Department of Justice, has concrete recommendations to correct this situation. He recommends lowering the voting age to 18, providing free television and radio time for candidates, and income tax credits for political contributions—but nowhere does this expert recommend Federal watchdogs to assure that everyone eligible to vote does vote whether he wants to or not.

Mr. Chairman, I have long believed that the voting privilege includes an absolute right not to vote. Many individuals find themselves not offered an intelligent choice and other realize that they do not have sufficient understanding of the issues to cast a ballot. In such cases their conscience leads them to decline to participate. This, in effect, gives their consent and approval to the selection made by the majority of the voters. Such an omission may give statistical troubles to bureaucrats but it certainly is not the type of national emergency which should make anyone consider drastic legislation of doubtful constitutionality to deny to such citizens their right not to vote—simply to keep the bookkeeping neat.

I insert a news reports describing the election in the District at this point:

[From the Washington Post, Dec. 10, 1969]

DEMOCRATS PROPOSE VOTING LAW CHANGES

(By Paul Hodge)

The D.C. Democratic Central Committee last night recommended wide-ranging revisions in Washington's election laws.

The committee's proposals include free television and radio time for school board candidates, tax credits of "perhaps $10" for political contributions and lowering of the voting age to 18.

The proposals stem from what Committee Chairman Bruce Torris called a "disastrous" school board election in which only 12 per cent of the registered voters cast ballots. The board of election already has called for suggestions on how to increase participation in the city's only local election.

Only 25,000 voted Nov. 4 out of some 200,000 registered voters. There are about 350,000 to 400,000 in the District eligible to vote, the elections board estimates.

Terris said the Nov. 4 election was "tragic, because about 70 per cent of those voting were white in a city where 90 per cent of the children are black."

The Democrats will soon present detailed recommendations to the election board, Terris said. Other proposals will include slate vote in the school board primaries (to help identify candidates for voters) and unlimited campaign expenditures (the elections board is considering limited costs to about $5,000 per candidate).

The tax-credit proposal is similar to one considered nationally for presidential candidates, Terris said.

The proposal for free time on TV and radio, "say perhaps 10 minutes per candidate," Terris said, is also similar to proposals for presidential elections.

In the course of debate I have been pleased to hear Members on the other side of the aisle indicate their fear that if this measure were broadened to cover all 50 States, as suggested in the administration substitute, it would probably be declared unconstitutional.

We in the South, who have suffered under the tyranny imposed by this act, have long known it to be in flagrant violation of the Constitution. Unfortunately, the caliber of the Federal judiciary in the South is such that determinations of this question have been political and not legal in every instance. I agree with our friends on the other side of the aisle that if this measure is applied to the entire country it will be declared unconstitutional—as it should have been 5 years ago.

I intend to cast my vote to make this measure equally applicable to all citizens of the United States. I do so in the hope that the clear and present danger of Federal intervention in the local election machinery in all parts of the country will alert Members to this act's nauseating suppression of basic rights. The destruction of the local franchise has always been the first act of the totalitarian.

In the event that the amended bill becomes law, I sincerely hope that some of my newly effected friends will take prompt steps to test the constitutionality of the law in a forum whose judgment is not subject to review by the Fifth Circuit Court of Appeals. Nevertheless, Mr. Chairman, because two wrongs do not make a right, I cannot vote for either the original bill or the substitute on final passage, because I know that neither give any rights but that they actually prevent the exercise of rights plainly protected by the Constitution. Five years ago this bill was unconstiutional and immoral. The passage of time has not healed either defect, nor will its extension to all of our sister States. I must oppose its adoption.

Mr. BINGHAM. Mr. Chairman, in the course of my earlier remarks during the debate on this bill, I mentioned the literacy test provision of the administration substitute. I did not mean to imply that I support or sanction the use of literacy tests in New York. On the contrary, I have consistently opposed such tests, and will continue to do so. There is no question that such tests, even when formulated and administered with care and without malice, impose unjustifiable restraints on the right of every citizen to vote and to participate in the political process.

However, I feel that we should concentrate the limited Federal resources available to enforce the voting rights legislation on ending the use of literacy tests in those areas of the country where their effect on political participation is most direct, severe, and regressive. As a practical matter, this seems infinitely more sensible to me than dissipating our efforts by trying to police with Federal resources election systems in areas like New York where the negative effects of literacy tests are much less clear and great than in other areas of the country covered by the current voting rights legislation. We cannot afford to risk losing the gains we have made in the South by spreading out investigative and enforcement resources too thin.

Mr. HALPERN. Mr. Chairman, the whole effort of Congress, of the Justice Department, and of the Federal courts in enacting and enforcing the Civil Rights Act of 1957, 1960, title I of the Civil Rights Act of 1964, and the Voting Rights Act of 1965 has been aimed at securing for black Americans in the Southern States the right to vote guaranteed them by the 15th amendment. The approach to protecting voting rights prior to 1965 was judicial. The attempt to protect voting rights by recourse to the courts on a case-by-case basis had little success because litigation is too time consuming, and because local registration officials—who were determined to prevent Negroes from voting—usually had other ways of keeping black applicants off the registration rolls after the courts had enjoined specific discriminatory practices.

In passing the Voting Rights Act of 1965, Congress bypassed the judicial approach and abolished the very means by which local registration officials nullified the efficacy of court orders. It did this by suspending literacy tests and devices as conditions for voter registration in States and counties covered by the triggering criteria of section 4(b), by authorizing Federal examiners to list eligible voters in each of these counties where voting rights are still denied, by authorizing Federal observers to insure the fair conduct of elections, and by requiring covered States and political subdivisions to submit new voting laws for approval to the Federal District Court for the District of Columbia or to the U.S. Attorney General in order to prevent covered jurisdictions from impairing 15th amendment rights by discriminatory legislation.

The Voting Rights Act of 1965 has proven tremendously effective. Since its enactment, approximately 800,000 Negro citizens have become registered voters in Alabama, Georgia, Louisiana, Mississippi, and South Carolina. Prior to passage of the act, 29 percent of age-eligible Negroes in these States were registered; 52 percent are registered today. According to the Southern Regional Council there were 70 Negro elected officeholders in the South in 1965 shortly after passage of the Voting Rights Act; today there are 473. Negroes in the South have reason to hope that they can make their presence felt in the democratic political process.

If the House should reject H.R. 4249 as a simple extension of the Voting Rights Act for an additional 5 years and pass instead the administration substitute, it would jeopardize the tremendous gains in political rights achieved over the past 4 years.

There is surely no need to suspend literacy tests for voter registration in the

12 States not now covered by the act which administer such tests. Can it be imagined that if voter discrimination based on race or color occurred in these 12 States that there would have been no complaints to the Civil Rights Commission or lawsuits brought by the NAACP? There have been no complaints or lawsuits coming from any of these States. The Southern States and the Southern States alone have sought to prevent Negroes from voting, and protective legislation is needed today and will be needed tomorrow to insure political liberty in the South.

Federal examiners have been sent to 64 counties in the South. Is it imaginable that the Justice Department should find it necessary to send examiners into any county in any of the 12 States, for example, which presently have literacy tests—to send examiners into Alaska, Massachusetts, or Delaware? The suggestion reflects the absurdity of the substitute amendment proposed by the administration.

Suspension of literacy tests in Connecticut might not endanger voting rights in Mississippi, but elimination of the requirement that presently covered States submit new voting laws for prior Federal approval before putting them into effect would certainly endanger voting rights throughout the South. The Nixon-Mitchell substitute replaces this requirement with authorization for the Attorney General to ask the Federal courts to enjoin the application of new voting laws which would be racially discriminatory. The substitute amendment would thus replace administrative enforcement which is the only kind of approach which has succeeded in protecting voting rights with judicial enforcement which was the approach of the civil rights acts prior to 1965 and which failed.

If the substitute amendment should become law, Southern States would be free to enact laws designed to prevent Negroes from voting or to lessen their voting power or to prevent Negro candidates from getting into office and the Attorney General could not immediately put a stop to the enforcement of such laws. He would have first to go into court and initiate a process so time consuming that elections might occur in the meanwhile and Negroes might suffer denial or abridgment of voting rights.

The Civil Rights Commission, in its 1968 report, "Political Participation," warned us that the Southern States still aim to prevent Negroes from exercising proportionate electoral power. The Commission stated:

> In areas where registration has increased, we have moved into a new phase of the problem. Political boundaries have been changed in an effort to dilute the newly gained voting strength of Negroes. Various devices have been used to prevent Negroes from becoming candidates or obtaining office. Discrimination has occurred against Negro registrants at the polls and discriminatory practices—ranging from the exclusion of Negro poll watchers to discrimination in the selection of election officials to vote fraud—have been pursued which violate the integrity of the electoral process.

In the face of this evidence, the substitute bill would deprive the Federal Government of the most effective kind of check on voting laws which the Southern States might enact.

The issue is this, Mr. Chairman: Will Congress continue to give effective protection of voting rights or will it permit abridgment of the democratic process? Current polarizing tendencies in our country might well be reinforced by lessened Federal protection of voting rights.

Mr. CONYERS. Mr. Chairman, history is watching us. History will deliberate on our actions today, and when this era has passed and the emotions have died down, history will render judgment on this Congress and what it has done. And history is an empirical, unemotional and merciless judge. What verdict will it reach on our consideration of the Voting Rights Act of 1969?

Today, we must consider two alternatives. To give a 5-year extension to sections 4 and 5 of the Voting Rights Act of 1965 or pass the administration backed substitute. How do these alternatives differ? A three-point answer is required. The administration substitute would suspend literacy tests nationwide while extension of the Voting Rights Act would continue the suspension of these tests only in the six States and part of a seventh covered by the act.

I agree with Attorney General Mitchell that literacy tests are not justifiable. In my judgment, they should be abolished. Every State should be prohibited from using this and similar devices as a prerequisite to the right to vote in any election. But one thing surprises me. In 1965, when I urged moving toward abolishing literacy tests, some of my colleagues thought the idea scandalous. Yet today, many of these same gentlemen are seemingly supporting that very move. Their new found free thinking on this matter is extremely interesting.

The principal basis for such action is the 14th amendment which prohibits any State from denying any of its citizens equal protection of the laws.

The principle constitutional base for the Voting Rights Act is the 15th amendment. Therefore, separate legislation is required to properly legislate against literacy tests on a nationwide basis. In that regard, five of my colleagues and I have introduced a separate piece of legislation, H.R. 15146, to abolish these tests nationwide. But the careful deliberation we must give to any such legislative action must not obscure or obstruct the extension of the Voting Rights Act. And that is exactly what is being done today. The debate on literacy tests is designed to throw a cloud around the two remaining major differences in the alternatives we are considering. Under the present Voting Rights Act, the U.S. Attorney General may direct the U.S. Civil Service Commission to appoint Federal examiners to list eligible voters if he has received 20 meritorious written complaints alleging voter discrimination. This power is eliminated in the administration substitute. There would be no provision for administrative appointment. The Attorney General would have to petition in court for the appointment of examiners. What kind of effective relief to those disenfranchised by fraudulent election procedures can be given years after the fact? In the absence of examiners, what process on the local level will give the Attorney General "reason to believe" racially discriminatory voting practices have been enacted or are being administered? The reliance on appointed examiners is a return to the ineffective, arduous procedures in effect prior to 1965. We should certainly not revert to a procedure already found wanting.

The third difference of major consequence between the present and proposed measures is the elimination of section 5 from the Voting Rights Act of 1965 provided by the administration substitute. The States covered by the present act would not be required to first obtain the approval of the Attorney General or a declaratory judgment from the District Court of the District of Columbia before implementing new voting qualifications or procedures. The burden of proof for any wrongdoing would then be on the Attorney General. This would force a return to the case-by-case, county-by-county approach through the courts which has proved so slow and inadequate in the past.

What is the net effect of these differences? If accepted, the administration substitute, most obviously, would be a clear impediment to the enforcement of our constitutionally guaranteed right to the vote, and would obstruct access to the ballot for those millions of Americans who are still disenfranchised. To support such a move, my colleagues must believe that the clear and present evil that required our action in 1965 has been removed. You must believe there is no longer any injustice to correct. You must believe that Southern public officials will not make every effort to disenfranchise those black people already on the voting rolls and to hinder in every way those still attempting to become listed. This is the most important question to consider in this entire debate: Do you believe there is no racially motivated voter discrimination now being practiced and that there is no probability or inclination on the part of Southern public officials to practice or support such discrimination? In short, is full voter equality a reality? This question cannot possibly be answered affirmatively. The evidence is overwhelming. Can the South, in 4 years, have so clearly reversed the effect of their 100-year history of voter discrimination and racial injustice? If this be fact, then there is every justification for not extending the Voting Rights Act in its present form. All could agree on the administration substitute. But practices so institutionalized, so built in and deeply imbedded into the fabric of a society, do not vanish that easily, even though we wish that they could.

We must look at the facts, regard the evidence. Even under present enforcement provisions there are still 185 counties where less than 50 percent of the eligible black Americans have been registered to vote. In the entire State of Alabama the percentage is only slightly above a majority, 51 percent; in Georgia, 52.6 percent; in South Carolina, 51.2 percent. In Mississippi, the percentage is 59.8 percent; in Louisiana, it is 58.9 percent; in Virginia, it is 55.6 percent. In

the 6½ States covered by the 1965 act, only 57 percent of the black voting-age population is registered. This must be compared to the 79 percent of the white voting-age population that is registered, a difference of 22 percent. Federal examiners have only been assigned to 58 of the 517 counties in all the 6½ States covered by the present law.

Since these are the figures presently, there can be little confidence in the future if the Voting Rights Act is not extended. Equality will be further impeded. I do not believe we have gone far enough. At least 2 million black Americans remain who are not allowed to exercise their right to vote. Many more who do vote suffer harassment and intimidation. In my judgment, the Voting Rights Act must not only be extended, but strengthened. It should be made more effective, not less. The enforcement provisions should be more automatic. Assurance of voting rights even now depends too much on the discretion of the Attorney General. The Voting Rights Act should allow door-to-door registration and class-action litigation. It should be strengthened to the extent that all Americans, black as well as white, are truly guaranteed their right to freely cast a secret ballot in any and all elections. Partial democracy is no democracy at all.

But there are those in this body who are saying that enough progress has been made. My colleague from Michigan (Mr. GERALD R. FORD) is the sponsor of the administration substitute. He says that black people have been included in the southern political process to such a great extent that the State legislatures will not reverse the trend. Let me remind Mr. FORD that there is only one black legislator in Louisiana. There is only one black legislator in Mississippi. There is only one black legislator in North Carolina. There is only one black legislator in Virginia. There are none in Alabama or South Carolina.

The argument from the gentleman from Michigan cannot be considered seriously. To the contrary, in one current example, the Georgia State Legislature is now attempting to merge the city of Atlanta into the surrounding Fulton County and thereby severely curtail the ballot power of the black citizens of that city. These voters recently reversed the political order of the last generation by electing a liberal white mayor and a liberal, black vice mayor. This recent political event shows that abolition of the city of Atlanta is an obviously discriminatory change in voting procedure.

The democratic process in the South is well described by the former Assistant Attorney General in charge of the Civil Rights Division, Mr. Burke Marshall. He has said:

> When the will to keep Negro registration to a minimum is strong, and the routine of determining whose applications are acceptable is within the discretion of local officials, the latitude for discrimination is almost endless. The practices that can be used are virtually infinite.

The most obvious tactic that will be used is requiring reregistration of all voters. Then all manner of contrived and hypocritical efforts will be made to prevent black people from returning to their rightful place on the voting rolls. A number of localities in the South—West Feliciana Parish in Louisiana being prominent among them—already have instituted procedures requiring reregistration.

If the U.S. House of Representatives today accepts the Nixon administration substitute amendment, it will see tomorrow the injustices it has perpetrated. All America will suffer. For when freedom is denied for some, no one is truly free to enjoy it. Wendell Willkie, a Republican, once stated:

> Freedom is an indivisible word. If we want to enjoy it, and fight for it, we must be prepared to extend it to everyone, whether they are rich or poor, whether they agree with us or not, no matter what their race or the color of their skin.

History and the country are watching. How will we decide? The law is already on the books. All we have to do is extend it. I urge my colleagues to do no less.

The CHAIRMAN. The time of the gentleman from New York (Mr. CELLER) has expired.

All time has expired.

The Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4(a) of the Voting Rights Act of 1965 (79 Stat. 438; 42 U.S.C. 1973(a)) is amended as follows:

In the first and third paragraphs, after the words "during the", strike the word "five" and substitute the word "ten".

In the first paragraph, after the words "a period of", strike the word "five" and substitute the word "ten".

SUBSTITUTE AMENDMENT OFFERED BY MR. GERALD R. FORD

Mr. GERALD R. FORD. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. GERALD R. FORD: On page 1, strike all after the enacting clause and insert in lieu thereof the following:

"That this Act shall be known as the "Voting Rights Act Amendments of 1969."

"SEC. 2. Section 4 of the Voting Rights Act of 1965 (79 Stat. 438; 42 U.S.C 1973b) is amended as follows:

"(a) Strike subsection (a) and substitute the following:

"'(a)(1) Prior to January 1, 1974, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device.'

"(b) Strike subsection (b) and designate present subsection (c) as (a)(2).

"(c) Strike subsections (d) and (e) and add the following as subsection (b):

"'(b)(1) No citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any election for President and Vice President of the United States shall be denied the right to vote in any such election for failure to comply with a residence or registration requirement if he has resided in that State or political subdivision since the 1st day of September next preceding the election and has complied with the requirements of registration to the extent that they provide for registration after that date.

"'(2) If such citizen has begun residence in a State or political subdivision after the 1st day of September next preceding an election for President and Vice President of the United States and does not satisfy the residence requirements of that State or political subdivision, he shall be allowed to vote in such election: (A) in person in the State or political subdivision in which he resided on the last day of August of that year if he had satisfied, as of the date of his change of residence, the requirements to vote in that State or political subdivision; or (B) by absentee ballot in the State or political subdivision in which he resided on the last day of August of that year if he satisfies, but for his nonresident status and the reason for his absence, the requirements for absentee voting in that State or political subdivision.

"'(3) No citizen of the United States who is otherwise qualified to vote by absentee ballot in any State or political subdivision in any election for President and Vice President of the United States shall be denied the right to vote in such election because of any requirement of registration that does not include a provision for absentee registration.

"'(4) "State" as used in this subsection includes the District of Columbia.'

"SEC. 3. Section 5 of the Voting Rights Act of 1965 (79 Stat. 439; 42 U.S.C. 1973c) is amended to read as follows:

"'SEC. 5. (a) Whenever the Attorney General has reason to believe that a State or political subdivision has enacted or is seeking to administer any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting which has the purpose or effect of denying or abridging the right to vote on account of race or color, he may institute for the United States, or in the name of the United States, an action in a district court of the United States, in accordance with sections 1391 through 1393 of title 28, United States Code, for a restraining order of a preliminary or permanent injunction, or such other order as he deems appropriate.

"'(b) An action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall be to the Supreme Court.'

"SEC. 4. Section 6 of the Voting Rights Act of 1965 (79 Stat. 439; 42 U.S.C. 1973d) is amended by striking the words 'unless a declaratory judgment has been rendered under section 4(a)' and by striking, immediately after the words 'political subdivision,' the words 'named in, or included within the scope of, determinations made under section 4(b).'

"SEC. 5. Section 8 of the Voting Rights Act of 1965 (79 Stat. 441; 42 U.S.C. 1973f) is amended by striking the words 'Whenever an examiner is serving under this Act in any political subdivision the Civil Service Commission may' and substituting the following:

"'Whenever the Attorney General determines with respect to any political subdivision that in his judgment the designation of observers is necessary or appropriate to enforce the guarantees of the fifteenth amendment, the Civil Service Commission shall.'

"Section 8 is further amended by adding the following sentence at the end thereof:

"'A determination of the Attorney General under this section shall not be reviewable in any court.'

"SEC. 6. Section 14 of the Voting Rights Act of 1965 (79 Stat. 445; 42 U.S.C. 1931l) is amended by striking subsections (b) and (d) and designating subsection (c) as (b).

"SEC. 7. The Voting Rights Act of 1965 (79 Stat. 437; 42 U.S.C. 1973) is amended by redesignating sections 17, 18, and 19 as sections 18, 19, and 20, respectively, and inserting the following new section:

"'SEC. 17. (a) There is hereby created a temporary Commission, to be known as the National Advisory Commission on Voting Rights (hereafter called the Commission),

which will be composed of not more than nine members who shall be appointed by the President. The President shall designate one member to serve as Chairman.

"'(b) The Commission shall undertake to make a study of the effects upon voting and voter registration of laws restricting or abridging the right to vote, including laws making residence, economic status or passage of literacy tests and other tests or devices a prerequisite to voting. The Commission shall also study the impact of fraudulent and corrupt practices upon voting rights. The Commission shall conduct such hearings as it deems appropriate and shall consult with the Attorney General, the Secretary of Commerce, and the Civil Rights Commission, and with such other persons and agencies as it deems appropriate. The Commission shall report to the President and the Congress, not later than January 15, 1973, the results of its study and make its recommendations for legislative or other action to protect the right to vote. The Commission shall cease to exist thirty days following the submission of its report.

"'(c) As soon as practicable following enactment of this statute and after consultation with the Attorney General and the Civil Rights Commission, the Secretary of Commerce shall make special surveys, in States which utilize literacy and other tests or devices, and in other States, to collect data regarding voting in presidential and other elections, by race, national origin, and income groups. The Secretary of Commerce shall transmit this data, together with other pertinent data from the Nineteenth Decennial Census, to the Commission.

"'(d) The Commission is authorized to request from any executive department or agency any information and assistance deemed necessary to carry out its functions under this section. Each department or agency is authorized, to the extent permitted by law and within the limits of available funds, to cooperate with the Commission and to furnish information and assistance to the Commission.

"'(e) Members of the Commission who are Members of Congress or in the executive branch of the Government shall serve without additional compensation, but shall be permitted travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code, for persons intermittently employed. Other members of the Commission shall be entitled to receive compensation at the rate now or hereafter provided for GS–18 of the General Schedule for employees for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Commission. While traveling on official business in performance of services for the Commission members of the Commission shall be allowed expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons intermittently employed. The Commission shall have an Executive Director who shall be designated by the President and shall receive such compensation as he may determine, not in excess of the maximum rate now or hereafter provided for GS–18 of the General Schedule under section 5332 of title 5, United States Code. The Commission is authorized to appoint and fix the compensation of such other personnel as may be necessary to perform its functions. The Commission may obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code.'

"SEC. 8. The provisions of this Act shall become effective on August 6, 1970, except that Section 7 shall become effective immediately."

Mr. GERALD R. FORD (during the reading). Mr. Chairman, I ask unanimous consent that the further reading of the amendment in the nature of a substitute be dispensed with and that it be printed in the RECORD.

Mr. CELLER. Mr. Chairman, is the substitute amendment identical to the bill, H.R. 12695?

Mr. GERALD R. FORD. The answer is in the affirmative.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan to dispense with the further reading of the amendment.

There was no objection.

The CHAIRMAN. The gentleman from Michigan is recognized.

(Mr. GERALD R. FORD asked and was given permission to proceed for an additional 5 minutes.)

Mr. GERALD R. FORD. Mr. Chairman, at the outset let me read for the benefit of the Members a letter which I received yesterday from the President of the United States.

THE WHITE HOUSE,
Washington, D.C., December 10, 1969.

Hon. GERALD R. FORD,
Minority Leader of the U.S. House of Representatives, Washington, D.C.

DEAR JERRY: I am aware that the House is considering a five-year extension of the Voting Rights Act of 1965, and alternatively, as an amendment, the Administration-proposed nationwide voting rights bill, H.R. 12695.

I strongly believe that the nationwide bill is superior because it is more comprehensive and equitable. Therefore, I believe every effort must be made to see that its essence, at least, prevails.

I would stress two critical points:

1. Instead of simply extending until 1975 the present Voting Rights Act, which bans literacy tests in only seven states, as the Committee bill would do, the nationwide bill would apply to all states until January 1, 1974. It would extend protection to millions of citizens not now covered and not covered under the Committee bill.

2. H.R. 12695 assures that otherwise qualified voters would not be denied the right to vote for President merely because they changed their state of residence shortly before a national election.

In short, the nationwide bill would go a long way toward insuring a vote for all our citizens in every state. Under it those millions who have been voteless in the past and thus voiceless in our government would have the legal tools they need to obtain and secure the franchise. Justice requires no less.

For certainly an enlightened national legislature must admit that justice is diminished for any citizen who does not have the right to vote for those who govern him. There is no way for the disenfranchised to consider themselves equal partners in our society.

This is true regardless of state or geographical location.

I urge that this message be brought to your colleagues, and I hope they will join in our efforts to grant equal voting rights to all citizens of the United States.

Sincerely,

RICHARD NIXON.

Mr. Chairman, I would like to make three basic points. Section I of the 15th amendment to the Constitution reads as follows:

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 my humble opinion, Mr. Chairman, the Nationwide Voting Act would achieve that result far more effectively than the existing law which is proposed for extension. Let me take one illustration. Under the existing law and sections 4(a) and 4(b) seven States are under what is called the triggering device. Those seven States have automatically, in effect, examiners to register prospective voters and observers to make certain that the voting is carried out in accordance with the law. Those seven States, even after they have met the criteria established in the 1964 election, have the same onus to bear—exactly the same onus to bear. Five of those seven States have met the criteria of the 1965 act predicated on the presidential election of 1964.

Under the existing law and that which is proposed to be extended by the committee, 12 other States that still have a literacy test are not faced with that burden. A total of 43 States in effect are not faced with that burden of having automatic Federal examiners and Federal observers sent in to check on local officials.

I think that is unfair. I think that is inequitable.

Let us take a look at the proposed nationwide bill. Under this proposal, which I am offering as an amendment, the Attorney General can send to any local jurisdiction, to any State, Federal examiners to help in the registration or observers to make certain and to make positive that the election is carried out fairly and equitably for every citizen.

In my honest opinion it is unfair and unjust under the 15th amendment to discriminate against seven States, and particularly the five States which have met the criteria that were established in the 1965 act.

Another concept that is dear, I think, to all Americans is the presumption of innocence. A person in our society is innocent until proven guilty. It seems to me if a person is innocent until proven guilty, then a State ought to be innocent until proven guilty. Under the existing law seven States are presumed guilty until they prove their innocence. Those seven States in good faith have participated in the registration of approximately 1 million who were not heretofore registered. Five of those States have met the criteria that were established in the 1965 act. Yet they still have the burden of proof and they are still considered to be guilty.

Let me make this analogy if I may. Take a track meet, a high jump. The track officials establish a 6-foot height and say that if contestants jump 6 feet, they have made it. Well, everybody who jumps 6 feet in good conscience under the rules established ought to be given credit for qualifying.

Under the existing law and the proposed extension recommended by the committee, five of the seven States which have done what the Congress told them to do are still considered unqualified. They still have to prove their innocence, contrary to any established concept I know of in this country.

The nationwide bill says that the Attorney General can move in when he has evidence, and he can go against any local jurisdiction or any State, but the Attorney General has the burden of proof

to establish for sure that the jurisdiction, whether it is local or State, is denying or abridging the right to vote. In other words, under our bill we use the basic concept that a person or a political subdivision or a State is innocent until proven guilty.

The third point is retrogression. I have heard some people say, "If we do not pass the existing law there will be retrogression, backsliding."

Let me say this: the most influential power against backsliding is the fact that 1 million people in this region have been registered to vote over the past 4 years. That is people power—people power. Every one of us in this Chamber understands people power. If we do not, we had better.

The people who have been registered will not permit backsliding.

Let me make this point: even if there were that danger or that threat—which I do not think there is—the Attorney General has power and authority under the bill I have offered as an amendment to move into any local jurisdiction, any State, and prevent the authorities in either case from taking action that would permit or result in backsliding.

So we have people power on the one hand and the power of the U.S. Attorney General on the other. He has the authority to move in to take affirmative action to prevent by injunctive relief any change in precinct lines, change in registration laws, to make sure the votes are counted. The Attorney General has plenty of power to prevent backsliding.

Furthermore, the Attorney General has a pretty accurate poll.

Every 4 years in a real national election he can determine by how people vote in any precinct or any State, whether or not the criteria of the 1965 act have been violated.

Let me make one other observation. Under my proposal there is the provision which would establish a nationwide residency requirement so that individuals in our society who, for one reason or another, move from one State to another do not lose their right to vote for President of the United States. An individual in a mobile society such as that in which we live ought not to be penalized for actions he must undertake beyond his control. He ought to be able to vote for the President of the United States, whether he moves from Michigan to California or Florida to Alaska. He should not be precluded and prevented from exercising the franchise.

I am amazed that the committee bill did not recognize that absolute need and necessity.

Yes, Mr. Chairman, for the reasons I have given and others that have been stated during the course of this debate, I strongly hope that the amendment in the form of a substitute, for the nationwide voting rights bill, is approved.

Mr. CELLER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I listened with a great deal of interest to the statement of the distinguished minority leader that 4 years is enough to bring about a remedy as far as disenfranchisement of certain minorities is concerned. Just think of it. Four years, after a century of repression. Four years, after a century of disenfranchisement. Is 4 years enough? I question that, indeed. That is a case of extreme foolish optimism. Four years is not enough. We have sufficient proof to indicate that.

The Commission on Civil Rights says that despite the progress, however, it is clear that we are still a long way from the goal of full enfranchisement of Negro citizens.

As this report discloses many problems remain in securing to the Negroes of the South the opportunity to participate equally with white citizens in voting and political activity. There remain areas where the number of Negroes registered to vote is disproportionately low. Some Negroes are still discouraged by past discrimination. Many reside in counties and parishes which have not been designated for Federal examiners. In areas where there have been registrars registration has increased and that we have moved into a new phase of voting discrimination. Political boundaries have been changed in an effort to dilute the newly gained vote of the Negro and other devices have been adopted.

There are various subtle and disingenuous methods used to continue to disenfrancise Negroes.

So, Mr. Chairman, work remains to be done. If you take away the so-called trigger which is the real result of the substitute—and I do not believe it is the voice of "Gerald" but the hand of "John" that is involved in this substitute.

There is more in it than meets the eye. It is purely political. Let us not forget that. Those who are now voting for this substitute in the main, voted for the act of 1965. Now there is suddenly a change of heart because there is a sudden change in the political atmosphere.

Mr. THOMPSON of Georgia. Mr. Chairman, will the gentleman yield?

Mr. CELLER. Yes, I yield to the gentleman from Georgia.

Mr. THOMPSON of Georgia. Is the gentleman aware of the fact that the Attorney General testified at the hearings that there is a higher percentage ratio of Negroes registered in the South than in the gentleman's own State of New York?

Mr. CELLER. I asked the Attorney General that, to give me proof as to whether or not there was a single case in my own State where a Negro was denied the right to vote because of his race or color. He could not give me one single example. He presented no record at all with reference to voting discrimination in the State of New York insofar as Negroes or Puerto Ricans are concerned.

Mr. THOMPSON of Georgia. Perhaps the gentleman from New York misunderstood my question.

Mr. CELLER. We encourage the Negro vote to the extent that we have a district with a Negro Congresswoman. Mrs. CHISHOLM represents that district. Do you call that discrimination?

Mr. THOMPSON of Georgia. No, but I was talking about——

Mr. CELLER. We call that respect for the Negro vote.

Mr. THOMPSON of Georgia. Mr. Chairman, will the gentleman yield?

Mr. CELLER. Just a minute. You asked for it and you are going to get it.

The CHAIRMAN. The time of the gentleman from New York has expired.

(By unanimous consent, Mr. CELLER was allowed to proceed for 5 additional minutes.)

Mr. CELLER. In addition thereto, there is a Puerto Rican president of the Borough of Bronx. There are more Puerto Ricans in the Borough of Bronx than there are in San Juan, P.R. Do you think there is evidence of discrimination against Puerto Ricans in the city of New York, in view of the election of a Puerto Rican? We encourage the Puerto Rican vote as we encourage the Negro vote.

Mr. THOMPSON of Georgia. Mr. Chairman, if the gentleman will yield, I would like for the gentleman to answer my question.

Mr. CELLER. In my own district, I have a great many Negroes, and I do all and sundry things to encourage registration and voting, as do all my colleagues of the New York delegation.

Mr. THOMPSON of Georgia. Mr. Chairman, will the gentleman yield in order that I may get an answer to my question? I am afraid the gentleman has got off on a tangent.

The CHAIRMAN. Will the gentleman from New York yield to the gentleman from Georgia?

The gentleman refuses to yield at this time.

Mr. CELLER. Mr. Chairman, the gentleman from Michigan spoke about burden of proof. Let me tell you about burden of proof, and let me quote from a Supreme Court decision, given the history in some States of repression of any attempts by black people to gain political power, and the greater familiarity of the State with the purpose and effect of its legislation the burden of proof should be on the States "covered" by the act.

As the Supreme Court observed:

> After enduring nearly a century of widespread resistance to the 15th Amendment, Congress has marshalled an army of potent weapons against the evil, with authority in the Attorney General to employ effectively. *South Carolina* v. *Katzenbach* 383 U.S. 301. (1966)

Thus, the burden is where it belongs. It is impossible for an Attorney General to keep abreast of each and every election law change. The States and counties involved are in the best position to explain their laws. If they are changing their statutes or laws with reference to voting they should come forward and submit them for Federal review before the laws can be enforced. That is where the burden should lie and the burden must continue to lie. It would be a disaster to the Voting Rights Act of 1965 if we repeal that requirement. We would then have a situation of case-by-case litigation.

The record of the past shows it is almost impossible for the Attorney General to institute effective remedies to end voting discrimination by proceeding case by case; it is a slow, snail's process. One case took 4 years to develop, and meanwhile there were any number of elections. The verdict was in favor of the petitioner after 4 years. What good was

the judgment after the elections were over? Once an election has passed, interference with the right to vote is irremediable. The case-by-case approach was tried in the areas now covered by the act. It encountered delay and intransigence. The progress it yielded was miniscule. To abandon the automatic remedies of the act, in favor of court litigation, is to revert to the inadequate protections of the past, and jeopardize the gains in voter registration thus far achieved. I again say that I believe that the substitute should not be approved by this Committee.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. ANDERSON of Illinois. Mr. Chairman, I move to strike the last word.

(By unanimous consent, Mr. ANDERSON of Illinois was allowed to proceed for an additional 5 minutes.)

Mr. ANDERSON of Illinois. Mr. Chairman, I do not lightly embark upon a course which places me in conflict with the present administration, and also with the gentleman from Michigan who addressed the House a few minutes ago, but I believe that there are overriding causes in this case that make that position, unenviable as it may be, the only course which I in good conscience can follow.

We have heard it explained that the so-called Nationwide Voting Act would more effectively implement the guarantees of the 15th amendment than would the extension of the present act, this despite the overwhelming evidence in the record before us that more than 1 million people have been added to the rolls in a short period since the enactment of this statute in 1965.

I pointed out when I had a few minutes yesterday that we run a grave constitutional risk of the invalidation of this entire statute under the decision in the Lassiter case.

There has been another point made that a State ought to be presumed innocent and not guilty, but again the fact of the matter is that the record is overwhelmingly clear that the whole purpose behind the enactment of this statute in 1965 was that for historical reasons, for cultural and educational reasons, we were trying to rifle in on those areas where the problem was the greatest.

And I ask you what is the purpose of section 5—which I agree with the gentleman from California is the very heart and soul of this statute? The purpose of section 5 is not to punish; it is to deter. It is to serve notice upon those who would use sophisticated methods, who would, by the adoption of various strategems seek to change voter practices and procedures either by altering boundary lines, by abolishing districts, by changing districts, by changing election to selection, and by changing filing fees—and you could go on and on—it is to deter.

The whole purpose of section 5 is to deter that kind of illegal conduct—not to punish. If their hands are in fact clean—if they come before the Attorney General—the present Attorney General of the United States, with clean hands, with any legitimate change that they desire to make in their voting procedures, I have every reason to believe—I have every confidence that the Attorney General will grant the proposed change and that there will not even be the necessity to go before the District Court here in the District of Columbia to ratify that particular change.

I think the fact remains that the testimony which was adduced at the hearings—I think if my memory serves me correctly there were days and days of hearings, when this statute was enacted in 1965—I think there were 67 witnesses and the bill was debated for 3 full days here on the floor of this House and I think for 26 days in the other Chamber. If you read the record of those debates and if you read the record of the hearings, I think the evidence is there as to why we took this action.

Again I repeat—it was not to punish and not to single out with opprobrium and for no good reason, certain areas of this country—but rather to try to guarantee to every citizen that precious right that we all enjoy—the right to choose and the right to vote.

In the decision that the Supreme Court made, which affirmed the constitutionality of this statute, the Court said, and I am quoting:

> Voting suits are unusually onerous to prepare. Sometimes they require as much as 6,000 man hours that must be spent combing through registration records, in preparation for control, and litigation has been exceedingly slow in part because of ample opportunities to delay afforded voting officials and others involved in these cases.

Mr. Chairman, it was to get away from that kind of case by case method of adjudication, that were not effective under the 1957, 1960 and 1964 acts that we adopted the voting rights act of 1965.

We have some people, I think, in this Chamber who are suffering from a gander complex. They tell me that what is sauce for the goose must be sauce for the gander. They say if this statute is so good, let us extend it nationwide.

Well, again, quite aside from the constitutional problems that that point of view raises, I would repeat that there is nothing so very strange about trying to rifle in on a particular problem by acting in a simple, rational manner.

I remember when we passed the economic development act. I remember when we passed the area redevelopment administration act.

What did we do there? We used an unemployment factor. We used that as a trigger in an effort to pinpoint the impact of this legislation in those areas of the country where the need was the greatest.

I believe, Mr. Chairman, that is all we are trying to do in asking for the extension of the present act—and that is to focus on those areas where the need is the greatest.

This Chamber has resounded, and will resound I suppose for some hours yet, with the injured and anguished feelings of wounded State pride. Some even say that what we seek to do does violence to the very concept of federalism.

I would offer simply this thought in concluding, against these outraged cries of wounded State pride, I think on the other side of the scales of justice we ought to place in the balance perhaps the rights of people—the rights of people to exercise what the Congress and the Constitution gave them a century ago in the 15th amendment.

I think if justice is truly that blindfolded Goddess that she is portrayed to be, then I think that in our hearts we will have to admit that the equities lie with those who want to see us complete a job that this Congress began in 1965.

I realize that there are those today who put this matter in quite a different perspective and who believe that the paramount issue before this Chamber is the question of equality among the States.

It seems to me there is a larger and an even more important question that confronts us—and that is that we try to do those things which will assure equality among the citizens of each and every State. To me that is far more important than even the question of the sovereign equality of the several States.

Mr. Chairman, I hope that the substitute amendment is defeated.

I must now yield to my colleague, the gentleman from New York (Mr. FISH) to whom I had earlier promised I would yield.

Mr. FISH. Mr. Chairman, I congratulate the gentleman in the well and associate myself with his remarks as one of the original sponsors of the committee bill.

Mr. Chairman, there is little to add to the statement of the gentleman from Illinois (Mr. ANDERSON). I find it fitting in this debate on human rights that a Republican from Illinois reminds us that we still stand in the tradition of Lincoln.

The Voting Rights Act of 1965 has worked. There has been a significant increase in the number of Negro citizens registered, voting, and running for office. But full equality is far from a reality, and Federal protection is still needed. A dilution of the simple extension of the 1965 act would represent a retreat.

The evidence of continued efforts to frustrate Negro registration indicates that the job can best be completed by a 5-year extension of the existing legislation. I cannot accept legislation which dilutes the main thrust of the 1965 act, the present sections 4 and 5. It is interesting to note, Mr. Chairman, that the original legislation drafted in 1965 calls for a 10-year lifetime, and that this period was reduced to 5 years solely to gain a political compromise to break the filibuster against the bill in the other Chamber.

Mr. WAGGONNER. Mr. Chairman, will the gentleman yield?

Mr. ANDERSON of Illinois. I yield to the gentleman from Louisiana.

Mr. WAGGONNER. Mr. Chairman, I am almost persuaded now to ask two questions, since I heard the gentleman's concluding statements, but I will ask the last question first in case we do not have time for the first.

Mr. Chairman, will the gentleman tell me how he can reconcile his closing statement and provide equality for all citizens if we do not provide equality for the States, how can we provide equality for the people in the States if the States themselves are not treated equally?

Mr. ANDERSON of Illinois. Because, my friend, in our country the sovereignty resides not in the States, but the sovereignty resides in the people. What we are trying to do in this legislation is to make sure that sovereignty will be exercised fairly and without any reference to color or race or previous condition of servitude. That is all we seek to do.

Mr. RODINO. Mr. Chairman, I rise in opposition to the proposed amendment which incorporates the administration's alternative to a simple extension of the Voting Rights Act of 1965.

I urge rejection of this amendment because I believe it proposes remedies for wrongs which have not been established. Many of its complex provisions are of doubtful constitutionality. Most importantly, it is an inadequate, regressive alternative to the Voting Rights Act of 1965.

The substitute eliminates the trigger or formula of the Voting Rights Act and in its place proposes a 4-year nationwide ban on literacy tests. Unlike the present act, it does not give the States affected an opportunity to establish that their tests have not been used to discriminate. This fact, coupled with the lack of any evidence or complaint of discriminatory use of such tests, renders the constitutionality of the entire proposal highly dubious.

The administration's proposal scuttles the automatic administrative remedies of the act. It scraps the requirement that new voting laws or new election practices require Federal review before they may be implemented. The administration's alternative would be to authorize suits by the Attorney General to challenge discriminatory voting practices. The Attorney General already possesses such authority. The amendment is a redundancy; it is superfluous.

It cuts out from the Voting Rights Act a remedy which may make all the difference in the next few years as to whether or not the gains thus far realized will remain secure. It proposes a return to the case-by-case, county-by-county litigation approach which gave rise to the Voting Rights Act in the first place.

To those who attack the Voting Rights Act as "regional legislation," I ask: Has fear characterized voting and efforts to vote throughout the Nation, or has it been focused in certain regions? Has segregation in travel, recreation, education, and hospital care, as well as voting, been embodied in statutes and ordinances in areas where the formula of the Act does not apply? Of course not. We must not apologize because certain remedies of this Act focus on certain regions of the country.

Lest our memories be too short, it may be appropriate to recall a few words from a Supreme Court decision in 1965 in United States against Louisiana:

> As the evidence showed, colored people, even some with the most advanced education and scholarship, were declared by voting registrars with less education to have an unsatisfactory understanding of the constitution of Louisiana or of the United States. This is not a test but a trap, sufficient to stop even the most brilliant man on his way to the voting booth. The cherished right of people in a country like ours to vote cannot be obliterated by the use of laws like this, which leaves the voting fate of a citizen to the passing whim or impulse of an individual registrar. Many of our cases have pointed out the invalidity of laws so completely devoid of standards and restraints.

The administration proposal assumes that the stringent remedies of the act are no longer needed. Instead of focusing on those areas where the public policy and tradition had fostered voting discrimination, the substitute applies the remedies across the land without a prior judicial proceeding. But can and should we automatically interfere with the rights of all States to set voter qualifications? No evidence, no record of complaints of voter discrimination have been offered. Why should we authorize the Attorney General to appoint Federal examiners to register voters in Portland, Maine, Seattle, Wash., or Fresno, Calif., without any evidence at all of voting discrimination?

How can we constitutionally ban literacy tests in New Hampshire, Oregon, or Wyoming without any evidence or complaints of discrimination due to literacy tests?

Other provisions of the administration proposal authorize special voter surveys and create a presidential commission on voting. These provisions are entirely superfluous and duplicate existing law. Other provisions which would establish minimum residency requirements for voting in presidential elections also affects absentee voting and registration requirements under State law. They pose complicated questions of practical application and raise serious doubts as to their constitutional validity.

For all these reasons and particularly because the proposed amendment would jeopardize the progress we have thus far achieved in opening voter rolls to all, irrespective of race or color, I must express my full and complete opposition to it.

I urge my colleagues to reject the amendment.

The CHAIRMAN. The time of the gentleman from New Jersey has expired.

AMENDMENT OFFERED BY MR. DENNIS TO THE SUBSTITUTE AMENDMENT OFFERED BY MR. GERALD R. FORD

Mr. DENNIS. Mr. Chairman, I offer an amendment to the substitute offered by the gentleman from Michigan (Mr. GERALD R. FORD).

The Clerk read as follows:

> Amendment offered by Mr. DENNIS to the substitute amendment offered by Mr. GERALD R. FORD: Page 1, line 7, strike out the words "and substitute the following", and strike out lines 8, 9, and 10 in their entirety.
>
> Page 2, line 2, strike out the figure "(2)".

Mr. DENNIS. Mr. Chairman this amendment does just one thing. It strikes from the substitute the following language:

> Prior to January 1, 1974, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device . . .

In other words, it removes from the administration bill the nationwide suspension of literacy tests. It otherwise leaves the substitute administration proposal exactly as it now is.

I support the substitute. I have already indicated to the Committee in my previous remarks that I much prefer its approach, or proceeding through the courts having the Attorney General required to prove a case of discrimination, and treating all of the country alike, in the traditional way that the substitute does, to the drastic remedies of sections 4 and 5 of the 1965 Act, which the committee bill seeks to extend.

But the substitute is not perfect, and I want to improve it. The main reason I want to take out this nationwide prohibition of literacy tests is not so much because I believe in the test, although, if it is fairly administered, there is a good case one can make for it, but because I believe it is very plainly unconstitutional to try to say to the several States of the Union that they cannot prescribe such a test if they want to, assuming that they do not apply it in any discriminatory manner.

The reason why I say that is not just off the cuff as a lawyer but because the Supreme Court of the United States has so squarely decided on one occasion, in the case of *Lassiter* v. *Northampton County Board of Election*, 360 U.S. 45. They had that very question before the Court.

The Court pointed out, Mr. Chairman, that the several States have wide jurisdiction as to proper voting qualifications such as residence, age, and so on, which they can properly prescribe for voting laws if they are applied equally and fairly to all citizens alike. The court said this in a case where there was a challenge to a literacy test where no discrimination was shown.

The Court said the following:

> 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. . . .
>
> The present requirement, applicable to members of all races, is that the prospective voter "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 spring for the citizen. Certainly we cannot condemn it on its face. . . .

They upheld the State law and so far as I know that is still the law.

Mr. ROGERS of Colorado. Mr. Chairman will the gentleman yield?

Mr. DENNIS. I yield to the gentleman from Colorado.

Mr. ROGERS of Colorado. Do I understand that the decision to which the gentleman has referred is the Lassiter decision which, in effect, said that the State of North Carolina could insist upon a literacy test? That was in 1960 and that decision has not been set aside in subsequent decisions.

Mr. DENNIS. As the gentleman knows we have the Katzenbach decision and the

Gaston County decision but neither of them overrule that case.

Mr. ROGERS of Colorado. Mr. Chairman, if the gentleman will yield further, the Katzenbach case and the others were based on the Voting Rights Act of 1965 where in section 2 thereof it was provided that there shall not be imposed or applied by any State or political subdivision any act to deny or abridge the right of any citizen of the United States to vote on account of race or color.

Mr. DENNIS. The gentleman is correct.

Mr. ROGERS of Colorado. The basis for the Voting Rights Act of 1965 was on race and color and that is what the gentleman's amendment deals with, that if there is discrimination because of race or color as provided in section 2, your amendment will eliminate the obnoxious features at least of this section of the Voting Rights Act, the one limiting this bill and its extension and the substitute to race and color; that is, if there no discrimination. But the literacy tests by the State would still stand.

The CHAIRMAN. The time of the gentleman from Indiana has expired.

Mr. ROGERS of Colorado. Mr. Chairman, I ask unanimous consent that the gentleman may proceed for 5 additional minutes.

Mr. THOMPSON of Georgia. Mr. Chairman, reserving the right to object, I know there are many people that do want to be heard. I have been here since 10 o'clock this morning and have not been given time. I would like assurance from the chairman of the committee that there will be no effort to cut off debate at a later time if we do have these extensions.

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. THOMPSON of Georgia. Yes, I yield to the gentleman from New York.

Mr. CELLER. I cannot give any assurance that debate will or will not be cut off. It depends upon the exigencies as they arise. The gentleman would not want me to do that.

Mr. THOMPSON of Georgia. I was wondering if the chairman himself would offer such a limitation on debate?

Mr. CELLER. I do not know what situation will develop. Let us wait and see.

Mr. THOMPSON of Georgia. Mr. Chairman, I object.

Mr. ROGERS of Colorado. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to H.R. 12695 and I yield to the gentleman from Indiana in order that he may proceed.

Mr. DENNIS. Mr. Chairman, I shall not take the 5 additional minutes, but what I want to say to the gentleman from Colorado and to the Committee is that what I am saying is that a literacy test as such, assuming it is fairly administered, is not unconstitutional, and the Court has so held. Therefore, I think the part I am trying to take out of the substitute bill is an unconstitutional part and that is why I am trying to get it out.

If we succeed in doing that and the Ford amendment should pass, then the suspension of literacy tests will not exist anywhere in the country. But I would call the attention of this body to the fact that you still have section 3 of the act of 1965, which provides that when the Attorney General gets a decree to enforce voting rights, that as part of that decree, the Court can suspend literacy tests in the decree if the court sees fit. That seems to me to be a proper way to operate.

What I am saying to you is that by supporting this amendment you get a clean voting rights enforcement enactment, by proceeding in a proper and responsible way to enforce voting rights without loading the measure down with extraneous, and, as I believe, unconstitutional provisions.

Mr. ROGERS of Colorado. Mr. Chairman, the administration proposal would suspend literacy tests and other similar devices anywhere in the United States until January 1, 1974.

EXISTING LAW

Under the Voting Rights Act of 1965, literacy tests are suspended in six States—Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia—and in 39 counties in North Carolina. In addition to these seven Southern States, 12 other States have a constitutional or statutory provision requiring some showing of literacy as a precondition to voting. These are: Alaska, Arizona, California, Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New York, Oregon, Washington, and Wyoming.

Under existing decisions the right to vote may be conditioned on a literacy test so long as it is not applied in a discriminatory fashion.[1]

COMMENT

First. The proposed nationwide ban is in no sense an effective substitute for the existing provisions of the Voting Rights Act which focus on areas in which a substantial record of voting discrimination has been established. There has been no evidence demonstrating the denial or abridgement of the right to vote on the basis of race or color because of literacy tests in the 12 States not now subject to automatic literacy test suspension. Moreover, no lawsuits have been instituted by individuals, civil rights groups, or the Federal Government challenging the purpose or effect of such literacy tests.

Second. The Attorney General is empowered under existing law—section 3 of the Voting Rights Act—to challenge the efficacy of literacy tests anywhere in the Nation. Should the Government succeed in challenging the validity of a literacy test, there is no reason to believe that a proliferation of litigation will ensue since the States in question historically have not pursued policies of voting discrimination on the basis of race or color.

Third. The administration proposal would arbitrarily prohibit the application of all literacy tests without affording any State or political subdivision an opportunity to establish to the satisfaction of a Federal court that in fact the application of such a literacy test does not discriminate on the basis of race or color. The Voting Rights Act of 1965, of course, does enable jurisdictions covered by the automatic suspension an opportunity to be released from the act.

Fourth. The administration proposal would have the curious impact of suspending the use of literacy tests in several areas which have been released by judgment in lawsuits from the suspension of such tests under the Voting Rights Act of 1965. These jurisdictions include: Wake County, N.C.; Apache, Navajo, and Coconino Counties, Ariz.; the State of Alaska; and Elmore County, Idaho.

Mr. ANDREWS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. ROGERS of Colorado. I yield to the gentleman from Alabama.

Mr. ANDREWS of Alabama. Mr. Chairman, the gentleman named the States and counties affected by the criteria of the 1965 Voting Rights Act.

Mr. ROGERS of Colorado. That is right.

Mr. ANDREWS of Alabama. Was there any coincidence in the fact that those States and counties voted for GOLDWATER?

Mr. ROGERS of Colorado. I, of course, do not believe that we considered whether they voted for GOLDWATER, but we did consider as to whether or not there was a certain percentage of people of a certain color who had not voted in the States that I named. And that was the overwhelming evidence that I had reference to that caused the enactment of the 1965 Voting Rights Act.

Mr. ANDREWS of Alabama. Mr. Chairman, will the gentleman yield further?

Mr. ROGERS of Colorado. I yield further to the gentleman from Alabama.

Mr. ANDREWS of Alabama. Mr. Chairman, does the gentleman think it is right to permit a moron to vote in one of these six States, and not permit him to vote in New York?

Mr. ROGERS of Colorado. The question is whether or not he is discriminated against.

Mr. ANDREWS of Alabama. Just one moment.

Mr. ROGERS of Colorado. Wait a minute.

Mr. ANDREWS of Alabama. That was not my question.

Mr. ROGERS of Colorado. The question asked by the gentleman relates to the Voting Rights Act, does it not?

Mr. ANDREWS of Alabama. That is correct.

Mr. ROGERS of Colorado. The Voting Rights Act of 1965 prohibits discrimination in voting on the basis of color or race. It enforces the 15th amendment.

The CHAIRMAN. The time of the gentleman has expired.

Mr. THOMPSON of Georgia. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I regret that unfortunately this debate seems to be degenerating into somewhat of an emotional state. Unfortunately, in an emotional air we

[1] In *Gaston County* v. *United States*, — U.S. —, decided June 2, 1969, the Court suggested that a literacy test may have the effect of denying the right to vote on the basis of race or color when applied to persons who have been subjected to inferior and unequal educational opportunity.

cannot always look at the equities of the situation.

Those Members who were here earlier to hear the gentleman from Virginia (Mr. POFF), I am sure recognized that as he gave his statement it was perhaps one of the best statements that has been given. I certainly do. Although, of course, it favored my position, I believe it was one of the fairest and clearest statements that has been made. It had no prejudice involved in it. There was no attempt to villify the South because of course the gentleman is from the South, but he did give a clear and concise presentation of what this act is all about.

Before I get into my main subject I would like to answer a question that the chairman of the Committee on the Judiciary asked me when he had the floor, and I asked him to yield.

He asked if I felt that he was prejudiced against Puerto Ricans.

If you look at the hearings on page 58 you will see where the chairman makes the statement that he voted against an amendment which would allow Puerto Ricans to vote who had a sixth-grade education in Spanish, but were not literate in English.

He says:

I am aware of that amendment, and I am afraid to confess that I voted against it.

I think perhaps that speaks for itself.

Another point that the chairman made on the same page when questioned by Mr. Glickstein, the civil rights commissioner, about literacy tests being used to discriminate he states:

I admit that with a jungle of literacy tests, it may be very easy to discriminate. In that sense, I would agree with you, but only in that sense.

These, of course, are statements of the chairman.

So certainly literacy tests may be used to discriminate not only in the South but in New York.

But the most important point I was attempting to make during the time that I asked the gentleman to yield is this point. In the State of New York there is a lower ratio of Negroes registered to vote than in the South. Is this because there are now no literacy test in the South but New York is free to invoke such test?

Mr. LOWENSTEIN. Mr. Chairman, will the gentleman yield?

Mr. THOMPSON of Georgia. I yield to the gentleman.

Mr. LOWENSTEIN. Do you maintain that prior to the enactment of the Voting Rights Act there was no discrimination against black voters in the South?

Mr. THOMPSON of Georgia. Certainly not—there has been discrimination and there is no way that it can be condoned. However, let me say this.

We in this body should not look at the past and try to punish for past sins, but we should look at the present and the future of this country and try to do what is right for all citizens.

Mr. LOWENSTEIN. I agree.

Mr. THOMPSON of Georgia. Whether it be Georgia, Alabama, or New York State.

If the gentleman will allow me to continue, the point I believe I made was that simply there was a higher percentage of voting-age Negroes who went to the polls in the Deep South than in New York.

Further, from the testimony of the Attorney General on page 227 of the report—a higher percentage of voting-age Negroes went to the polls in the Deep South than in Watts or Washington, D.C., in the past presidential election.

Little more than one-third of the Negro voting-age population in Manhattan, the Bronx, Brooklyn, New York City, cast their votes in the presidential election.

So, surely, when we talk on an emotional basis about the fact that there may not have been the turnout in the South that there was in other areas, there are other areas of the country that we have not had the turnout as well.

But let me get to some of the basis of the voting rights.

Mr. LOWENSTEIN. Mr. Chairman, will the gentleman yield?

Mr. THOMPSON of Georgia. I yield to the gentleman.

Mr. LOWENSTEIN. Of course, low voter turnouts can result from several different causes. I would be interested to know if it is your contention that in an area where there is a low turnout of voters for reasons not connected with discrimination, that that makes a situation equivalent to one where the low turnout is due to people being denied the right to vote because of their race? That question is central to the gentleman's point, since no one has alleged, much less produced evidence, that racial discrimination is the cause of the low voter turnouts that mar elections in some northern cities.

I agree that efforts should be made to increase voter participation wherever it is low, but that is not the purpose of this law. The purpose of this law is to make it possible for people to vote who wish to, to end racial barriers to the use of the franchise. Goodness knows, we have problems in New York about voter turnout—and about many other things—but these are not the problems this particular act is supposed to cure.

Mr. THOMPSON of Georgia. I believe I understand the gentleman's question and the gentleman can have his say when he gets 5 minutes.

Mr. LOWENSTEIN. I am simply asking the gentleman a question.

Mr. THOMPSON of Georgia. I do not condone discrimination any place, wherever it may occur. But I certainly feel that all laws should be applied equally and evenly throughout the United States.

In New York State there may be discrimination or there may not—I am not making that charge. But I am making the charge that there is a lower percentage of Negroes registered to vote in New York than in the entire South, on the basis of the current figures.

Mr. MACGREGOR. Mr. Chairman, I move to strike out the last word. I rise in opposition to the amendment offered by the gentleman from Indiana (Mr. DENNIS).

Mr. Chairman, the rights of citizenship, in December 1969, should be freely offered to those for whom the danger of alienation from society is most severe—because they have been discriminated against in the past, because they are poor, and because they are undereducated. As responsible citizenship does not necessarily imply literacy, so responsible voting does not necessarily imply an education. Thus, it would appear that the literacy test is, at best, an artificial and unnecessary restriction on the right to vote.

State officials have advised that in some of the States—for example, Delaware and Oregon—literacy requirements are no longer enforced or are enforced only sporadically.

Moreover, there is information that in many of these States the literacy test is not applied uniformly, but is applied at the discretion of local election officials. This lack of uniformity would appear to violate section 101 of the Civil Rights Act of 1964.

The Supreme Court appeared to tell us in the case of Gaston County against the United States that any literacy test would probably discriminate against Negroes in those States which have, in the past, failed to provide equal educational opportunities for all races.

Many Negroes, who have received inferior educations in these States, have moved all over the Nation.

The Bureau of the Census estimates that, between 1940 and 1968, net migration of nonwhites from the South totaled more than 4 million persons. Certainly, it may be assumed that part of that migration was to those Northern and Western States which employ literacy tests now or could impose them in the future; and that, as was true in Gaston County, the effect of these tests is to further penalize persons for the inferior education they received previously.

Thus, following the Supreme Court's reasoning, it would appear inequitable for a State to administer a literacy test to such persons because they would still be under the educational disadvantage offered in a State which had legal segregation.

Furthermore, the Office of Education studies and Department of Justice lawsuits have alleged that areas outside of the South have provided inferior education to minority groups. Following the general reasoning of the Supreme Court in the Gaston County case, any literacy test given to a person who has received an inferior public education would be just as unfair in a State not covered by the 1965 act.

As a matter of public policy, it seems to me that Congress has an interest in assuring that all citizens have equal rights to vote and that all State governments have equal rights to impose or to be prohibited from imposing certain voting restrictions.

Mr. RAILSBACK. Mr. Chairman, will the gentleman yield?

Mr. MACGREGOR. I yield to my distinguished colleague from Illinois.

Mr. RAILSBACK. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I concur with the remarks of the gentleman. Despite the fact that I do not intend to support the Ford substitute, I think this is one section in that substitute which is excellent.

in other words, nationalizing the knocking out of all literacy tests.

Mr. Chairman, is it not also true, I ask the gentleman, that in the State of New York and some other States perhaps the mere fact that there is a literacy test is enough to cause some people without much education to not want to submit to the test?

Mr. MACGREGOR. Yes; particularly the blacks from the South.

Mr. Chairman, I thank the gentleman from Illinois for his comments.

Let me remind the Members that the National Association for the Advancement of Colored People and the American Civil Liberties Union and President Kennedy's National Commission on Registration and Voting have all urged the elimination of literacy tests as a precondition to voting. They have not just urged that they be eliminated in the South, but they have urged that they be eliminated nationwide.

Mr. CELLER. Mr. Chairman, I ask unanimous consent that all debate on the so-called Dennis amendment conclude in 10 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. The Chair recognizes the gentleman from California (Mr. HANNA).

Mr. HANNA. Mr. Chairman, I take this time to ask the chairman of the committee some questions.

May I ask the chairman of the committee, the gentleman from New York, am I correct in understanding the situation that exists in regard to the Dennis amendment; assuming that we pass the Dennis amendment, the remainder of what is in the Ford substitute is then only in the main consisting of two things: First, it would take out that section of the existing law where the burden of proof is on the Southern States, those which originally had the majority of the problem with reference to colored population?

Mr. CELLER. Mr. Chairman, I think that is correct, but it does go beyond that.

Mr. HANNA. The second thing it would keep in is the point about allowing all the citizens of the United States to vote for President or Vice President regardless of the fact that they may have moved rather recently. Is that not also still in the Ford substitute?

Mr. CELLER. I do not think it goes as far as that absolutely. I think there are certain restrictions involved.

Mr. HANNA. As I recall the reading of the letter by Mr. GERALD R. FORD, two things seemed very clear in the letter. They were that the President was for this business of letting all citizens, whether they had moved or not before the election, vote for President and Vice President. That is one point he was for.

The second thing the President was for was the business of letting all citizens vote regardless of the fact that there might be some literacy tests or some other types of tests in a given State under the election laws. Those two things the President made very clear in the letter. I do not believe he was very clear about any other points, but he made those two points. I ask the question, assuming we could clear the question of constitutionality of Federal law about this business of putting a 5-year moratorium on literacy tests, would the gentleman from New York be averse to those two aspects?

Mr. CELLER. Mr. Chairman, I am averse. I want a simple renewal of the Voting Rights Act of 1965, without any ands, buts, or moreovers. I think the country is entitled to renewal of that act without any sham.

The CHAIRMAN. The Chair recognizes the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT. Mr. Chairman, I rise in opposition to H.R. 4249 because it is based upon conditions as they existed in 1964 rather than the present time and would ban acts in some States that are permitted in others. It seems to me that if a given act such as literacy tests are invalid under Federal law in one State, they should be invalid in all.

The Attorney General has recognized this in recommending to the Congress a proposal which, among other things, bans literacy tests and similar devices throughout the country until an advisory commission has an opportunity to investigate the matter and to report back to the President and to the Congress. Certainly, I think this is much more sound than a straight 5-year extension of an act without any weight or consideration being given to any change in the circumstances in the individual States.

Mr. Chairman, I believe every Member of this House supports the 15th amendment and would look with disfavor on any action by a State or political subdivision which would deny the right to vote to any American on the basis of his color or his race. Furthermore, I believe that all sections of our country have arrived at the place where there will be no denial by any government unit of the right to vote on this basis. But, if this is not true, it still seems reasonable to have laws on the subject equally applicable to all parts of the country. Therefore, I urge your support of the administration's proposal.

You have heard the statement that no individual should be above the law and no individual below the law, and I submit that we can go somewhat further and say that no State should be above or below but that a Federal law should be uniform throughout the country.

I wonder, however, Mr. Chairman, if some of the people favoring this legislation are not attempting to make a whipping boy out of the South and to impose restrictions upon the South which they are unwilling to accept for their own State. This is regional legislation which I understand was recommended by former Attorney General Ramsey Clark before he left office. It could well have the effect of driving some of our Democratic colleagues from the South into the Republican Party. They might be more appreciated and more comfortable there. It will certainly have the effect of hastening the rebuilding of a strong Republican Party in the South. So, from a selfish political point of view, let me urge the northern Democrats to be as harsh, to be as oppressive as possible in their northern strategy. By making the South a whipping boy, conjuring up or magnifying southern problems, you may be able to get more votes in the North. But you will be helping us rebuild a strong Republican Southland. Your efforts are appreciated.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois (Mr. RAILSBACK).

Mr. RAILSBACK. Mr. Chairman, I rise in opposition to the Dennis amendment which, as I understand it, would have the effect of removing from the substitute offered by the gentleman from Michigan (Mr. GERALD R. FORD) the suspension of literacy tests. It does not have anything to do with the residency requirements.

There has been a great deal said about the need for this in the South but no need existing in the North. I believe we ought to be perfectly fair and reveal some other information which I came across, which was submitted by the Attorney General.

In the nine northern big-city States—Massachusetts, New York, New Jersey, Pennsylvania, Ohio, Michigan, Illinois, Missouri, and California—there were only 10 congressional districts where less than 100,000 votes were cast for Congress in 1968.

Of those 10, one was in California and eight were in the State of New York. These nine California and New York districts—the 21st in California; the 11th, 12th, 14th, 18th, 19th, 20th, 21st, and 22d in New York—included most or part of all of the major Negro ghetto areas—Watts, Harlem, Brownsville, Ocean Hill, Bedford-Stuyvesant, and the south Bronx.

In the largely Negro Watts congressional district in California, the 21st, only 95,000 persons voted in 1968, less than half the turnout in the average white congressional district.

It seems perfectly clear to me that when we debate today, and try to focus attention on vote frauds, on literacy or the need for banning literacy tests in one part of the country, we are deceiving ourselves.

If there is a proper way to include the entire 50 States in vote and election reform it should be done. It is my sincere hope that the chairman meant what he said, that he would give us early hearings if we do not get the job done today, to look at all the States. That is what we should be doing.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana (Mr. DENNIS) to the substitute amendment offered by the gentleman from Michigan (Mr. GERALD R. FORD).

The amendment to the substitute amendment was rejected.

Mr. MIKVA. Mr. Chairman, I rise in opposition to the substitute amendment.

Mr. Chairman, a lot has been said about literacy tests. I believe the Members present on the House floor ought to take a little look at what the proposed substitute would do to the residency laws of their States. And because a part of the proposed substitute or the Ford amendment deals with making uniform residency requirements, this is a special matter which I could personally favor. I think in the national elections people ought to be allowed to vote notwith-

standing the fact that they may have moved in sometime prior to the time that the existing State law allows. However, this amendment was considered by the committee but was rejected for some reasons which I think are sound and which I think ought to be brought to the attention of the House.

First of all, there are some serious doubts concerning the authority of the Congress to approve a residency requirement for voting in presidential elections. There is no clear-cut decision that says Congress has that power.

Now, in addition to the questions concerning the constitutional validity of the amendment, there are a lot of reservations about the language in this particular proposal. I think it is clear that the proponents of the amendment intend for people to vote only for President and Vice President. However, as I read the language on page 2, I think that language possibly could be construed to mean that, in an election year when a President and Vice President were to be elected, a voter would be allowed to vote for all of the offices that were up in that election.

I cite that as another example of very technical language going into such troublesome constitutional seas and feel that it should not be brought to the floor of the House without full and deliberate consideration.

Mr. HANNA. Mr. Chairman, will the gentleman yield?

Mr. MIKVA. I yield to the gentleman from California.

Mr. HANNA. In the State of California when the President is up for consideration in the 4-year period in that same election, the people would be selecting all of the assemblymen for the lower body of the house in the State and half of the senators and all of the Congressmen. Is it the gentleman's interpretation of the language that they get to vote in that election and that, in effect, this section would provide for them the right to vote for everyone even though they had moved out of the State?

Mr. MIKVA. The States involved in such restriction include Alabama, Arkansas, Delaware, Indiana, Iowa, Kentucky, Mississippi, Montana, Nevada, New York, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, and Wyoming.

In all of these States the present residency restrictions would be seriously affected.

In many States, I might point out to those of you who do not have absentee voting laws, I think they would be required to have an absentee voting system, or the Federal Government would have to run one for you, because the language says that absentee votes must be allowed.

I cite this again in support of my fundamental position on a uniform residency requirement for the election of President and Vice President. I favor it and I hope that the Committee on the Judiciary will at some future time consider such a proposal just as I hope it will consider the question of national literacy tests.

Mr. ROGERS of Colorado. Mr. Chairman, will the gentleman yield?

Mr. MIKVA. I yield to the gentleman from Colorado.

Mr. ROGERS of Colorado. If the requirements set forth in the substitute should be adopted, they would preempt the field and set aside all the State laws in that field; is that right?

Mr. MIKVA. Absolutely, in terms of elections.

Mr. ROGERS of Colorado. Mr. Chairman, if the gentleman will yield further, there are certain States that permit election for President and Vice President even though you have just moved into the State a couple of days before the election. That law would be set aside?

Mr. MIKVA. That is correct.

Mr. ROGERS of Colorado. And it would then go back to the 1st of September of that election year because it preempts the field and sets aside the State law?

Mr. MIKVA. I would answer the gentleman that I interpret the bill that way as it is proposed to be amended.

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. MIKVA. I yield to the gentleman from New York.

Mr. CELLER. Under the residency provisions of the substitute if a citizen moves into a State after September 1 and does not meet residency requirements for voting, he is given the right to vote in his former State of residence either in person or by absentee ballot. Twenty-nine States today permit new residents to vote for President and Vice President although they may arrive in the State after September 1.

What will assure that a new resident will not vote twice—once in his new State of residence, and a second time in his former State of residence? What machinery is prescribed in this so-called substitute to protect against dual voting? The answer is none.

The difficulty is that the opportunity for "double voting" is provided, but no safeguards against the practice are established.

The CHAIRMAN. The time of the gentleman has expired.

Mr. CELLER. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I will yield to the gentleman from Illinois (Mr. MIKVA).

Mr. MIKVA. I would like to answer that I agree with the gentleman completely that there is no machinery. Indeed, as I read the bill I do not believe it is even prohibited. I believe it is a sort of a Scout's honor proposition that you will not vote twice, but I do not read anything in the bill that would prohibit it at all.

Mr. CELLER. The States themselves would have to deal with the enforcement, and not the Federal Government; and would the States enforce it, or could they enforce it?

Mr. MIKVA. I do not see how they could enforce it, because they would not even have access to whether a person had voted in another State, or vice versa.

Mr. CELLER. In other words, is it not also true that the secretary of state or the attorney general of a State would be involved and would have to know all of the voting laws and residency requirements in every State in the Union; is that correct?

Mr. MIKVA. That is correct.

Mr. CELLER. In order for them to proceed with logic and simplicity in the matter.

Mr. MIKVA. In addition he would have to know who has moved in and out, and when they moved in and out in terms of whether or not they would be eligible to vote so that they would not vote twice.

Mr. CELLER. Is that not another emphatic objection to the so-called Ford-Mitchell substitute?

Mr. MIKVA. I would agree with the gentleman from New York, and that is also another example as to why we should hold hearings in order to perfect the legislative draftsmanship.

Mr. CELLER. Was that not also because of the fact that nothing of that sort was presented before the Committee on the Judiciary by either the Attorney General or anyone connected with him?

Mr. MIKVA. That is correct.

The CHAIRMAN. The time of the gentleman has expired.

Mr. BIESTER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think that most of the Members of the Committee share some of the concerns which this Member shares about legislation which is capable of being characterized as regional in nature. But, it seems to me that we make a mistake if we consider rights and responsibilities in our Federal system pursuant to an institutional focus only. I think the remarks of the gentleman from Illinos (Mr. ANDERSON) earlier today made an effort, and successfully, to establish the proposition that those rights are only in clear focus when they are brought sharply to bear on the rights and responsibilities of individuals, and not on the rights and privileges of institutions.

For example, an individual in this country has certain responsibilities to his State. Among them are, of course, paying taxes, obeying the police powers, and the State laws.

He has further responsibilities to his Federal Government, among those are his payment of Federal taxes, the obeying of Federal laws and, of course, his Federal military service.

Thus an individual experiences his responsibilities to both institutions, both at the State level and at the Federal level. By the same token each of those institutions at both levels owe him certain rights and guarantee him certain rights. At the Federal level it guarantees by the 15th amendment his right to assume a citizen's participation in American political life by the franchise. And we do not arrogate to ourselves in this body any new or special capacity or privilege when we seek to implement that right successfully.

Nevertheless——

Mr. ROGERS of Colorado. Mr. Chairman, will the gentleman yield?

Mr. BIESTER. I yield to the gentleman from Colorado.

Mr. ROGERS of Colorado. Mr. Chari-

man, I thank the gentleman for yielding, and in view of what the gentleman has mentioned, may I direct your attention to page 3 of the substitute bill dealing with the question of absentee voting?

Now we know there are a certain number of States that do not have absentee voting. Yet, in section 3 on page 3 it says that they shall be entitled to vote by absentee ballot. How do you propose that those States that do not have absentee voting, how do you propose that they should vote?

Mr. BIESTER. I suggest to the gentleman that he save that question for one who supports the substitute—I do not.

Mr. Chairman, it seems to me we also face in the minds of those people who look to our institutions for the protection of their rights a very disturbing challenge.

Young black people in this country are caught, including those who have served honoraby in Vietnam, between the constant challenge of an insufficiently responsive society on the one hand, and militants who sow hate and separatism on the other.

These young people want to see the American political system work. They want to be able to tell the militants that the system works and that the future of black people in America lies within the free, fully franchised political life of America. They offer us faith in one America, and we must return that faith in kind.

Mr. Chairman, rights live only in the sure knowledge of their vindication. Let us, with this extension, continue that sure knowledge.

The disinguished minority leader has said that the States in question were asked to jump 6 feet and they jumped 6 feet.

I respectfully suggest that they did not jump 6 feet, they were dragged 6 feet.

Mr. WATSON. Mr. Chairman, will the gentleman yield?

Mr. BIESTER. I yield to the gentleman.

Mr. WATSON. Since you say that they did not jump but they were dragged 6 feet—in either event they made the 6 feet; did they not?

Mr. BIESTER. They made just 6 feet.

Mr. WATSON. That was all required and yet you do not reward them for that?

Mr. BIESTER. They made just 6 feet and they have to do more—if you changed the figure from 50 percent to 55 percent, they still would have to do more, they would still be covered.

Mr. WATSON. As I understand, with the standards set in the 1965 act, they made it but now you refuse to give them credit for it, but will change the requirements.

Mr. BIESTER. We will give them credit and we will ask them to do more. In fact, one of the States in question just made it with 50.

Mr. Chairman, I urge the rejection of the substitute amendment and urge the adoption of the committee bill.

Mr. WIGGINS. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I wish to speak primarily on a single subject because I detect a certain undercurrent of discontent on one side of the aisle about the substitute bill.

The point is the literacy test on a nationwide basis. I realize a great many Members feel that a literacy test is worthwhile and they may be reluctant to accept the substitute for this reason.

I want to say I have a great deal of empathy with you because I too feel there is merit in the literacy tests.

The shining goal which we seek to achieve, I think, is maximum participation by qualified voters.

We will not be a better Nation by encouraging political participation by those barely able to discern the difference between a polling booth and an outhouse.

States should be able to enact reasonable tests of competency to vote and those tests must be applied in a nondiscriminatory manner. Literacy as well as age can be such a reasonable test.

Therefore, I would prefer the continuance of reasonable and fairly administered literacy tests by those States which choose to do so.

But the Supreme Court has declared the rule in the Gaston case to be the law of the land. That case casts doubt on all remaining literacy tests in the 20 States now applying such tests.

Since Gaston is the law, I am reluctantly prepared to accept the abolition of literacy tests and urge my colleagues to do likewise.

In summary and in conclusion, the substitute bill is better than the 1965 act we now have.

It is constructive that any law be applied uniformly. It is constructive to deal with the subject of State residence requirements in presidential elections.

It is constructive to extend the power of the Attorney General to place examiners in any State, not just a few, and obtain injunctions in appropriate cases to prevent discrimination in voting.

Mr. Chairman, I urge the adoption of the substitute offered by the gentleman from Michigan (Mr. GERALD R. FORD).

Mr. PELLY. Mr. Chairman, will the gentleman yield?

Mr. WIGGINS. I yield to the gentleman.

Mr. PELLY. Mr. Chairman, I favor an extension of the Voting Act of 1965, and oppose the substitute. To begin with, I think the Voting Rights Act has been effective and I do not think this is any time to take a step backward. In other words, nearly 1 million persons have been added to the voting rolls since 1965 when this act was passed with my support.

Unfortunately, discrimination in voting rights still continues. It does more so in the South, but I do not wish to punish the people of any State. I just want to end discrimination where it exists.

The Commission on Civil Rights recommends continuation of this act and it has the support of other groups, including the AFL–CIO and the NAACP.

Mr. Chairman, let us not jeopardize the progress made in America in the past few years. Let us stand firm and, if we take any action at all, let us apply the same protection to minority citizens under this law, which applies to certain Southern States, to all the States of the Union.

Mr. POFF. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, may I express the hope that we will soon come to grips with the vote on the pending substitute.

I believe it would be in order at this time if the chairman would try to determine how many Members would like to address themselves to the question before the Committee and see if it is possible to agree on a time to close debate on this amendment.

Mr. CELLER. Mr. Chairman, I ask unanimous consent that all debate on the so-called Ford substitute, and all amendments thereto, conclude at 4 o'clock.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

Mr. WATSON. Mr. Chairman, reserving the right to object, I wonder if the able gentleman from New York, the chairman of the committee, will extend the time a little beyond that? There are many of us who have been seeking recognition who are not on the committee.

Mr. CELLER. Mr. Chairman, I will extend the time in the request to 5 minutes after 4 o'clock.

The CHAIRMAN. The gentleman from New York asks that all debate on the Ford amendment and all amendments thereto conclude at 4:05.

Mr. POFF. Mr. Chairman, reserving the right to object, may I ask is all this time coming out of my 5 minutes?

The CHAIRMAN. It will.

Mr. POFF. Mr. Chairman, I withdraw my reservation of objection.

Mr. GERALD R. FORD. Mr. Chairman, reserving the right to object, will the gentleman from New York, the chairman of the committee, amend the request to 4:15 and let the gentleman from Virginia make up the time he has lost on this discussion?

Mr. CELLER. Mr. Chairman, I amend the request to ask that all debate on the Ford substitute amendment and all amendments thereto conclude at 4:15.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. The gentleman from Virginia is recognized for 5 minutes.

Mr. POFF. Mr. Chairman, first I would like to pay tribute to the committee and to this House. I am proud of the tenor the debate has taken. I am proud to be a member of the great Committee on the Judiciary. I am proud to have an opportunity to try to influence a decision which will be of great consequence to this Nation. Our decision should be made carefully.

Time will permit me to review only briefly the details of the Ford substitute. As indicated in the general debate, in five particulars the Ford substitute is nationwide in character and in impact.

First, the Ford substitute provides a nationwide literacy test suspension until January 1, 1974. I emphasize that it is not a nationwide test ban, but a nationwide test suspension. During the interval the nationwide Commission which

will be appointed under the Ford substitute will study the impact of literacy tests and other devices upon voter participation by minority groups. At the conclusion of that time, the Commission will report to the Congress its recommendations for additional legislation.

Second, the Ford substitute provides nationwide residency requirements for voting in presidential elections. In a colloquy a moment ago, it was indicated some of the language in section 5 of the substitute may be ambiguous. To the extent that it is ambiguous, I believe it is possible to cure the ambiguity by legislative history. To the extent it is impossible to do that, I suggest that the substitute in its present form is not the final posture the legislation will assume before it goes to the President's desk. It is now nothing but a vehicle, and the Congress in its two bodies and in the conference committee will have ample opportunity to work its will upon the final product.

Third, the Ford substitute provides nationwide authority for the Attorney General to station examiners and observers in every precinct in every jurisdiction in each of the 50 States. It is important to emphasize that the present Voting Rights Act does not give the Attorney General equivalent authority, and the substitute makes it possible for the Attorney General on his own motion, after receipt of the required complaints, to dispatch either the examiner in advance of the election or the observer on election day to make certain that no racial discrimination in the voting process is practiced.

Fourth, the Ford substitute makes nationwide the authority for the Attorney General to bring preventive injunction suit to prevent voter discrimination either by an individual or by a State or municipality. This, I submit, is a perfect answer to the argument that has been made repeatedly that the States presently covered by the Voting Rights Act may, after coverage of section 5 is lifted, return to their old discriminatory practices.

The CHAIRMAN. The time of the gentleman from Virginia has expired.

The Chair has noted the Members standing at the time the request for a time limitation was made, and each Member will be recognized for approximately 1½ minutes.

Mr. ARENDS. Mr. Chairman, I ask unanimous consent that my time be allocated to the gentleman from Virginia (Mr. POFF).

Mr. TALCOTT. Mr. Chairman, I object.

The CHAIRMAN pro tempore. Objection is heard.

The Chair recognizes the gentleman from Illinois (Mr. ARENDS).

Mr. ARENDS. Mr. Chairman, I yield to the gentleman from Virginia (Mr. POFF) for a question or a statement.

Mr. POFF. Mr. Chairman, I had just finished saying that the substitute offered by the gentleman from Michigan (Mr. GERALD R. FORD) makes it possible for the Attorney General to bring, in any jurisdiction in any of the 50 States, a preventive injunction suit. This, I suggest, is a perfect answer to the fear expressed repeatedly that once the States presently covered are allowed to escape coverage they will somehow backslide into old ways and begin again the discriminatory practices which preceded the 1965 Voting Rights Act.

Finally, Mr. Chairman, the thing which I believe is really at issue here today is the course this Nation intends to take. I most earnestly submit to this body that this Nation at this crucial time should not be compartmentalized. It should not be sectionalized. It should not be regionalized. At this critical time this Nation should be reunited.

When we speak of reuniting America we must all yield and all agree that old shibboleths, old passions and old prejudices must pass away.

The CHAIRMAN pro tempore. The Chair recognizes the gentleman from California (Mr. HANNA).

Mr. HANNA. Mr. Chairman, I should like to reemphasize to the Members that the measure we have before us has these problems connected with it. If Members will just read the language of the measure they are asked to vote upon—and whether it can be changed by some other body I leave to their discretion—the way we are going to vote on it is that it now provides that in the election in which the President and the Vice President are up it would give rights that do not exist under State laws in many of the States of the United States. It is going to preempt the existing laws insofar as those elections are concerned.

I suggest that, just as in my own State, it will affect voting on State officers and State issues. It will allow those who have moved out of the State to get involved in the total election.

Second, the problem has been drawn about how this is going to affect absentee voting. It will seriously affect absentee voting. It will give the possibility that we are going to have dual voting by the people who have moved.

I suggest that any measure which has these kinds of problems connected with it should be defeated.

The CHAIRMAN pro tempore. The Chair recognizes the gentleman from Ohio (Mr. TAFT).

Mr. TAFT. Mr. Chairman, I rise in opposition to the amendment and in support of the bill as it was reported by the committee.

It seems to me there is something unique about the right to vote which ought to be mentioned here today. With many civil rights it is true, inevitably, that the claimed rights or at least the permissible conduct of others is affected by the granting of or the withholding of the rights of some other individual. That is not true of the right to vote.

For that reason it seems to me the very strictest requirements can and should be put upon protecting the right of each citizen of this country to vote.

The law we have passed does this. We do not know whether the amendment, should it be passed, would really work. I have my doubts, and I have heard doubts expressed by many other Members today.

We should not risk this. We should not take the chance that we would in some way hinder the progress and create the tremendous frustrations and the tremendous moral decay, which I believe could occur if there should be a backsliding on the progress we have made in this field.

If there are other nationwide concerns to which we should attend, it should be done in other legislation and should not be permitted to jeopardize the present requirements that have operated so successfully to strike at the problem where it lived in its most flagrant form.

I ask for the defeat of this amendment.

The CHAIRMAN. The Chair recognizes the gentleman from Texas (Mr. DOWDY).

Mr. DOWDY. Mr. Chairman, I am in agreement with the statements that have been made, that every American must have an equal right to vote, and that the right to vote is the cornerstone of our Republic. However, I fear that in the light and under the circumstances those statements have been here made, they were sanctimonious piety.

Much has been said about discrimination on the part of several States. In fact, the 1965 Voting Rights Act is highly discriminatory, because it discriminated against six or seven of the States of the Union, leaving the remainder of the 50 States entirely without its scope, though many of them were just as guilty of discrimination. I believe some 12 or 14 discriminate against Puerto Ricans, including the State of New York. But the Members from those States call upon the heavens to protect them when any mention is made that the same law should apply to their States, as they wish to apply against a few of the States of the South.

And here in this debate, those same Members desire to compound the discrimination. They now want to continue the same discrimination, and compound it by reference to the 1960 census and the 1964 election. They know the reforms have been accomplished in the six or seven States, but in their hatred for the people of those States, they would not bring the law up to date. We will have a new census next year, before the present voting rights law expires; why not base a new law on the new census? We have had several elections including another presidential election since 1964—why base present actions on days long past—or why not revert to a date during Reconstruction days?

This committee bill would not apply to my State of Texas, but understandably, the southern people—not Virginians alone—are sensitive on this issue. They feel, with justice, that there are two classes of law in the United States—one for them—and another for the people of other States. And they can point to the unequal application of this voting rights law as proof evident. This law was framed to apply to them, and to them alone. The law is not concerned with violation of voter rights or voting fraud anywhere else. Mr. Chairman, it is intolerable and outrageous to have a double standard of law in a representative republic.

The hypocrisy in the committee bill is evidence in that it purports to relieve only the citizens and authorities of a few States from discrimination. Why should

the law not be the same for all 50 States, and apply equally to them? Any law passed by this Congress should apply equally and uniformly to all of the States. The evidence of this hypocrisy is more so, in that the committee bill proposes to reach back to the 1964 election, rather than the more recent 1968 election. Otherwise, the newer date would be adopted, and the bill extended to protect the citizens of all States. If we are to legislate in this field, why should we not extend it to cover the multiplied thousands of eligible voters who are omitted from the 1965 act, and who are excluded from the committee bill?

Mr. Howard Glickstein, the general counsel and acting staff director of the U.S. Commission on Civil Rights testified during the hearings on this bill in May of this year. He then stated:

> It would be very incongruous to have a literacy test being administered in one county, and in a neighboring county there was no literacy test.

It is just as incongrous as well as discriminatory to bar literacy tests in six or seven States in the Union, and permit such literacy tests in the remaining States.

I am fundamentally against intrusion by the Federal Legislature into matters reserved to the State legislatures by the U.S. Constitution. However, if this bill is amended by the substitute which has been proposed here, I will be inclined to support it.

Otherwise, I must oppose the bill, as I am fundamentally opposed to discrimination involving any legal rights, including the right to vote.

Mr. ANDREWS of Alabama. Mr. Chairman, will the gentleman yield?

Mr. DOWDY. I yield to the gentleman from Alabama.

Mr. ANDREWS of Alabama. Mr. Chairman, I rise in support of the Ford amendment.

Mr. Chairman, when Congress passed the Voting Rights Act of 1965, it marked a new low in mockery of the Constitution and was clearly one of the darkest hours for this Nation since Reconstruction.

That was 5 years ago. Now the Congress is being asked to compound its earlier mistake by giving the act a new 5-year extension. Surely this punitive and purely sectional legislation is not going to stay on the books. Surely, somewhere during the course of history, Congress will abandon the notion that the end justifies any means and return to the Constitution as a basis for legislation.

The 1965 Voting Rights Act should die, just as the discriminatory legislation of Reconstruction Congresses passed on, and for two very basic and most important reasons.

First, the act was a carefully planned plot by the Johnson administration to deprive seven Southern States, and only those, of the simple right of equal application of the law.

State laws requiring literacy and moral character as conditions for registering to vote are suspended. Does this mean all State laws, Mr. Chairman? Oh no, it applies only in States which had less than 50 percent of its voting-age residents registered to vote on November 1, 1964, or in which less than 50 percent voted in the general election of 1964.

By no coincidence, the only States affected were Alabama, Alaska, Georgia, Louisiana, Virginia, Mississippi, South Carolina, and 26 counties in North Carolina and one in Arizona, Idaho, and Hawaii. And here it is 1969, and the Judiciary Committee wants to use a 1965 formula for another 5 years. How long will this body engage in punitive legislation?

Other States go right on using literacy tests and minimum education grade levels, and very probably anything else that they want to use. They do not worry about the Federal Government stepping in and running their elections, harassing and insulting their local voting officials. The Federal Government is preoccupied with seven of 50 States, and if this act is extended, the honeymoon can just keep right on going, and for seven States, the bondage will likewise go on and on.

Under the 1965 act, the Justice Department is permitted to conduct voter registration drives in various counties in a State. The counties are selected by the Attorney General on the basis of the relative lack of integrity of election officials, and considering the quality of the Attorneys General in the past, leaving such matters to his discretion is foolish indeed.

It might be proper to mention that funds used by the Justice Department to pay its "army of occupation" are Federal funds—part of which, of course, are provided by the very States now being used as whipping boys. The whole setup is constitutionally corrupt and outrageous.

The second major reason that the 1965 Voting Rights Act should pass from the scene is that it is unconstitutional—the most important consideration, if we still consider ourselves in the business of passing laws that do not depart from the Constitution.

The establishment of requirements for voting constitutionally lies within the province of the States. In passing this law, the Federal Government is deliberately infringing on the rights of the States.

The Voting Rights Act of 1965 gives the Attorney General the power to veto State legislation, in those few selected States, that in any way amends or modifies existing laws or which enacts any new regulations regarding any aspect of the election processes.

Therefore, these Southern States must come to Washington hat-in-hand to get Justice Department approval before any of these State laws can take effect. In other words, the 1965 Voting Rights Act presumes that State legislatures cannot be trusted to handle the duties given them by the U.S. Constitution.

The States' right to set residency requirements for voting should also be maintained. Let us remember, we vote for the President of the United States by States, and it is perfectly sensible that each State determine when a resident of that State is entitled to vote. The rights of the States have suffered enough, without further abuse by extending the 1965 Voting Rights Act.

Mr. Chairman, because of the 1965 Voting Rights Act, Alabama and other Southern States have been singled out for special harassment and humiliation. In the name of decency, civility, and indeed democracy, the act should die. The Civil War ended about a century ago. It is time that Reconstruction ended too.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois (Mr. McCLORY).

Mr. McCLORY. Mr. Chairman, I want to say quite candidly and frankly that there is no recrimination involved in this legislation. The only purpose of the committee bill is to extend the existing legislation for a period of 5 years in order to provide all Americans with an equal right to vote.

Mr. Chairman, I think the Ford substitute is aptly named a substitute. However, it would substitute virtually nothing for something which has been demonstrated to be effective.

With reference to Negro registrations in the States which have been subject to the triggering provisions of the 1965 act, they have increased dramatically. For instance, in the State of Mississippi, Negro registrations have risen from 6.8 percent to 56 percent, and comparable improvements have been made in many other States.

With reference to legislation which has been objected to by the Attorney General, well, there are more measures that have been objected to in 1969 than in any previous year.

Mr. Chairman, we need this legislation extended now more than any other one thing.

The original legislation was recommended for a period of 10 years. That is the period of time for which we need it. So the 5-year extension is consistent with the original intent. Therefore, Mr. Chairman, I urge the overwhelming support of this bill on the part of the Members as they supported the 1965 Voting Rights Act.

The CHAIRMAN. The Chair recognizes the gentleman from Indiana (Mr. JACOBS).

Mr. JACOBS. Mr. Chairman, those who are familiar with police work know that the concept of selective law enforcement is well established and effective in the fight against crime. I think this really describes the difference between the substitute and the bill which has been reported by the committee.

Selective law enforcement means that you go where the crime is being committed and concentrate law enforcement efforts in that area, rather than spread the effort thin.

Mr. Chairman, I had occasion when I was a police officer to persuade the county commission in my area to put a stop sign at a dangerous intersection where we were averaging five personal injury accidents a month. For about a year after the stop sign was installed there were no personal injury accidents at that intersection. Then some irate citizen, who was arrested for running the stop sign and who had considerable in-

fluence with the county commissioner, prevailed upon the commission to repeal the ordinance setting up the stop sign and it was taken down. The personal injury accidents resumed just as before.

That is the real "southern strategy" scheme of the administration substitute.

There is only limited law enforcement personnel in the Justice Department and that personnel should be used where everybody knows the problem exists.

When the fire department is fighting a big fire at the lumber company, you do not send half the firemen down the street to the asbestos plant.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois (Mr. FINDLEY).

Mr. FINDLEY. Mr. Chairman, the act of 1965 is very clearly an act to advance Negro voting rights. One need to read no further than the first sentence of the act to determine that. It is pretty hard to argue with success. The act has worked.

It is interesting to me to note that during the discussion today of the amendment in the nature of a substitute, now pending before us, not one of the advocates of this amendment has argued that it would do a better job than the committee bill in advancing the voting rights of Negroes. Therefore, my question is this: Why should we risk a step backward when we can be assured of continued further progress?

The CHAIRMAN. The Chair recognizes the gentleman from Ohio (Mr. MCCULLOCH).

Mr. MCCULLOCH. Mr. Chairman, obviously my remarks will be brief.

I want to read a few words by the Very Reverend Father Theodore Hesburgh, president of Notre Dame and longtime member of the Commission on Civil Rights, from its very beginning, and the Chairman thereof, appointed as Chairman by the President.

This is a letter that was sent to the Attorney General under date of June 28:

DEAR MR. ATTORNEY GENERAL: I am writing to express my deep concern about the amendments to the Voting Rights Act which you proposed to the Subcommittee of the House Judiciary Committee on Thursday, June 26, 1969. The Commission staff is preparing a more detailed analysis which will be provided to you.

Your fourth proposal—to eliminate existing protection against manipulative changes in voting laws—is in no sense an advance in protection of the voting rights of American citizens. It is a distinct retreat. It is an open invitation to those states which denied the vote to minority citizens in the past to resume doing so in the future, through insertion of disingenuous technicalities and changes in their election laws.

The CHAIRMAN. The time of the gentleman has expired.

The Chair recognizes the gentleman from New York (Mr. FISH).

Mr. FISH. Mr. Chairman, I ask unanimous consent that the time allotted to me may be yielded to the gentleman from Ohio.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

Mr. TALCOTT. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. FISH. Mr. Chairman, I yield to the gentleman from Ohio.

Mr. MCCULLOCH. I thank the gentleman.

Mr. Chairman, continuing reading from the letter by Father Hesburgh to the Attorney General:

Under the present act, they cannot make such changes without prior approval of the United States District Court for the District of Columbia or of the Justice Department. Even so, at least one municipality in Mississippi's election last month changed election procedures without approval and in violation of the law, a defiance which your statement recognizes has not been unusual.

The CHAIRMAN. The time of the gentleman from New York has expired.

The Chair recognizes the gentleman from Michigan (Mr. HUTCHINSON).

Mr. MCCULLOCH. Mr. Chairman, will the gentleman yield?

Mr. HUTCHINSON. I yield to the gentleman from Ohio.

Mr. MCCULLOCH. Mr. Chairman, again continuing with the letter from Father Hesburgh to the Attorney General:

Your proposed alternative would turn back the clock to 1957, relying on the slow process of litigation to try to keep up with rapidly enacted changes in the laws. It would mean that the Department of Justice would not have notice of such changes before they went into effect. The inadequacy of litigation as the sole technique of protecting the right to vote was recognized by Congress when it passed the Voting Rights Act of 1965. Now is not the time to gut one of the act's key provisions.

I am also disturbed by our fifth proposal, which would add to the United States Govment yet another new Federal commission, this one called a "national advisory commission," to concern itself with voting discrimination and corrupt practices relating to voting.

You state that this new agency would be set up to study the effects which literacy tests have on minority groups, to study the problem of election frauds, and to report to Congress its findings and recommendations for any new legislation pertaining to the right to vote.

I am unable to understand what purpose such a new commission would serve that is not already within the authority granted by the Congress to the United States Commission on Civil Rights. The Commission on Civil Rights is, as you know, a bipartisan, independent agency, proposed by President Eisenhower and Attorney General Brownell in 1956 and established by Congress in 1957. Attorney General Brownell said at that time:

"When there are charges that by one means or another the vote is being denied, we must find out all of the facts—the extent, the methods, the results . . . The study should be objective and free from partisanship."

Under its statute, as amended, the Commission on Civil Rights has been directed to—

"Investigate allegations, made in writing and under oath or affirmation, that citizens of the United States are unlawfully being accorded or denied the right to vote, or to have their votes properly counted, in any election of presidential electors, Members of the United States Senate, or of the House of Representatives, as a result of any patterns or practice of fraud or discrimination in the conduct of such election . . ." 78 Stat. 251, 42 U.S.C. 1975c(a)(5).

Thus the Commission on Civil Rights has an ample mandate to investigate fraud in such elections, as well as to—

"Investigate allegations in writing and under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin . . ." 71 Stat, 635, as amended, 42 U.S.C. 1975c(a)(1).

The Commission has been vigorous over the years in investigating denials of the franchise and fraudulent election processes. Indeed, it was work by this Commission which helped lay the factual base for the Civil Rights Act of 1960 and 1964 as well as the 1965 Voting Rights Act. Our investigations have not been confined to cases of election fraud which involve discrimination against members of minority groups, though we have consistently found that the most flagrant frauds and abuses were directed against minorities.

Our investigations have not flagged. You have been provided a copy of a recent staff memorandum on the May 1969 elections in Mississippi. The Commission's numerous hearings and reports are filled with the results of our research on voting. Our publications which deal especially with voting rights include:

"Political Participation (1968); The Voting Rights Act of 1965: The First Months (1965); Voting in Mississippi (1965); Report of the Commission (1959).

The Commission's budget proposal for fiscal year 1970 already requests funds for a study of political participation of minority groups outside the south.

The Commission on Civil Rights, as you know, has recommended abolition of literacy requirements for voting throughout the nation. I gather from your testimony that you agree. Certainly, however, this recommendation would not prevent the Commission from re-examining that question thoroughly and with an open mind if Congress so desires.

It is generally conceded that the Commission on Civil Rights has developed great expertise in investigating complaints of violations of voting rights and in recommending steps for their correction. Indeed, the document on voting complaints outside the states covered by the 1965 Act, which you submitted for the record of the subcommittee, was a staff paper of this Commission. It would be totally incongruous to establish a new body, staff it, and fund it in order to duplicate the tasks which the Commission on Civil Rights was established under President Eisenhower to perform and continues to perform.

President Nixon on January 30 spoke of the need for—

"Cutting expenditures, increasing efficiency in Government operations, abolishing unnecessary agencies and eliminating duplication of efforts."

At a time when funds for all domestic programs are severely limited, and when the President in April asked his Advisory Council on Executive Organization to look for ways to eliminate duplication and waste, it would make no sense to spend millions of dollars, lose valuable start-up and staffing time, and add still another agency to the Federal bureaucracy to do a job that, to the extent our funds permit, is already being done. If more effort needs to be put forth, the Commission on Civil Rights stands ready to use its skilled staff and years of experience, to the extent Congress will provide the money. This nation should not waste the limited domestic funds which are available. I hope you will withdraw the proposal.

Sincerely yours,

THEODORE M. HESBURGH,
Chairman.

The CHAIRMAN. The Chair recognizes the gentleman from California (Mr. EDWARDS).

Mr. EDWARDS of California. Mr.

Chairman, the bill that we passed in 1965, was by far the most successful civil rights bill enacted in the history of the United States. The Committee on the Judiciary met in May, June, and July, and civil rights organization leadership, the Conference of Civil Rights consisting of 125 organizations, organizations of labor, the U.S. Commission on Civil Rights, and others, all testified before the Committee on the Judiciary, or sent statements in full support of the measure. And then, of course, the committee itself gave great bipartisan support to this extension of the 1965 act.

The problem, of course, is the proposal of the Attorney General known as the Ford bill, and the administration bill. Here again, civil rights organizations throughout the country and all minority groups consider the bill a disaster.

I also consider it a disaster, and I think that the colloquy that we have had here also indicates that it would be a disaster.

The CHAIRMAN. The time of the gentleman from California has expired.

The Chair recognizes the gentleman from Minnesota (Mr. MACGREGOR).

Mr. MACGREGOR. Mr. Chairman, as a member of the Committee on the Judiciary for some 9 years now, I truly regret that I cannot vote for the Ford substitute.

I use the expression "regret" because of the high regard I have for the minority leader, but more importantly I use the word "regret" because there are very meritorious provisions contained within the Ford substitute.

Specifically, that part of the substitute which would suspend nationwide all literacy tests for a period of 5 years is badly needed. Second, that part of the substitute which would establish uniform residency requirements for voting for President and Vice President of the United States is highly desirable.

I truly hope that these two features can be written into the law of the land following hearings by the House Committee on the Judiciary early next year.

I have sought for months to fashion a bill which would extend section 4 and section 5 of the Voting Rights Act of 1965 and incorporate the best features of the substitute. I regret that I have been unable to do so.

The CHAIRMAN. The Chair recognizes the gentleman from Missouri (Mr. BURLISON).

Mr. BURLISON of Missouri. Mr. Chairman, my vote will be cast against a straight and simple extension of the Voting Rights Act of 1965 and in favor of the administration substitute. I take this opportunity to briefly point out a couple of pertinent matters.

First, after observing elections in my district for three decades, I can say without fear of contradiction, a higher percentage of Negroes than whites vote there. Certainly this is no criticism of my Negro friends and constituents. Rather, is a commendation to them. I would vigorously contest any effort of intimidation or discrimination against them.

Next, it should be emphasized that I oppose literacy tests as a criteria for voter eligibility. In my opinion a lack of formal education does not deprive a citizen of the requisite judgment for casting an intelligent vote. I believe in applying this philosophy to all the States of the Union and not to those only of a particular region, and I would protect the vote of the unschooled citizen, whether he be black, white, red, or brown. The vehicle to do this is the substitute and not a simple extension.

The CHAIRMAN. The Chair recognizes the gentleman from Georgia (Mr. THOMPSON).

Mr. THOMPSON of Georgia. Mr. Chairman, the issue to be settled here today is one of whether or not the laws of the United States are going to apply evenly throughout the United States and whether a person is going to have a remedy available to him if he maintains that he is being discriminated against because of race, creed, or color, regardless of his place of residency. Not only whether he has a right of remedy if he is in the South but whether he also has a right of remedy in New York or Chicago or any other area.

I cannot help but feel that some of the resistance to this legislation may stem from the fact that some of the cities in the North may be somewhat concerned about having Federal voting registrars come into their areas.

I think it may be healthy if we had a situation where Federal voting observers did observe some elections in Chicago, New York and possibly not just based on race as related to this bill but on other factors as well.

Mr. Chairman, I urge the substitute be accepted by the House.

The CHAIRMAN. The Chair recognizes the gentleman from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. Mr. Chairman, I want my southern colleagues to listen to this: If they believe that this amendment limits the right of the Attorney General to exercise surveillance over their States, please harken to this.

The amendment provides in section 4 on page 4 that section 6 of the act be changed in order to permit the Attorney General of the United States to send examiners into any State in the Union.

This includes Texas and Florida which are not presently covered, and not just for 5 years, as section 4 and section 5 provide in the present act—but permanently. Now if you want the period in which there may be surveillance over elections to exist from now on forever until you repeal the act, then go ahead and enact the provision that permits the Attorney General to supervise your elections without the necessity of a court order — permanently — permanently — and not for 5 years—and not because there has been some showing of a presumption of discrimination because of low levels of registration and voting.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. LOWENSTEIN).

Mr. LOWENSTEIN. Mr. Chairman, I want to yield to the gentleman from Texas (Mr. ECKHARDT) so he can complete his line of argument. As most Members are aware, he has one of the finest legal minds in Congress, and all of us benefit enormously when he shares his experience and wisdom with us.

Before I yield, I want simply to suggest that this is an especially inappropriate moment to pass the first civil rights bill in our history that will weaken the statutory basis for enforcing civil rights. In this case the right that will be damaged is perhaps as basic as any in a free society: the right to vote. That is exactly what will happen if we adopt the substitute motion. And that is why Members who have carved their careers out of total resistance to the very idea of Federal legislation to protect voting—or any other—rights, are now to be found battling tooth and nail for what we are told is really an extension of the Voting Rights Act.

I include in the RECORD at this point a staff report of the U.S. Commission on Civil Rights. This report, prepared under the direction of the diligent and brilliant staff director Mr. Howard Glickstein, illustrates why the 1965 act should be extended. It is objective and points out problems in the administration of the act, but anyone who reads it with an open mind will have to realize that the need for such a law is far from ended.

The material follows:

U.S. COMMISSION ON CIVIL RIGHTS STAFF REPORT ON MAY 13, 1969, MUNICIPAL ELECTIONS IN MISSISSIPPI

Primary elections were held on May 13, 1969 by numerous Mississippi municipalities to choose candidates for the June 3, 1969 general election. The U.S. Commission on Civil Rights sent two attorneys to the state for a week to observe the elections and speak with many of the black candidates who sought political office and their supporters.

On May 13, 1969 Commission staff attorneys observed the conduct of the election in Fayette, Jefferson County; Woodville, Wilkinson County; Gloster, Amite County, Lexington, Durant, Goodman, and Pickens, Holmes County; and Belzoni, Humphreys County. Commission staff visited the polling places throughout the day and kept in contact with black candidates and their supporters in these cities. The rest of the week they spoke with black candidates and their supporters in other Mississippi towns. In all they spoke with black candidates or their campaign workers in 20 towns scattered among a total of 15 counties.

Most of the black candidates interviewed, regardless of whether they won or lost and regardless of whether they believed the election had been fair, believed that there would not have been as fair an election had it not been for the presence of the Federal Observers and the presence of numerous lawyers and others serving as poll watchers. Although there were criticisms of the manner in which the Federal Observers carried out their duties, not one black candidate in a county where Federal Observers were present believed the election would have been run in an honest manner were it not for the presence of these observers. In counties where Federal Observers were not present, there was a division of opinion as to whether there had been an honest election.

For convenience in reporting, the problems uncovered have been divided into four general areas:

1. Registration to vote.
2. Qualification as a candidate.
3. The conduct of the election.
4. The role of Federal Observers.

REGISTRATION TO VOTE

In many of the towns visited by the Commission staff, it was reported that black persons no longer have fears of adverse consequences if they register to vote. This was not true everywhere, however. In Woodville, for

example, a black candidate stated that people were still afraid to register to vote in Wilkinson County. As an example of the fear that still exists in the Woodville area, he noted that when three college students from Michigan State University who served as poll watchers for black candidates during the election had to leave the town very late at night, local black residents insisted that they be escorted to McComb by the Deacons of Defense. In Itta Bena there were reports of threats to bomb a black candidate's headquarters the night before the election. A guard was placed around the headquarters by local black persons the entire night. It was also noted in Woodville that several candidates who had held jobs either with the school system or the county had recently lost their jobs as a result of seeking elective office or because they were actively involved with the NAACP. Their contracts were not renewed after their involvement had become common knowledge.

A black candidate in Moorhead, in Sunflower County, stated that some black persons were afraid to register to vote for fear that white persons would take economic reprisals against them. A similar reluctance to register was reported in rural areas of Quitman County by a black candidate for office in Marks.

Problems in registering to vote for the city elections were widespread. Difficulties were reported in Summit, Pike County; Bolton and Edwards, Hinds County; Clarksdale, Coahoma County; Durant, Lexington and Goodman, Holmes County and Leland, Washington County.

A black candidate for office in Summit stated that black persons desiring to vote had difficulty in finding the Summit city clerk in order to register with him. Under Mississippi law, a voter must register with the county registrar and with the city clerk in order to vote in municipal elections. Section 3211 of the Mississippi Code provides that the registrar "shall register the electors of his county at any time" and section 3374–61 makes this provision applicable to municipal clerks, who act as registrars for municipal elections. Until the deadline for registering for the primary election had passed, the city clerk in Summit, who has another full-time job, was only available for registration between 3 p.m. and 7 p.m. on Tuesdays and Wednesdays. In the future, however, the clerk in Summit has reportedly agreed to register voters at any time, except on Sunday. Pike, the county in which Summit is located, has not been designated for Federal Examiners. It was reported that the town clerk in Edwards is in his office only from 9 a.m. to 11 a.m. Monday through Friday. Thus, it is very difficult for people who work during the day to register in the city.

In several of the towns noted above, county clerks did not inform the newly registered voters that it was necessary for him to register in the city as well. Thus, large numbers of black persons were unable to vote in municipal elections because they had not registered in the city, even though they had registered at the county courthouse.

In one town where no primary was held, but where black candidates were running as independents, two black voters alleged that the city clerk was present when they registered with the county clerk, and that he told them he would take care of the city registration for them. He did not, however, and their ballots were challenged. One black voter was told by the same city clerk, when she saw him in 1966 after having been listed by the Federal Examiner, that she already was on the city books. Her name, however, was not on the list and thus her ballot was challenged.

In another town, witnesses reported that the county clerk harassed black persons who attempted to register with her. In July 1968, a local civil rights volunteer took a crippled black woman and four other black persons (two to register, and two to help the crippled woman) to the clerk's office. The clerk refused to allow the crippled woman to sit while she was registering, instead forcing her to walk from table to table for different parts of the registration process. This took about 15 minutes, the clerk asserting that, after all, the woman would have to stand while voting. On two occasions—July 1968 and February 1969—this clerk allegedly sent a deputy out to buy spray deodorizer while black persons were being registered.

Another widespread problem was that a large number of names listed by the Federal Examiners were not placed on the city rolls. As a consequence many persons who had been listed by the Federal Examiners had their ballots challenged, while others, anticipating challenge, did not cast ballots at all. Such problems were reported in Woodville, Wilkinson County; Vicksburg, Warren County; Edwards and Bolton, Hinds County; Clarksdale and Jonestown, Coahoma County; Itta Bena, Leflora County; Marks, Quitman County; and Lexington, Durant and Goodman, Holmes County. In some of these cases the Federal Examiners failed to transmit the names of persons listed by them to the appropriate city officials.

In March, local campaign workers discovered that the names of 150 black persons in Itta Bena who had registered with the Federal Examiner were not on the city lists. This was brought to the attention of the Civil Service Commission office in Jackson. That office allegedly was able to get 108 of the names placed on the city books for the elections, but apparently determined or assumed that the 42 others lived outside Itta Bena. At the May 13 primary, an additional 12 black persons were allegedly turned away because they were not on the city lists, although they too had been listed by the Federal Examiner.

In one town, persons listed by the Federal Examiner, but whose names were not on the registration books, were permitted to cast challenged votes. When a ballot is challenged, the Democratic Executive Committee decides whether to count it. The chairman of the Democratic Executive Committee in that town is alleged to have said, in reference to challenges by poll watchers for black candidates: "Let them challenge all they want because the challenge comes through me and I will handle them the way I want."

When the Federal Examiner arrived in Holmes County in March, he apparently made no effort to publicize his presence. Commission staff talked to many local black persons—candidates and campaign managers as well as voters—who did not know he was in Lexington until his presence was discovered by accident on his last day there. Predictably, he did not list anyone during his visit to Lexington.

Lack of such publicity was a widespread problem throughout Mississippi. Little or no advance publicity was given in any of the counties. While some civil rights leaders were apparently informed of the presence of Federal Examiners, in most cases nothing else was done. As could be expected, few persons were listed by the examiners. A list showing the counties in Mississippi where examiners were sent and the number of persons listed is attached.

QUALIFICATION AS A CANDIDATE

In several towns primaries were not held even though black candidates had sought to run and thought they had qualified. The absence of a Democratic Party Executive Committee in those communities required candidates to use a different procedure for qualifying and the black candidates were not informed of this procedure.

In Friars Point, for example, where the Justice Department subsequently on May 17 filed a suit, black candidates sought to qualify for the primary by filing their papers with the County Democratic Party Executive Committee. The local newspapers allegedly reported that the black candidates had qualified for the primary. Shortly before the primary, however, it was announced that the black candidates had not qualified for the primary, because they allegedly had not complied with certain statutory requirements. Despite the fact that they had allegedly filed their papers several weeks before the deadline for qualifying either in the Democratic primary or as independents, they were not notified that they had not qualified until after these deadlines had passed. The Justice Department suit charged that "without general notice to the public [the defendants] altered the procedure for qualifying." This was done without obtaining the approval of the Attorney General as required by Section 5 of the Voting Rights Act of 1965.

In Centerville several black persons attempted to qualify to run in the May 13 primary for city positions. They filed the required notice with the city clerk in Centerville and with the Secretary of the Democratic Committee in Woodville. They were told by the clerk at the town hall in Centerville that the town did not have a primary election. They were not told, however, that there was a procedure for obtaining a primary election. To run in a municipal primary in a town without a Municipal Executive Committee it is necessary to petition the Chairman of the County Executive Committee to call a special meeting of registered voters. At this meeting a temporary Executive Committee is elected. This Committee runs the primary election. They learned from civil rights lawyers in Jackson, however, that even though they were unable to run in the Democratic primary they could qualify as independents if they obtained signatures from 75 registered voters. Three candidates were able to get the necessary signatures, even though they learned of this possibility the day before the filing deadline. Thus they were able to get on the ballot for the June general election. In North Carrollton, in Carroll County, and Pickens, in Holmes County, black candidates attempting to qualify as Democrats were told there was no primary and therefore had to qualify as independents. As in Centerville they were not told there was a procedure by which a primary could be held.

A black candidate in one town in Hinds County, however, was unable to qualify for election because she was unaware of the proper procedures to follow. She allegedly filed her papers to run for office with the town clerk before the filing deadline. Someone, however, told her that she had to take the papers to the Mayor. She returned to the town clerk, obtained her papers from him and took them to the Mayor who informed her that he had nothing to do with the election. She then went back to the clerk's office, but he had left. She returned the next day and gave the papers to the clerk, but was told that she was one day past the deadline and, therefore, the clerk refused to put her on the ballot.

In Woodville, black voters were totally excluded from a second unofficial "white primary." All the black candidates for the Democratic primary were defeated. However, black and white persons had qualified as independent candidates for mayor and alderman. Thus, there was a possibility that the white vote would be split since there were two white candidates and one black candidate for mayor and eight white and one black candidates for the five alderman positions. To avoid this, the county White Citizens Council sent a letter to all white voters asking them which white candidates they believed should withdraw from the race. They apparently were at least partially successful, as it was reported that one of the white candidates for mayor had withdrawn his name. A copy of the letter is attached to this report. In contrast to the tone of the letter, a campaign poster is attached illustrating the slogan used by several black candidates in the area: "Don't vote for a black man. Or a white man.

Just a good man. . . . Doesn't that sound good."

In Canton, some black candidates qualified to run in the Democratic primary; others running as independents will appear on the ballot in the June 3 general election. The city, however, allegedly redistricted the municipal boundaries eliminating a large number of black persons and adding a number of white residents. The city did not, as required by the Voting Rights Act of 1965 submit these changes to the Attorney General or the District Court in Washington, D.C. for approval. A suit was brought in Federal court and on May 10, 1969 the holding of a primary and general election was enjoined.

THE CONDUCT OF THE ELECTION

On the day of the primary, election irregularities occurred in a large number of communities in which black candidates ran.

Among the most frequent irregularities were restrictions upon the activities of poll patchers for black candidates. Title 14, section 3128 of the Mississippi Code states:

"Each candidate shall have the right, either in person or by a representative to be named by him, to be present at the polling place, and the managers shall provide him or his representative with a suitable position from which he or his representative may be able to carefully inspect the manner in which the election is held."

Despite this provision, election officials in Marks allegedly required poll watchers representing the black candidates to sit over 20 feet from the election tables. From that distance, they could not see enough of what was happening to do more than tally the ballots voted. In Jonestown, the election officials at first challenged the right of the student volunteer poll watcher to be there. After reportedly telephoning an outside source, the officials allowed these poll watchers to remain, but seated them so far back of the polling place, at the insistence of the manager, that they could not see the names on the books and thus could not carry out all of the normal functions of poll watchers. In Leland, where no Federal Observers were present, the election officials also allegedly required poll watchers for the black candidates to stand so far away from the tables that they were unable to check the qualifications of voters. And, although section 3164 of the Code specifically provides that candidates and their representatives have the right to observe and inspect the counting of the ballots, the poll watchers in Clarksdale were not allowed near the machines or tally tables during the tally of votes. They protested, but were not allowed closer.

Although many municipalities across the State had black election officials working at the polling places, only a few had more than a token number of black persons, and the black persons working in the polling places were under the supervision of the white election managers. In Woodville, Clarksdale, and other cities, white election managers were reluctant to render assistance to illiterates, although the courts have held that the Voting Rights Act of 1965 requires that this assistance be given, and that illiterates be informed of its availability. *United States* v. *Louisiana*, 265 F. Supp. 703 (1966), *aff'd per curiam*, 386 U.S. 270 (1967). In Vicksburg, a black election official was told that she could not help illiterates who asked for her assistance in voting. She was told that the election manager would appoint someone to assist illiterates needing assistance. He invariably appointed one of the operators of the voting machines, all of whom were white, despite the voters' requests that a black election official assist them.

In Lexington, a black election official is reported to have told a student poll watcher that the election officials had been instructed not to give or offer help to voters until the voter needing assistance asked them. In polling places throughout the State, illiterate voters frequently seemed unaware that assistance was available, but quickly asked for it when poll watchers for the black candidates informed them of its availability. Instructions such as those allegedly given in Lexington deprive such voters of the means of voting as they wish.

Sec. 3272 of the Mississippi Code provides that voters who are blind or disabled "shall have the assistance of one of the managers or other person of his own selection" in the marking of his ballot. In one instance in Vicksburg, however, a poll watcher reported that a blind woman was denied assistance by the "person of her choosing"—her black sister. A white official insisted on casting her ballot for her.

In Itta Bena, white election officials assisting illiterates reportedly tried to influence the illiterates not to vote for the black candidates. It was also reported in Vicksburg, where no Federal Observers were present, that black voters who did not request assistance often had white election officials entering their booth under the pretense of giving assistance.

In Itta Bena, an armed white deputy sheriff, apparently there to maintain order, sat between the two tables being used for the election, allegedly harassing black persons. As a result, some left without voting. The election officials made no effort to moderate his conduct. Also in that city, a white election official allegedly demanded that four black women give her their marked ballots, rather then place them in the box. The women now fear that their ballots were never counted.

In Vicksburg, one of the polling places for a largely-black area was reportedly changed without publicity. When black persons showed up at their regular polling place to vote, the election officials stated that there had been a change, but refused to aid the voters in finding their proper voting place. As a consequence, many of these persons did not vote. In Greenwood, one black voter was not allowed to vote until she had "hounded" the election officials for several minutes, although her name was on the voting lists.

In Clarksdale, four black persons attempted to vote, but were turned away because their names were already marked as having voted. One of the student volunteers felt that some of these instances were explained by there being more than one person with the same name registered but the name appeared on the lists only once. At first, the election officials refused to permit the casting of a challenged ballot; later, they relented. A white voter in this situation was allegedly allowed to vote by machine upon his oral statement that he had not already voted. The officials ignored the challenge of the student volunteers. After that, a black voter in the same situation was also permitted to vote by machine.

A slightly different variation occurred in Vicksburg. A number of voters of a predominantly black ward, and presumably also some in predominantly white wards, were unable to find their names on any books; their names had apparently been dropped for some reason. When a poll watcher at this ward requested that these persons be permitted to cast challenged ballots he reportedly was told that this was not the custom in Vicksburg, apparently because the city used machines. It was not until 1:30 p.m., six and a half hours after the polls had opened, that paper ballots were furnished for those persons whose right to vote had been challenged, notwithstanding sec. 3170 of the Mississippi Code which clearly establishes the procedure for the challenging of ballots.

In Lexington, local officials of the municipal Democratic Executive Committee allegedly purged the names of 83 black persons and 67 white persons from the poll books shortly before the election. An overwhelming majority of black voters in Holmes County had registered by being listed by the Federal Examiner. Although the local officials refused to give a list of those purged to representatives of the black candidates, it is likely that most of the blacks purged from the poll books had been listed by the Federal Examiner. Sections 7 and 9 of the Voting Rights Act of 1965 establish an exclusive procedure, including provision for a prompt hearing, by which allegedly unqualified voters listed by a Federal Examiner may be removed from a list. Even if intended in good faith, the alleged purge of the names of black voters from the poll books violated the procedural safeguards provided by the Voting Rights Act.

To challenge unqualified voters effectively, a candidate normally needs to be able to inspect the poll books some time in advance of the election, searching for names of persons still on them who are not currently qualified to vote. Sec. 3211 of the Mississippi Code requires that the "registrar shall keep his books open at his office," and sec. 3374–61 renders this provision applicable to municipal clerks. In one town in Holmes County, a black representative of the local black candidates stated that he had on three occasions attempted to see the voter registration books maintained by the city clerk in the clerk's office at a local bank. On each of these occasions, access to the books was allegedly denied, on the ground that business was too pressing. When white volunteers came to look at the books the day before the election, however, the clerk produced them at once.

In Edwards, Mississippi the chairman and and a few of the other members of the Municipal Democratic Executive Committee met without informing the black members of the committee. At this meeting they appointed a number of Negroes closely aligned with the white power structure in the city to serve as election officials and to aid illiterate persons in voting.

The Commission staff was unable to document an earlier report from Vicksburg that election officials had told hundreds of black voters that it was unnecessary to vote for two candidates, that they could cast a single ballot for the black candidates. This would have been contrary to the full slate requirement, and such ballots would not be counted.

THE ROLE OF FEDERAL OBSERVERS

Notwithstanding the general agreement among the black candidates interviewed, that the May 13 primary would have been far more unfair if the Federal Observers and volunteer student and lawyer poll watchers had not been present, there were serious problems arising from the manner in which some of the Federal Observers conducted themselves and from the policies under which they operated.

In Clarksdale, for instance, the Federal Observers frequently did not observe the assistance being given to illiterate black voters. In Goodman, they stationed themselves in a location from which it was impossible to see several of the voting booths, and consequently did not know when black voters in that part of the polling place needed assistance or when it was being given to them. Seats from which they could have observed all of the events in the polling place were available. In Woodville, the volunteer poll watchers on several occasions suggested to black voters needing assistance that Federal Observers were present, and asked if the voters wanted an observer present while they received assistance in casting their vote. At least one observer, when told by a poll watcher that a voter desired him to observe, stated "If the voter wants me, tell him to come over and get me."

In that town, a volunteer poll watcher—an out-of-state attorney—charged that the Federal Observers did not bother writing up a report of an incident in which a black

woman was handed a ballot, walked over toward the booth, but appeared uncertain about what she should do. As she approached the table an election official reportedly took the unmarked ballot out of her hand and placed it in the box. Despite vocal protests by poll watchers about this matter, the observers apparently felt the issue was too frivolous to report. During the counting of the ballots, a Commission staff attorney noticed that the Federal Observers, at first, were making a brief notation as to the reason each time there was a ballot on which votes were not counted. Later in the evening, however, he noticed that they appeared to have lost their interest, and failed to do this on several occasions.

Black candidates and poll watchers at the Woodville election were extremely critical of the role of the Federal Observers. One student from Michigan State University, a poll watcher for one of the black candidates, charged that the Federal Observers challenged their right to observe the election. After the poll watchers showed them the Mississippi statute which did not prohibit out-of-state people from acting as poll watchers, the Federal Observers challenged their right to stand near the table where the ballots and ballot box were kept. In both instances the local election officials upheld the right of the poll watchers.

The Commission in its 1968 *Political Participation* report criticized the Department of Justice policy of "keeping the Federal presence as inconspicuous as possible" when observers were sent into polling places. It recommended that the Attorney General "should announce publicly in advance of the election that Federal Observers will be present and should assure that the observers are identified as Federal officials."

This recommendation has never been implemented, and the Department kept secret, until the last minute, the cities and polling places in which Federal Observers would be present for the May 13 election. The reasons stated by the Commission for its stand in 1968, however, remain true today:

"The subdivisions where the assignment of observers is warranted are those in which there is a likelihood of discrimination at the polls. It is important for Negro voters in these subdivisions to know that observers will be present to deter local election officials from subjecting Negroes who attempt to vote to discrimination and the harassment, indignity, and humiliation which accompany it."

The Commission's recommendation that the observers be identified as Federal officials has, similarly, not been implemented. Across the State during the May 13 election, Federal Observers failed to identify themselves by word or by kind of sign or official insignia. In its 1968 report, the Commission stated that "identification of the observers [would] serve to confirm to Negro voters that they will be afforded comparable treatment with other citizens at the polls." Without identification of the observers and advance notice of their presence, black voters feel no such assurance. In one community visited by a Commission staff attorney, a black candidate did not know, two days after the election, whether a Federal Observer had been present. In Itta Bena, poll watchers for the black candidates knew that Federal Observers were present, but did not know which of the white persons standing about they were.

In its 1968 report, the Commission recommended that the Attorney General should "instruct Federal Observers that they have a duty to point out to local election officials irregularities affecting Negro voters . . ." One of the reasons for this recommendation was that, under the Department of Justice policy that observers should take "only such steps as may be necessary to fulfill the observational functions," and that the irregularities they observe should be reported first to the captain of the observer team, and then to a Department of Justice attorney, who will take it up with election officials, [m]uch or all of the election day may elapse . . . before the matter is settled."

In the May 13 primary, the Federal Observers acted only as passive recorders of events, refusing at all times to speak to the election officials about even the most blatant discrimination against black voters. A Commission staff attorney in Woodville was informed by a lawyer from the Civil Rights Division of the Department of Justice that it was Department policy that the Federal Observers were to speak with no one.

This meant that no Federal agent monitoring the election would speak to local officials about even the most obvious irregularities until the Justice Department attorney assigned to that county or pair of counties returned to the particular polling place. In Itta Bena, this process allegedly took three hours from the first time an irregularity was brought to the attention of the Federal Observers by local poll watchers—at which time the observers admitted that the black voter turned away was fully qualified to vote—to the time when the Justice Department attorney arrived. In that time, a total of 26 voters in that situation had been turned away. Local candidates and their poll watchers were given no information telling them how to get in touch with Department representatives more quickly.

Neither the observers nor the local election officials informed voters that they could have assistance in voting and that Federal Observers could watch the assistance being given. Only if a voter asked for such assistance or if he was unable to write his name was he told that such assistance was available. Since many illiterates are able to write their names but not able to read and understand the ballot, this limited provision of information left many black voters, needing assistance, ignorant of the possibility that assistance could be given and that Federal Observers could watch it as it was being given.

Although the stated policy was that the observers should talk with no one, a Commission staff attorney saw the observers in Woodville engage in animated conversation with the white election officials on numerous occasions. They did not seem to speak with poll watchers, black candidates or any local black people, however. Two observers there also refused to speak to the Commission staff attorney when he asked one for the number of persons who had voted and the other—the one who had allegedly challenged the right of the poll watchers for the black candidates to be there—for his name.

Some of the local black persons understandably felt that the observers were in sympathy with the white community. At one point in the afernoon, several poll watchers and at least one black candidate asked the Commission staff attorney if he could not get the Federal Observers out of the balloting place. On reflection later, however, these same persons agreed that there would have been widescale fraud but for the mere fact of the observers' presence.

SUMMARY

The election of some black persons to municipal office in Mississippi is evidence that some changes have occurred in Mississippi since the passage of the Voting Rights Act of 1965. Even with these victories, however, virtually all cities and towns in Mississippi will still be governed by all-white local governments.

Interviews with observations by staff attorneys suggest that this is in part due to the following:

1. Many black persons in Mississippi still fear economic or other reprisals if they register to vote or openly support black candidates.

2. Officials in some cases have made registration difficult for black persons by narrowly limiting hours for registration, by failing adequately to inform applicants of procedures required to vote in municipal elections, and in some cases by actually misinforming them as to these requirements.

3. Black persons continue to be excluded from serving as election officials in most areas of the State surveyed.

4. Officials sometimes failed to assist or misinformed black candidates seeking to obtain places on the ballot, and some were unable to run in the primary as a result.

5. The Voting Rights Act of 1965 establishes procedures to be followed before local officials change election requirements or procedures or remove from the poll books persons listed by the Federal Examiners. In many instances throughout Mississippi, local officials took such actions without observing the Act or any of the procedural safeguards provided by the election laws of the State of Mississippi.

6. The Federal Government neglected to take adequate steps to inform citizens of the presence of Federal Examiners and thus examiners listed relatively few voters in recent months.

7. Some Federal Examiners failed to transmit the names of persons listed by them to city voting officials, and as a result many black voters throughout the State had their ballots challenged or were turned away from the polls.

8. Although most black candidates believed that the mere presence of Federal Observers improved the honesty of election procedures, a number of election irregularities occurred even where Federal Observers were present.

9. The effectiveness of Federal Observers was limited by their failure to make their presence known to voters and by their failure to intervene at once when irregularities were observed.

U.S. GOVERNMENT MEMORANDUM

APRIL 3, 1969.

From: David H. Hunter.

Subject: Mississippi Voter Registration.

Federal Examiners were in Mississippi to list persons to vote on four Saturdays in March. This was the only listing in Mississippi by Federal Examiners in 1969 prior to the holding of the municipal elections. A hyphen is used to indicate that no Federal Examiner was in the county on that date. The results are as follows:

County	Mar. 8	Mar. 15	Mar. 22	Mar. 29	Total
Amite	0	0	5	-	5
Benton	-	0	0	-	0
Carroll	0	1	1	-	2
Clay	0	0	0	-	0
Coahoma	-	0	0	-	0
De Soto	-	0	0	-	0
Forrest	-	0	0	-	0
Franklin	-	0	17	10	27
Hinds	0	35	43	80	158
Holmes	0	0	0	-	0
Humphreys	-	11	14	1	26
Jasper	-	2	1	-	3
Jefferson	-	8	0	-	8
Jefferson Davis	-	0	1	-	1
Jones	-	2	2	-	4
Leflore	22	58	78	108	266
Madison	0	19	68	68	155

County	Mar. 18	Mar. 15	Mar. 22	Mar. 29	Total
Marshall	0	3	0		3
Neshoba		2	1		3
Newton		0	2		2
Noxubee		0	42	30	72
Oktibbeha		37	15	13	65
Rankin		0	0		0
Sharkey		9	18	10	37
Simpson	2	0	25	25	52
Walthall		13	5	22	40
Warren		12	8	16	36
Wilkinson		16	11	1	28
Winston		0	8	5	13
Total	24	228	365	389	1,006

MAY 20, 1969.

DEAR FELLOW CITIZEN OF WOODVILLE: Your local Citizens Council is gravely concerned about the political prospects in the Woodville Municipal General Election which will be held on June 3rd, and we feel sure that you, as a public spirited white citizen, are equally concerned.

First, may we emphasize the fact that we have no axes to grind nor political fortunes to favor or oppose as to individuals, but are taking this action purely and simply to endeavor to insure that white officials are elected on June 3rd.

As you doubtless know, the present prospects in the Mayor's race present two white candidates and one negro candidate. In the Alderman race, there are eight white candidates and one negro. In both instances, the negroes are thus virtually assured of election.

We feel that forgetting personal ambitions or desires, some of the white candidates should withdraw so that there will be only one white candidate for each office. It is our understanding that some of the candidates are agreeable to this, provided it can be ascertained which ones the majority of the white voters favor.

In an attempt to determine the wishes of the white voters of Woodville, we are therefore, conducting a "straw vote" election which we feel will be of tremendous assistance in working out a compromise—provided you, the voters, co-operate by taking part.

We are enclosing herewith an unofficial ballot which we ask that you mark in private, seal in the enclosed envelope, and return immediately by mail. You will note from the enclosure that there is no way your ballot can be identified, and your vote will thus be secret. As soon as possible, since the deadline for printing the Official Ballot is very near, we will open these envelopes and tabulate the vote—in the presence of all candidates or their representatives. From the resulting tally, we hope to be able to effect a compromise settlement of this grave issue which faces us all.

Please do not delay. Time is of the essence. Please mark and return the enclosed ballot today.

May we thank you in advance for your co-operation, and again assure you that our only motive in undertaking this project is public service in what we feel is the best interests of the Town of Woodville.

Sincerely,

WILKINSON COUNTY CITIZEN COUNCIL.

STRAW BALLOT

(*Not an Official Ballot)

FOR MAYOR—TOWN OF WOODVILLE

(Vote for One)

W. H. Catchings ( )
Marvin N. Lewis ( )

FOR ALDERMAN—TOWN OF WOODVILLE

(Vote for Four)

J. M. (Mac) Best ( )
Thomas M. Bryan ( )
Pat Cavin ( )
Cage Chisholm ( )
H. B. Curry ( )
Anthony David ( )
James (Jabbo) Herrington ( )
Brandon Inman ( )

(*NOTE.—This is not an Official Ballot, but merely an attempt by the Citizens Council to ascertain the candidates preferred by the majority of the white voters of Woodville. See letter attached.)

Mr. ECKHARDT. Mr. Chairman, if I am not correct about this, I should like to be corrected.

As a matter of fact, I heard the gentleman from Virginia (Mr. POFF) rise on the floor a minute ago and state quite correctly that section 3 of the act is a permanent provision of the act and only permits the Attorney General after an action in court to bring action to appoint examiners.

This does not now apply all over the United States under the present act, but it would apply nationwide under the act as amended.

Under the present act in sections 4 and 5, it limits the authority of the Attorney General to appoint examiners, as provided in section 6 to the situation where registration and voting were below 50 percent in the 1964 election.

A court order has nearly always been required as a matter of practice and a court order would have to be obtained after the conclusion of the 5-year period.

But under the amendment, no court order would be required and examiners and registrars could ride all over the United States through the South, the North, and all over and apply their surveillance to elections throughout the country. Though I am willing to apply somewhat drastic cures to drastic ills, I do not believe it desirable to grant permanent authority to an appointive official to ride herd over elections all over the country—even though there is no inkling of wrongdoing or discrimination.

The special temporary authority under sections 4 and 5 of the existing act was an authority granted in a special circumstance where well established evidences of enormous abuse had been adduced. The authority, as has been pointed out, was limited in time and territory. But the authority granted in this amendment is broad and permanent. I am not willing to so extend the authority of an appointive office without the guidance or limitation of a court.

The CHAIRMAN. The Chair recognizes the gentleman from Pennsylvania (Mr. BIESTER).

Mr. BIESTER. Mr. Chairman, we are nearing the end of debate on the substitute and it seems to me the most important thing we should recall is that the enforcement section of the voting rights bill is the heart of the subject.

What we would be requiring those presently disenfranchised in the States covered by the bill to do—were we to adopt the substitute—would be to put them back in the game of catchup football. I urge defeat of the substitute.

The CHAIRMAN. The Chair recognizes the gentleman from Louisiana (Mr. WAGGONNER.)

Mr. WAGGONNER. Mr. Chairman, the gentleman from Texas (Mr. ECKHARDT) attempts to strike fear in the hearts of southerners by painting a picture attempting to portray the awful things that will happen if the Members vote for this substitute and give the U.S. Attorney General authority to do in all States what can be done now in only a few Southern States.

Let me tell the gentleman from Texas (Mr. ECKHARDT), as a southerner, this is exactly what we want to do. We want to spread the blessings around. Since we have been chosen for special blessings because we are southerners, we want everyone else to enjoy those blessings, everyone who thinks they have been so good for us. This is exactly what we want to do. If the present law is so good why not let it apply to everyone and all States alike.

We want others to see how high-handed and unfair people like Ramsey Clark as Attorney General of the United States have been. We want others to feel the wrath of these people who ignore the law and abuse States who live within the law.

We feel if they feel this, they will come back and write some different and fair-minded legislation. When other people are discriminated against as we have been, then, perhaps something will be done. Vote for the substitute. Treat everyone fairly. I believe the present Attorney General will administer the law with equity. I believe he is a fair-minded man.

The CHAIRMAN. The Chair recognizes the gentleman from Indiana (Mr. DENNIS).

Mr. DENNIS. Mr. Chairman, I yield to the gentleman from Michigan (Mr. GERALD R. FORD).

Mr. GERALD R. FORD. Mr. Chairman, I am grateful to the gentleman from Indiana for yielding.

Mr. Chairman, I would like to make this observation and comment. If we are interested in maximizing the opportunity for people to register and to vote in all 50 States, then we should support the substitute amendment which I offered.

I might say to those who have been most vigorous in their advocacy of increasing registration and voting for Negroes, I believe that if we really believe that, then we can maximize it in all 50 States by my substitute. But the principal point is that I feel what we ought to do is to treat all States alike and all people alike. That is what the substitute does.

One other observation: As I said in my remarks yesterday and today, there is a deeply imbedded principle in our philosophy, in our American heritage, that one is presumed innocent until he is proven guilty. The law that has been on the statute books turns that around and has presumed seven States guilty until they were able to prove their innocence. Five of them, on the criteria we established 5 years ago, have proven that innocence. I think it is unfair and it is

inequitable to keep them in continuous servitude for another 5 years.

Mr. Chairman, I therefore believe that the way to remedy it is not to make the other 43 States be in the same condition, but to make the seven equally treated with the other 43. I strongly believe that the nationwide legislation which I have offered to this body should be approved, and all States and all people will be treated one and the same.

Mr. McCULLOCH. Mr. Chairman, will the gentleman yield for a question?

Mr. GERALD R. FORD. I yield to the gentleman from Ohio.

Mr. McCULLOCH. Mr. Chairman, would the gentleman from Michigan please tell us how his substitute would maximize the registration of blacks in the States affected, using my own State, about which I know. How would the legislation maximize that in Ohio?

The CHAIRMAN. The time of the gentleman from Michigan has expired. The Chair recognizes the gentleman from South Carolina (Mr. WATSON).

Mr. WATSON. Mr. Chairman, earlier the distinguished chairman of the Judiciary Committee quoted the prophet Leviticus when he said: "Proclaim liberty throughout the land and to all the people," but yet the gentleman said we should protect that liberty to vote only in six Southern States.

The question is not whether or not we are going to protect the voting right of the black American for under the substitute those rights would be protected. The question is whether or not we are going to protect that voting right in every State of the Nation. We have to resolve this question in our mind.

If the Members believe that we should continue a discriminatory piece of legislation and reward those six Southern States who have tried, whether they were dragged there or voluntarily went there, by putting them under 5 years of additional servitude, then they can vote for the proposal as it is.

But your constituents back home will ask: Why do you demand to protect the rights of the black man in the South but do not support a measure to give the same protection to the black man in your district in the North? That is the question one has to ask.

Mr. Chairman, I am strongly against any Federal voting standards, inasmuch as the Constitution provides that qualifications of electors are the prerogative of the individual States. But, if the 1965 Voting Rights Act is to be extended, it must be expanded so as to apply to all States of the Nation rather than six Southern States, including my beloved South Carolina.

In my judgment, if the present law is not broadened to include every State in the Union, then most certainly that in itself would be an admission that the 1965 act was conceived in vengeance, passed in prejudice, and continued in hypocrisy. As our able minority leader said when he was supporting his substitute which would remove this yoke from the neck of the Southern States, "there should be no second-class citizen in America and neither should there be a second-class State." For the proponents of the simple 5-year extension of this entirely southern measure to quote from the Civil Rights Commission in justification of their position is to rely upon a source which will never be satisfied unless the South is totally severed from the Nation.

Then, too, it is inconceivable that some of our colleagues from the North are so zealous in demanding rights for the black man in the South while denying those same rights to the black man in the other sections of the Nation.

Certainly the garnering of a vote is not so important to anyone as to warrant making the South the whipping boy of the Nation. We are proud people, and while the Federal lashes may be applied to our backs, they will never make us succumb to admitting the constitutionality of an unconstitutional measure.

The most incredible aspect of the whole argument is that while it is an admitted fact that my State and four other Southern States have met the 50-percent qualification in the last 1968 general election, the authors of the straight 5-year extension refuse to use the latest election figures, continuing to insist upon the use of the 1964 election results.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. RYAN).

Mr. RYAN. Mr. Chairman, the question before the House is whether or not the key provisions of the Voting Rights Act of 1965 shall be scrapped—whether or not the clock shall be turned back to the days when there was wholesale discrimination in the right to vote and no effective remedy.

A big point has been made about the fact that certain States had voting participation in the 1968 presidential election of a little more than 50 percent. This turnout reflects the impact of the act and should not be used to escape the very provisions which made it possible.

I refer the Members of this Committee to page 4 of the report, which points out that in many counties in these States, less than 50 percent of the voting-age blacks are registered.

In 1968, for example, in Alabama, less than 50 percent of those of voting age were registered in 27 of 67 counties. In five counties the black registration was less than 35 percent.

So it goes in Georgia, Mississippi, and South Carolina.

The report states at page 4:

> Although statewide totals do reflect increases, a substantial number of counties still disclose extremely low Negro registration. For example, in Alabama, less than 50 percent of Negroes of voting age are registered in 27 of 67 counties; in five counties, Negro registration is less than 35 percent; in Georgia, less than 50 percent of Negroes of voting age are registered in 68 of 152 counties; in 27 counties it is less than 35 percent; in Mississippi, less than 50 percent of Negroes of voting age are registered in 24 of 82 counties; in six counties it is less than 35 percent; in South Carolina, less than 50 percent of Negroes of voting age are registered in 23 of 46 counties; in three counties it is less than 35 percent.

It is important for us to continue section 4 and section 5 so that the right of people to vote will be protected in those areas.

The Ford substitute, which fits neatly into the administration's southern strategy, eliminates the automatic features of the 1965 act which have made it effective. By removing section 5, this retrogressive proposal opens the door wide to all of the old stratagems and maneuvers which were employed to deny access to the ballot box to black Americans.

If the administration were really concerned about protecting the right to vote nationwide, then it would urge extension of the 1965 act instead of using its power to cripple it. The Attorney General could have advocated an extension of the essential remedies combined with a complete ban on literacy tests. Why did he not? The Department of Justice easily could have drafted such legislation.

I have always opposed literacy tests in every part of the country. I first introduced legislation to abolish literacy tests during my first term in the 87th Congress, H.R. 8901, and I reintroduced legislation in the 88th Congress, H.R. 6029, and the 89th Congress, H.R. 2477. In this Congress I am a sponsor of H.R. 15146, along with the gentleman from Michigan (Mr. CONYERS). The chairman of the Judiciary Committee has assured us that the Judiciary Committee will hold hearings early in the next session of this Congress. Legislation banning literacy tests should be enacted in addition to the present Voting Rights Act. The vice of the Ford substitute is that it weakens the present law. For that reason it is opposed by the U.S. Commission on Civil Rights which said:

> The administration's substitute is a much weaker bill.

Roy Wilkins, director of the NAACP, who is also chairman of the Leadership Conference on Civil Rights, which comprises 125 national organizations, has written to Members of Congress urging defeat of the substitute.

Now is no time to retreat. The Voting Rights Act of 1965 should be extended.

The CHAIRMAN. The Chair recognizes the gentleman from Pennsylvania (Mr. COUGHLIN).

Mr. COUGHLIN. Mr. Chairman, we are dealing today perhaps with the most vital and basic and fundamental right of all; that is, the right to vote in this great land of ours.

Extension of the Voting Rights Act of 1965 will serve as our legal and moral commitment — necessary and unimpeachable—to the cause of equal rights.

While the administration proposal in the substitute contains some excellent points which should be studied carefully by the Judiciary Committee, it also contains one point that guts the enforcement provisions of the Voting Rights Act of 1965.

If we vote for the substitute today we can properly be accused of gutting the Voting Rights Act that guarantees this most fundamental civil right of all, the right to vote.

The CHAIRMAN. The Chair recognizes the gentleman from Colorado (Mr. ROGERS).

Mr. ROGERS of Colorado. Mr. Chairman, I yield to my colleague from Colorado (Mr. EVANS).

Mr. EVANS of Colorado. Mr. Chair-

man, I rise in opposition to the substitute and in support of the committee bill.

Why is it that the President, the minority leader and others want to let these sections of the 1965 Voting Rights Act expire?

To find the answer we should look at the effect of these sections during their existence over the last 4 years. We all know that the effect of these sections has been to allow and encourage more registration and more voting of Negroes in the last 4 years, in some States, than at any time since the Civil War? Is is as simple as that.

This has been true because the burden of proof has been placed upon States, rather than on individuals, under certain circumstances, to show that the laws, rules, and procedures of the State do not discriminate.

Well, then, who complains of these sections and why? First, those who believe the dignity and sovereignty of their State has been diminished by their operation. And, second, those who fear and do not want Negroes to register and vote.

Therefore, I must conclude that the purpose of the position urged by the President and by the minority leader, Mr. FORD, is to encourage those who would like to return to the old ways of discrimination to believe that they may begin again to reconstitute the disadvantages and impediments to the registration and voting of Negroes in their States.

Mr. ROGERS of Colorado. Mr. Chairman, may I point out that the substitute was introduced on July 9, 1969, and that the hearings in connection with this legislation had been concluded on July 1, before the committee recessed the substitute. No one had an opportunity to cross-examine witnesses in connection with the language of the proposal. Hence I believe it is not proper that we should adopt it at this time.

Mr. HUNT. Mr. Chairman, will the gentleman yield?

Mr. ROGERS of Colorado. I yield to the gentleman from New Jersey.

Mr. HUNT. Mr. Chairman, I want to express my support for H.R. 12695, the proposed "Nationwide Voting Rights Act of 1969."

We must, in my opinion, broaden the coverage of the Voting Rights Act of 1965. The bill reported by the Judiciary Committee (H.R. 4249) would merely keep in force for an additional 5 years the provisions of the 1965 act. In contrast, the bill which I support would afford nationwide protection of the right to vote.

A key feature of the nationwide bill is the provision suspending the use of all literacy tests. Perhaps, at one time there was justification for making literacy a prerequisite for registering to vote. However, there is no longer a proper basis for such a requirement. Radio and television are available to the overwhelming majority of households and give broad coverage to elections and to public questions generally. We are no longer dependent upon the printed page as the sole source of information regarding candidates and issues.

Most States have either abolished the literacy test or have never made the ability to read a precondition for voting. H.R. 12695 would suspend literacy tests in the 20 States which retain such a requirement. I submit that this measure embodies a proper concern for the rights of the undereducated, in whatever part of the United States they may reside.

I urge the adoption of H.R. 12695, the substitute nationwide voting rights bill offered by Mr. FORD.

The CHAIRMAN. The Chair recognizes the gentleman from Florida (Mr. GIBBONS).

Mr. GIBBONS. Mr. Chairman, I ask unanimous consent to yield my time to the gentleman from Washington (Mr. MEEDS).

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

Mr. TALCOTT. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. GIBBONS. I will use the time, then, Mr. Chairman.

The CHAIRMAN. The gentleman from Florida is recognized.

Mr. GIBBONS. Mr. Chairman, I guess I am about as southern as anyone in this Chamber by geography and by heritage, but I cannot support the substitute proposed by the gentleman from Michigan (Mr. GERALD R. FORD), though I must admit it looked rather attractive the first couple of times I looked at it.

Down in my part of the country, ever since I have been big enough to know anything about it, we have not been discriminating against the right of Negroes to vote. We have encouraged them to vote and to register. Our elections have been conducted honestly.

I regret that my other colleagues from some areas of the South find themselves in a bind, so they cannot meet the nationwide test of just 50 percent of the people in their own jurisdictions being registered and able to vote. I hope this deficiency will soon be remedied. In the meantime, I doubt that the Ford substitute will be of much help.

The CHAIRMAN. The Chair recognizes the gentleman from Washington (Mr. MEEDS).

Mr. MEEDS. Mr. Chairman, I rise in opposition to the substitute amendment.

I was particularly struck by the argument of the distinguished minority leader when he offered his substitute. If I correctly understand that argument, it was that the Attorney General could move in, that the Attorney General would have the power to do this and to do that.

Before we turn over this vast power and authority to the Attorney General I believe we ought to examine his track record in similar areas where he presently has such power and authority.

Mr. Chairman. on August 25 of this year the Attorney General had the power and authority to move into the 33 Mississippi cases and ask for immediate implementation of HEW plans. He did not do so. Instead, through his deputies he moved for a delay.

Mr. Chairman, on October 29, he had the power and authority to appear before the U.S. Supreme Court in Holmes against Alexander and speak out for immediate integration of 16 of the 33 Missisippi school districts. What did he do? He had his deputies appear and seek further delay.

To the great credit of the Supreme Court they disagreed unanimously with his position and the case was remanded to the Fifth Circuit Court with instruction of immediate integration.

Mr. Chairman, thereafter the Attorney General had the power and authority to appear before the Fifth Circuit Court and move for immediate integration of the 33 school districts in the consolidated cases. In all instances there were plans for integration before the court.

How did the Attorney General exercise this power and authority? He instructed his deputies to urge of the court further delay and further planning. This despite the holding of the U.S. Supreme Court in Holmes against Alexander requiring immediate integration. In fact the Supreme Court specifically set forth that the plans of the 16 districts before the court in that case could be implemented immediately.

Again the Attorney General found himself on the wrong side of a court order requiring haste in integration as the Fifth Circuit Court ordered immediate implementation of 26 of the 33 plans.

Further, Mr. Chairman, immediately after the decision in Holmes against Alexander the Attorney General had the power and authority to move in hundreds of cases before various courts in the South, where there are plans filed, for immediate implementation of those plans. This could be done by simply filing so-called "Holmes" motions. My latest information is that there have been a number of these motions prepared for nearly a month but still they have not been approved for filing by the Attorney General.

I submit that if we pass this substitute which gives the Attorney General new powers and authority in the field of civil rights and then sit back and wait for him to exercise that power and authority we may have a long wait.

The CHAIRMAN. The Chair recognizes the gentleman from California (Mr. CORMAN).

Mr. CORMAN. Mr. Chairman, the record is clear that the substitute, if adopted, would repeal necessary portions of the 1965 Voting Rights Act.

I call to your attention some rhetoric which we have heard here this afternoon. The distinguished minority leader said he does not want to keep those five States in servitude any longer. That sentiment was echoed by the gentleman from South Carolina (Mr. WATSON).

Mr. Chairman, for heaven's sake, is it to be considered servitude if we require States to let all their citizens vote regardless of their race or color? What kind of nonsense is that?

Mr. Chairman, the minority leader who proposed the Mitchell substitute tells us that in his opinion it does a better job of promoting voting rights than does the 1965 Voting Rights Act. That opinion is apparently shared by the gentleman from Louisiana (Mr. WAGGONNER). It is, however, vigorously opposed by Mr.

CELLER and Mr. MCCULLOCH and Father Hesburgh, president of the Civil Rights Commission, and by every element of the leadership conference, an association of organizations responsible for so much public support for civil rights legislation in the past.

Oh, yes, by way of postscript, the architect of this great substitute was, I understand, Attorney General Mitchell; architect of the "southern strategy" alluded to a few moments ago by the gentleman from Virginia (Mr. SCOTT). That "southern strategy" is the theory of some Republicans that if they turn their backs on racial justice, if they pander to segregation and discrimination, that they can somehow build a national party of majority stature. Such a tactic is immoral, unconscionable, patently destructive to the Nation, and in the long run, doomed to failure. It will, I am confident, be rejected by an overwhelming number of Americans, both Democrats and Republicans. The gentleman who proposes the substitute gives us a glowing report of the good faith of the States covered since 1965 by the voting rights bill. How naive does he take us to be? Where was that good faith in the 5 years before Federal intervention, 5 years during which black Americans were fired from their jobs, driven from their homes and assaulted and in some instances killed to prevent their exercising their right to vote. And where will that good faith be if the minority leader succeeds in destroying the law which has given those black Americans access to the ballot box. He knows and I know that it will be precisely the same good faith that was experienced before 1965.

Mr. Chairman, the gentleman from Connecticut (Mr. MESKILL) took exception to an earlier suggestion I made that one should look at the players in deciding which side to support in this controversy. With all due respects to my distinguished colleague from Connecticut, I was not referring to him. I did not have him in mind as one I look to for guidance in evaluating civil rights legislation.

I must say when I see the gentleman from Ohio (Mr. MCCULLOCH) and the gentleman from New York (Mr. CELLER) opposed by the coalition of the minority leader and the gentleman from Louisiana (Mr. WAGGONNER), I am really in no doubt about who is for racial justice and who is against it.

I urge rejection of the Ford substitute. Its passage would represent the first step backwards in a century in civil rights legislation.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. CELLER) to close debate.

Mr. CELLER. Mr. Chairman, what we want to do with reference to this amendment is to prevent color voting. We want voting to become colorblind.

Mr. Chairman, the Attorney General can go anywhere in the country he chooses and attack voting discrimination. Under the 1965 act he is authorized to institute suits to protect against impairment of the 15th amendment rights. But not a single suit has been started under that provision of the law. We specifically asked if he had started any suits and he said, "No."

Therefore, Mr. Chairman, the decision is plain. There has been voting discrimination in the areas where the triggering device does not apply. Therefore, as I see it, there is no need to change or alter the triggering device and adopt the substitute which has been offered by the gentleman from Michigan (Mr. GERALD R. FORD).

Mr. COLMER. Mr. Chairman, for nearly 5 years seven once sovereign States have been treated by the Federal Government as if they were conquered provinces.

An unprecedented and grievous invasion of the sovereignty of seven States out of the 21 States in the country at large that had some form of literacy test for voters in 1964. This deliberate discrimination was tailored, through a completely arbitrary, contrived "automatic triggering device," to fit only these seven States located in one region of our country. Although this "trigger" was based on conditions that prevailed in 1964 that no longer prevail, legislation is pending before us (H.R. 4249) that would expand and compound this inequality.

If this bill reported by the House Judiciary Committee should be adopted, a Negro in New York will continue to be subject to a literacy test while a Negro in Mississippi will not.

Its passage will mean that a Negro in one North Carolina county will continue to take a literacy test while a second Negro living a mile away in another North Carolina county will be exempt from such a test.

This is ridiculous. If the Federal Government is going to ban literacy tests, why should this not apply in all States?

The distinguished chairman of the Judiciary Committee attempts to brush this question aside by asserting that there is no discrimination in voting outside the States covered by the 1965 act. And yet on page 296 of the hearings of Subcommittee No. 5 of the House Committee on the Judiciary the following paragraph appears:

> Consider the 1968 voter turnout in the New York ghettoes. In the core ghetto of Harlem, Bedford-Stuyvesant, the South Bronx and Brownsville-Ocean Hill, six nearly all-Negro assembly districts (55th, 56th, 70th, 72nd, 77th, and 78th) cast an average of only 18,000 votes in 1968 despite 1960 Census eligible voter population of 45,000-55,000. On average, less than 25,000 voters were registered in these districts.

On the same page of the hearings Mr. CELLER acknowledged that parts of Bedford-Stuyvesant, Ocean Hill, and Brownsville were in his district.

On the other hand, in the Fifth Mississippi District of 16 counties five counties are reported to have 100-percent nonwhite registration. Only four counties are below 50 percent, ranging from 45.1 to 49.9 percent. This information comes from a U.S. Civil Rights Commission study called "Political Participation—1968."

Further, on page 278 of the hearings appears a statement that a higher percentage of Negroes voted in South Carolina and Mississippi than in Watts or Harlem—245,000 more people voted in Mississippi in 1968 than in 1964.

In the light of these recent figures how can anyone defend the Judiciary Committee's proposal to broaden and make even more harsh the patent inequality of the 1965 act?

If 1968 is substituted for 1964 in the arbitrary formula for coverage under the Voting Rights Act, several most interesting facts and possibilities arise:

First. Only Georgia and South Carolina had a vote in the 1968 election of less than 50 percent. The other five States now under the original act would no longer be covered.

Second. Several nearly all-Negro assembly districts in New York and probably in many other northern cities would fail to meet the standards set in section 4(b) of the 1965 act. It would be found that some had less than 50 percent of the persons of voting age registered on November 1, 1968, and that some voted less than 50 percent of such persons in the 1968 presidential election.

Maybe it was the possible consequences of such a speculation that prompted the following outburst of the distinguished chairman of the Judiciary during the hearings:

> Will you agree that the proposal offered in this amendment by the Administration would be replete with all manner and kind of difficulties and make it extremely hazardous as to whether it would pass the Congress?
>
> For example, powers sought by the Attorney General to go into every nook and cranny in every State to supervise—and that it is a word I use advisely—the registration and election and the procedures attendant thereupon, in every State of the Union.
>
> Do you think the Congress would stand for such an intrusion in every State of the Union?

This cry of outrage, which will be found on page 246 of the hearings, is very revealing in several respects:

First, it acknowledges, possibly unconsciously, the political nature of the whole voting rights proposal. The only conclusion I can draw from this quotation is that the distinguished chairman feels that, while Northern and Western Congressmen are perfectly willing to invade the sovereignty of Southern States, they would not stand for such an intrusion in their own States, and this would make passage of a new voting rights bill "extremely hazardous." The position of the distinguished chairman would seem to reflect upon the sense of justice of our colleagues from the North and the West.

Second, it puts into words, possibly better than I could, the resentment that those of us who represent Southern States feel toward legislation authorizing the Attorney General, whoever he may be at the moment, to "go into every nook and cranny" of our States to supervise the registration and election and the procedures attendant thereupon. The gentleman from New York has made a more persuasive argument than I could against this whole concept of treating sovereign States as if they were conquered provinces.

I cannot believe that our colleagues from regions outside the South subscribe to a policy of unequal treatment by the

Federal Government of States and citizens of these United States.

AN ALTERNATIVE

On the other hand, the administration bill, H.R. 12695, has a paramount virtue: it utilizes a nationwide approach, thereby treating every State and every citizen, wherever he may reside, equally.

In brief, this bill has the following provisions:

First. A nationwide ban on literacy tests until January 1, 1974.

Second. Nationwide restrictions on residency requirements for presidential elections.

Third. Attorney General to have nationwide authority to dispatch voting examiners and observers.

Fourth. Attorney General to have nationwide authority to start voting rights lawsuits to freeze discriminatory voting laws.

Fifth. President to appoint a national advisory commission to study voting discrimination and other corrupt practices.

Whether one subscribes in full to each and every one of these provisions, certainly one must concede that it strives for equality, a very worthy objective that does not characterize the Judiciary Committee's bill.

OUT-OF-DATE FIGURES AND HEARSAY

I want to comment very briefly on some arguments made in support of the committee's bill, H.R. 4249.

When all other arguments fail them, the proponents refer to a study of the U.S. Commission on Civil Rights called "Political Participation." They present its "findings" as gospel truth, whereas even the most cursory perusal of this publication reveals that its conclusions are based upon out of date or completely unofficial figures and hearsay "facts."

This questionable basis is made clear by the following:

The publication was issued in May 1968, before conventions were held and before congressional and presidential races.

It uses 1960 census figures and figures furnished by unofficial and biased organizations. One example of its sources is V.E.P. News, September 1967.

The footnotes show plainly the hearsay nature of various charges made.

APATHY AND PRESSURE ORGANIZATIONS

Finally, I would raise this question: How does one explain an average turnout of 18,000 voters in 1968 in nearly all-Negro assembly districts in New York City that had an eligible voter population according to the 1960 census of 45,000 to 55,000? Or a 12-percent turnout in a District of Columbia School Board election?

As indicated above, the figures of the 1960 census are not up to date. But does that explain the low turnout? Or is it apathy? Or possibly lack of organized drives by such organizations as the NAACP or the SCLC?

Is the real reason for a low turnout in New York City different from a low turnout in Mississippi in 1964?

Mr. Chairman, this action which the proponents of this bill are advocating reminds me of my knowledge of history following the unfortunate fratricidal strife between the States and the aftermath thereof. I recall that the Congress control at that time, by the so-called North which had prevailed in that strife, made fiery speeches and attempted, in some instances succeeded, in enacting legislation to punish the Southern States. As I have listened to this debate, I have been impressed by the continuous reference to the South as the aggressor in denying the right to all citizens of the United States. In fact, as the debate progressed and some of my so-called northern friends addressed the House, I was thankful that in those days of punitive legislation we had Thaddeus Stevens instead of some of these present-day legislators.

I have already attempted to show the lack of consistency in the positions taken by some of the advocates of continuing this iniquitous bill. But I was amazed when I heard my friend and colleague, a member of my committee, the very able and eloquent gentleman from Illinois (Mr. ANDERSON), raise a question of the constitutionality of making his administration's bill the law and I quote him, as follows:

> I think there is grave constitutional doubts as to whether or not you can simply ban these tests all over the country without any reference at all to whether or not they have ever been used as a matter of fact to attempt to discriminate against somebody in voting because of his race or because of his color.

Knowing him as I do, as a student of the law and the Constitution, I repeat, I am amazed that he should take such a position. Conversely, I would think that the present law, which he desires to perpetuate—namely making the provisions of the law applicable only to a few States or its citizens, would raise the question of constitutionality rather than making it applicable to all the States.

Mr. Chairman, and that brings me to another point. I asked my friend the very distinguished gentleman from New York (Mr. CELLER), when he was before my Committee on Rules requesting a rule to bring the bill to the floor, when the unfortunate War Between the States was going to end. We in the South, in spite of that strife of more than a hundred years ago, are members of the Union. Whatever might have been the merits of the position of the Southern States, we are now members of the sisterhood of the States, and desire to continue to be so. It would seem to me that, after more than a century, this division should end. This is regional legislation aimed at a particular section of the country and is certainly not in line with the desire to have a reunited country. Regional legislation is divisive. And, certainly with all the problems that confront us, both upon domestic and foreign fronts, we should be united. Therefore, Mr. Chairman, I decry the further efforts to divide this country by a continuation of this type of legislation.

Finally, Mr. Chairman, while I do not subscribe to doctrine, as set out in the administration's bill providing for repeal of literacy tests in any or all of the States, I do feel that if it is to be applicable to a portion of our States, then it should be made applicable to all.

Therefore, I support the bill advocated by President Nixon and sponsored by the able gentleman from Michigan, the minority leader, but I must confess that I do so on the basis that it is the lesser of evils.

The CHAIRMAN. The time of the gentleman from New York has expired. All time has expired.

The question is on the amendment in the nature of a substitute offered by the gentleman from Michigan (Mr. GERALD R. FORD).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. GERALD R. FORD. Mr. Chairman, I demand tellers.

Tellers were ordered, and the Chairman appointed as tellers, Mr. GERALD R. FORD and Mr. ROGERS of Colorado.

The Committee divided, and the tellers reported that there were—ayes 189, noes 165.

So the substitute amendment was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose, and the Speaker having resumed the Chair, Mr. BOLLING, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4249) to extend the Voting Rights Act of 1965 with respect to the discriminatory use of tests and devices, pursuant to House Resolution 714, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

PARLIAMENTARY INQUIRY

Mr. CELLER. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state his parliamentary inquiry.

Mr. CELLER. Mr. Speaker, I am sure that Members would like to know what the status of the bill will be, if the substitute bill is defeated on rollcall vote.

The SPEAKER. In response to the parliamentary inquiry, if the situation arises where the amendment is rejected, then the matter pending before the House will be the bill reported out of the Committee on the Judiciary.

The question is on the amendment.

Mr. CELLER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas, 208, nays 204, not voting 21, as follows:

[Roll No. 316]

YEAS—208

Abbitt	Blanton	Bush
Abernethy	Boggs	Byrnes, Wis.
Adair	Bow	Cabell
Alexander	Bray	Caffery
Anderson, Tenn.	Brinkley	Camp
	Brock	Carter
Andrews, Ala.	Broomfield	Casey
Arends	Brotzman	Cederberg
Ashbrook	Brown, Mich.	Chamberlain
Aspinall	Brown, Ohio	Chappell
Ayres	Broyhill, N.C.	Clancy
Baring	Broyhill, Va.	Clausen, Don H.
Belcher	Buchanan	
Berry	Burke, Fla.	Clawson, Del
Betts	Burleson, Tex.	Collier
Bevill	Burlison, Mo.	Collins
Blackburn	Burton, Utah	Colmer

Corbett
Cramer
Crane
Cunningham
Daniel, Va.
Davis, Ga.
Davis, Wis.
Delaney
Denney
Dennis
Derwinski
Devine
Dickinson
Dorn
Dowdy
Downing
Duncan
Edwards, Ala.
Edwards, La.
Erlenborn
Eshleman
Evins, Tenn.
Fisher
Flowers
Flynt
Ford, Gerald R.
Foreman
Fountain
Frey
Fuqua
Galifianakis
Gettys
Goldwater
Goodling
Green, Oreg.
Griffin
Gross
Grover
Gubser
Hagan
Haley
Hall
Hammer-schmidt
Hansen, Idaho
Harsha
Hastings
Hébert
Henderson
Hogan
Hull
Hunt
Ichord
Jarman
Johnson, Pa.
Jonas
Jones, Ala.
Jones, N.C.
Kee
King
Kleppe
Kuykendall
Landgrebe
Landrum
Langen
Latta
Lennon
Lloyd
Lujan
Lukens
McClure
McEwen
McMillan
Mahon
Mann
Marsh
Martin
Mathias
May
Mayne
Meskill
Michel
Miller, Ohio
Mills
Minshall
Mize
Montgomery
Morton
Myers
Natcher
Nelsen
Nichols
O'Neal, Ga.
Passman
Pettis
Pickle
Poage
Poff
Pollock
Preyer, N.C.
Price, Tex.
Pryor, Ark.
Quie
Quillen
Rarick
Reid, Ill.
Rhodes
Rivers
Roberts
Rogers, Fla.
Roudebush
Ruth
Satterfield
Saylor
Schadeberg
Scherle
Scott
Sebelius
Shriver
Skubitz
Slack
Smith, Calif.
Snyder
Springer
Steiger, Ariz.
Steiger, Wis.
Stephens
Stubblefield
Stuckey
Talcott
Taylor
Teague, Calif.
Thompson, Ga.
Thomson, Wis.
Ullman
Waggonner
Wampler
Watkins
Watson
Watts
Weicker
Whalley
Whitehurst
Whitten
Wiggins
Williams
Wilson, Bob
Winn
Wold
Wright
Wyatt
Wydler
Wylie
Wyman
Young
Zion
Zwach

NAYS—204

Adams
Addabbo
Albert
Anderson, Calif.
Anderson, Ill.
Annunzio
Ashley
Barrett
Beall, Md.
Bell, Calif.
Bennett
Biaggi
Biester
Bingham
Blatnik
Boland
Bolling
Brademas
Brasco
Brooks
Brown, Calif.
Burke, Mass.
Burton, Calif.
Button
Byrne, Pa.
Carey
Celler
Chisholm
Clark
Clay
Cleveland
Cohelan
Conable
Conte
Conyers
Corman
Coughlin
Cowger
Culver
Daddario
Daniels, N.J.
de la Garza
Dellenback
Dent
Diggs
Dingell
Donohue
Dulski
Dwyer
Eckhardt
Edmondson
Edwards, Calif.
Esch
Evans, Colo.
Fallon
Farbstein
Feighan
Findley
Fish
Flood
Foley
Ford, William D.
Fraser
Frelinghuysen
Friedel
Fulton, Pa.
Gallagher
Garmatz
Gaydos
Giaimo
Gibbons
Gilbert
Gonzalez
Gray
Green, Pa.
Griffiths
Gude
Halpern
Hamilton
Hanley
Hanna
Hansen, Wash.
Harrington
Harvey
Hathaway
Hawkins
Hechler, W. Va.
Heckler, Mass.
Helstoski
Hicks
Holifield
Horton
Howard
Hungate
Hutchinson
Jacobs
Johnson, Calif.
Karth
Kastenmeier
Kazen
Keith
Kluczynski
Koch
Kyros
Leggett
Long, Md.
Lowenstein
McCarthy
McClory
McCloskey
McCulloch
McDade
McDonald, Mich.
McFall
McKneally
Macdonald, Mass.
MacGregor
Madden
Matsunaga
Meeds
Melcher
Mikva
Miller, Calif.
Minish
Mink
Mollohan
Monagan
Moorhead
Morgan
Morse
Mosher
Moss
Murphy, Ill.
Murphy, N.Y.
Nedzi
Nix
Obey
O'Hara
O'Konski
Olsen
Ottinger
O'Neill, Mass.
Patman
Patten
Pelly
Pepper
Perkins
Philbin
Pike
Pirnie
Podell
Price, Ill.
Pucinski
Railsback
Randall
Rees
Reid, N.Y.
Reuss
Riegle
Robison
Rodino
Roe
Rogers, Colo.
Rooney, N.Y.
Rooney, Pa.
Rosenthal
Rostenkowski
Roth
Roybal
Ryan
St Germain
St. Onge
Sandman
Scheuer
Schwengel
Shipley
Sisk
Smith, Iowa
Smith, N.Y.
Stafford
Staggers
Stanton
Steed
Stokes
Stratton
Sullivan
Symington
Taft
Thompson, N.J.
Tiernan
Tunney
Udall
Van Deerlin
Vanik
Vigorito
Waldie
Whalen
White
Widnall
Wilson, Charles H.
Wolff
Yates
Yatron
Zablocki

NOT VOTING—21

Andrews, N. Dak.
Cahill
Dawson
Eilberg
Fascell
Fulton, Tenn.
Hays
Hosmer
Jones, Tenn.
Kirwan
Kyl
Lipscomb
Mailliard
Powell
Purcell
Reifel
Ruppe
Schneebeli
Teague, Tex.
Utt
Vander Jagt

So the amendment was agreed to.

The Clerk announced the following pairs:

On the vote:

Mr. Purcell for, with Mr. Andrews of North Dakota against.

Mr. Lipscomb for, Mr. Fascell against.

Mr. Teague of Texas for, with Mr. Eilberg against.

Mr. Utt for, with Mr. Cahill against.

Mr. Hosmer for, with Mr. Schneebeli against.

Until further notice:

Mr. Kirwan with Mr. Reifel.

Mr. Fulton of Tennessee with Mr. Ruppe.

Mr. Hays with Mr. Mailliard.

Mr. Kyl with Mr. Vander Jagt.

Mr. Dawson with Mr. Powell.

Mr. CORBETT changed his vote from "nay" to "yea."

The result of the vote was announced as above recorded.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken, and the Speaker announced that the ayes appeared to have it.

PARLIAMENTARY INQUIRY

Mr. EDWARDS of California. Mr. Speaker, a parliamentary inquiry: has a motion to recommit been made?

The SPEAKER. The Chair will state that a motion to recommit comes too late at this stage. The Chair has already put the question on the passage of the bill and announced that the ayes appeared to have it.

Mr. CELLER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 234, nays 179, not voting 20, as follows:

[Roll No. 317]

YEAS—234

Abernethy
Adair
Addabbo
Alexander
Anderson, Tenn.
Andrews, Ala.
Arends
Ashbrook
Aspinall
Ayres
Baring
Beall, Md.
Belcher
Bell, Calif.
Bennett
Berry
Betts
Bevill
Blackburn
Blanton
Boggs
Bow
Bray
Brinkley
Brock
Broomfield
Brotzman
Brown, Mich.
Brown, Ohio
Broyhill, N.C.
Broyhill, Va.
Buchanan
Burke, Fla.
Burlison, Mo.
Burton, Utah
Bush
Byrnes, Wis.
Cabell
Camp
Carter
Casey
Cederberg
Chamberlain
Chappell
Clancy
Clark
Clausen, Don H.
Clawson, Del
Cleveland
Collier
Collins
Colmer
Conable
Corbett
Cowger
Cramer
Crane
Cunningham
Daniel, Va.
Davis, Wis.
de la Garza
Delaney
Dellenback
Denney
Dennis
Dent
Derwinski
Devine
Dickinson
Dorn
Downing
Duncan
Dwyer
Edwards, Ala.
Edwards, La.
Erlenborn
Eshleman
Evins, Tenn.
Flowers
Flynt
Ford, Gerald R.
Foreman
Fountain
Frelinghuysen
Frey
Fulton, Pa.
Fuqua
Galifianakis
Garmatz
Gettys
Gibbons
Goldwater
Goodling
Gray
Green, Oreg.
Griffin
Gross
Grover
Gubser
Haley
Hall
Hamilton
Hammer-schmidt
Hansen, Idaho
Harsha
Hastings
Henderson
Hogan
Hull
Hunt
Hutchinson
Ichord
Jacobs
Jarman
Johnson, Pa.
Jonas
Jones, Ala.
Jones, N.C.
Kee
Keith
King
Kleppe
Kuykendall
Landgrebe
Landrum
Langen
Latta
Lennon
Lloyd
Lujan
Lukens
McCloskey
McClure
McDade
McDonald, Mich.
McEwen
McKneally
McMillan
MacGregor
Mahon
Mann
Marsh
Martin
Mathias
May
Mayne
Meskill
Michel
Miller, Ohio
Mills
Minshall
Mize
Mollohan
Montgomery
Morton
Myers
Natcher
Nelsen
Nichols
O'Konski
O'Neal, Ga.
Pepper
Pettis
Pickle
Pirnie
Poff
Pollock
Preyer, N.C.
Price, Tex.
Pryor, Ark.
Quie
Quillen
Railsback
Reid, Ill.
Rhodes
Rivers
Roberts
Rogers, Fla.
Roth
Roudebush
Ruth
Sandman
Satterfield
Saylor
Schadeberg
Scherle
Schwengel
Scott
Sebelius
Shipley
Shriver
Sikes
Skubitz
Slack
Smith, Calif.
Smith, Iowa
Snyder
Springer
Stafford
Steiger, Wis.
Stephens
Stubblefield
Stuckey
Talcott
Taylor
Teague, Calif.
Thompson, Ga.
Thomson, Wis.
Ullman
Waggonner
Wampler
Watkins
Watson
Watts
Weicker
Whalley
White
Whitehurst
Whitten
Widnall
Wiggins
Williams
Wilson, Bob
Winn
Wright
Wyatt
Wydler
Wylie
Wyman
Young
Zion
Zwach

NAYS—179

Abbitt
Adams
Albert
Anderson, Calif.
Anderson, Ill.
Annunzio
Ashley
Barrett
Biaggi
Biester
Bingham
Blatnik
Boland
Bolling
Brademas
Brasco
Brooks
Brown, Calif.
Burke, Mass.
Burleson, Tex.
Burton, Calif.
Button
Byrne, Pa.
Caffery
Carey
Celler
Chisholm
Clay
Cohelan
Conte
Conyers
Corman
Coughlin
Culver
Daddario
Daniels, N.J.
Davis, Ga.
Diggs
Dingell
Donohue
Dowdy
Dulski
Eckhardt
Edmondson
Edwards, Calif.
Esch
Evans, Colo.
Fallon
Farbstein
Feighan
Findley
Fish
Fisher
Flood
Foley
Ford, William D.
Fraser
Friedel
Gallagher
Gaydos
Giaimo
Gilbert
Gonzalez
Green, Pa.
Griffiths
Gude
Hagan
Halpern
Hanley
Hanna
Hansen, Wash.
Harrington
Harvey
Hathaway
Hawkins
Hébert
Hechler, W. Va.
Heckler, Mass.
Helstoski
Hicks
Holifield
Horton
Howard
Hungate
Johnson, Calif.

Karth	Nedzi	Roybal
Kastenmeier	Nix	Ryan
Kazen	Obey	St Germain
Kluczynski	O'Hara	St. Onge
Koch	Olsen	Scheuer
Kyros	O'Neill, Mass.	Sisk
Leggett	Ottinger	Smith, N.Y.
Long, La.	Passman	Staggers
Long, Md.	Patman	Stanton
Lowenstein	Patten	Steed
McCarthy	Pelly	Steiger, Ariz.
McClory	Perkins	Stokes
McCulloch	Philbin	Stratton
McFall	Pike	Sullivan
Macdonald, Mass.	Poage	Symington
Madden	Podell	Taft
Matsunaga	Price, Ill.	Teague, Tex.
Meeds	Pucinski	Thompson, N.J.
Melcher	Randall	Tiernan
Mikva	Rarick	Tunney
Miller, Calif.	Rees	Udall
Minish	Reid, N.Y.	Van Deerlin
Mink	Reuss	Vanik
Monagan	Riegle	Vigorito
Moorhead	Robison	Waldie
Morgan	Rodino	Whalen
Morse	Roe	Wilson, Charles H.
Mosher	Rogers, Colo.	Wolff
Moss	Rooney, N.Y.	Yates
Murphy, Ill.	Rooney, Pa.	Yatron
Murphy, N.Y.	Rosenthal	Zablocki
	Rostenkowski	

NOT VOTING—20

Andrews, N. Dak.	Hays	Powell
Cahill	Hosmer	Purcell
Dawson	Jones, Tenn.	Reifel
Eilberg	Kirwan	Ruppe
Fascell	Kyl	Schneebeli
Fulton, Tenn.	Lipscomb	Utt
	Mailliard	Vander Jagt

So the bill was passed.

The clerk announced the following pairs:

On this vote:

Mr. Purcell for with Mr. Andrews of North Dakota against.
Mr. Utt for with Mr. Eilberg against.
Mr. Lipscomb for with Mr. Dawson against.
Mr. Hosmer for with Mr. Kirwan against.

Until further notice:

Mr. Kyl with Mr. Fascell.
Mr. Ruppe with Mr. Mailliard.
Mr. Hays with Mr. Schneebeli.
Mr. Reifel with Mr. Vander Jagt.

Mr. HOLIFIELD changed his vote from "yea" to "nay."

Mr. HAMILTON changed his vote from "nay" to "yea."

Mr. HECHLER of West Virginia changed his vote from "yea" to "nay."

Mr. BROYHILL of Virginia changed his vote from "nay" to "yea."

Mr. COUGHLIN changed his vote from "yea" to "nay."

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CELLER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to extend their remarks and include extraneous matter on the bill just passed.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 2208. An act for the relief of James Hideaki Buck;

H.R. 4560. An act for the relief of Sa Cha Bae;

H.R. 5133. An act for the relief of Pagona Anomerianaki;

H.R. 6600. An act for the relief of Panagiotis, Georgia, and Constantina Malliaras;

H.R. 10156. An act for the relief of Lidia Mendola; and

H.R. 11503. An act for the relief of Wylo Pleasant, doing business as Pleasant Western Lumber Co. (now known as Pleasant's Logging and Milling, Inc.).

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 13270. An act to reform the income tax laws.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 13270) entitled "An act to reform the income tax laws, requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. LONG, Mr. ANDERSON, Mr. GORE, Mr. TALMADGE, Mr. BENNETT, Mr. CURTIS and Mr. MILLER to be the conferees on the part of the Senate.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 13763) entitled "An act making appropriations for the legislative branch for the fiscal year ending June 30, 1970, and for other purposes."

The message also announced that the Senate agrees to the House amendment to the Senate amendment numbered 37.

SUPPLEMENTAL APPROPRIATIONS, 1970

Mr. MAHON, from the Committee on Appropriations, reported the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes (Rept. No. 91–747), which was read a first and second time, and referred to the Committee of the Whole House on the State of the Union and ordered to be printed.

Mr. BOW reserved all points of order on the bill.

Mr. MAHON. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes; and pending that motion, Mr. Speaker, I ask unanimous consent that general debate on this measure be limited to not to exceed 30 minutes, the time to be equally divided and controlled by the gentleman from Ohio (Mr. BOW) and myself.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mr. BOW. Mr. Speaker, reserving the right to object, I realize the hour is late, and that Members would like to leave, but it seems to me on a supplemental bill of this size that general debate of 30 minutes is quite short. I would ask my chairman if he would ask for an hour of debate, and if we do not take it, fine, but it seems to me some Members may want to be heard on it, and it seems to me we should have some time for Members to speak if they care to.

Mr. MAHON. Mr. Speaker, I modify my request to ask that the time for general debate be not to exceed 1 hour, the time to be equally divided and controlled by the gentleman from Ohio and myself.

Mr. BOW. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER. The question is on the motion offered by the gentleman from Texas.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 15209, with Mr. O'HARA in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the unanimous consent agreement, the gentleman from Texas (Mr. MAHON) will be recognized for 30 minutes, and the gentleman from Ohio (Mr. BOW) will be recognized for 30 minutes.

The chair recognizes the gentleman from Texas.

Mr. MAHON. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. GUBSER).

(By unanimous consent, Mr. GUBSER was allowed to speak out of order.)

SUBCOMMITTEE INVESTIGATION OF MYLAI INCIDENT

Mr. GUBSER. Mr. Chairman, I am currently serving as a member of the Investigating Subcommittee of the Armed Services Committee, which is looking into the Army's handling and reporting of events connected with the so-called Mylai incident. In order to be impeccably responsible and completely objective, we as members of the committee have made no statements to the press because we have not heard all the evidence.

Today, on the first page of the Evening Star, I read an article by James Doyle which reads as follows in part:

A helicopter pilot has told members of the House Armed Services Committee that he trained his guns on American soldiers.

Later in the article it says:

He told the congressmen that when he landed he got in an argument with the platoon leader on the scene.

Mr. Chairman, I have been present at every single meeting of these hearings, and I say to you on my honor as a member of the U.S. House of Representatives that these statements are not true.

Mr. ICHORD. Mr. Chairman, will the gentleman yield?

Mr. GUBSER. I yield to the gentleman from Missouri.

Mr. ICHORD. Mr. Chairman, as one

who was also present, I concur with the distinguished gentleman from California. The statement in the article is false.

Mr. GUBSER. Mr. Chairman, I thank the gentleman from Missouri.

Mr. GROSS. Mr. Chairman, would the gentleman yield to clarify, before he starts consideration of the bill. We are dealing now with a committee print which carries no number, but the committee print of the report shows "No. 91–747." Is that correct? Is there a printed numbered bill?

Mr. MAHON. Mr. Chairman, the number of the bill is H.R. 15209, which has been reported and filed. The bill is available on this table and on the table on the other side of the aisle and in the regular places near the Speaker's table. And so is the report.

The gentleman has a copy. It was not parliamentarily possible for us to file it earlier today during consideration of the voting rights bill, so there was some delay in getting the number.

This is the final supplemental bill, and the copy the gentleman has is what is now before us.

Mr. GROSS. There is nothing else to supersede what we have here?

Mr. MAHON. The gentleman is entirely correct.

Mr. GROSS. I thank the gentleman.

SUMMARY OF THE BILL

Mr. MAHON. Mr. Chairman, this supplemental bill is the final appropriation bill of the year to be presented to the House. It concludes the appropriations business of the House except, of course, for the consideration and disposition of conference reports on several bills pending in conference or in the other body.

If Members will turn to page 2 of the committee report, they can see at a glance the major features of the pending bill. It is a relatively modest supplemental bill. Something between 75 and 80 percent of the total in the bill relates in one way or another to the effects of Hurricane Camille last August. Briefly:

The committee considered estimates for new budget—obligational—authority aggregating $298,547,261 as contained in House Document No. 91–199, of November 24, and Senate Document No. 91–33, of September 15, the latter containing an estimate of $8,380,000 not previously acted upon.

The committee recommends a total of $235,057,761 in the accompanying bill, a reduction of $63,489,500, or about 21 percent.

The committee actions on the various budget requests are explained in the applicable chapters of the report. But in summary may I say that of the $235,057,761 new budget authority in the bill, $175,000,000, or about 75 percent of the total, is for disaster relief loans under the Small Business Administration to supply replacement of funds drawn down largely on account of the devastation caused by Hurricane Camille. There are, in other accounts in the bill, about $7,958,000 also associated with Hurricane Camille damage in August, 1969.

About 6 percent of the total, or $15,323,261 is in the bill for claims and judgments.

Another 4 percent—$9,350,000—is in the bill for law enforcement in the Treasury Department, primarily in connection with control of smuggling of marihuana and narcotics.

About 3 percent of the total of the bill, $7,500,000 is for additional construction of the John F. Kennedy Center for the Performing Arts.

Nearly 6 percent of the total, or $13,500,000 is for accelerated development of the Trust Territory of the Pacific Islands and for Indian education and welfare services.

In respect to the item for claims and judgments, I anticipate that an amendment will be offered by the gentleman from Oklahoma (Mr. EDMONDSON), increasing the amount for judgments, relating to an Indian Claims Commission award. I am advised that a budget estimate for that is on its way to the Capitol.

This is a relatively small supplemental. It does have a number of items in it. The great bulk of the total recommended is for emergencies of one sort or another, including additional requirements brought about by Hurricane Camille of last August.

Mr. HALL. Mr. Chairman, will the gentleman yield?

KENNEDY CENTER FOR PERFORMING ARTS

Mr. MAHON. I yield to the gentleman from Missouri.

Mr. HALL. Mr. Chairman, I appreciate the gentleman's statement and I certainly appreciate his yielding to me. I appreciate his coming to me yesterday and providing me in advance with a copy of the committee print. I understand that this is what is under current consideration.

The last statement the gentleman made I can only paraphrase. After explaining the main items he said that there were only lesser amounts outside of the emergencies and outside of the budget and so forth, which bothers me a little bit based on what my study has revealed in the bill under chapter 3, Department of the Interior and Related Agencies, lines 7 through 18, for additional expenses to enable the Board of Trustees of the John F. Kennedy Center for the Performing Arts to carry out the purposes of the act of September 2, 1958.

Does the gentleman consider this an emergency or a matter of deficiency or properly in a supplemental appropriation bill to be considered here at this time of night? Is it still presided over by the same gentlemen, "Mr. R. Stevens," "Mr. B. Keeney," or whatever the name is, the gentleman who put out all of the grants for the arts center for the mating dance of the butterfly on the Amazon, and the study of "architecture" by the gentleman from Santa Barbara, the University of California?

Is this what we are adding $7.5 million on, and must these funds be matched?

Those are quite a number of questions, but I am amazed to find this in a supplemental or deficiency appropriation bill.

Mr. MAHON. In response to the gentleman, the Kennedy Center has sustained a cost overrun of considerable magnitude. The building has been under construction for some time. The Congress has just recently approved the authorization of these additional funds, which are supposed to finish the structure.

President Nixon has sent up a budget request for $7,500,000, representing this to be an emergency, because if the funds are not made available to proceed there will be a slowdown in the work and an accumulation of additional costs.

While the committee realized this was a matter which would be somewhat controversial, we saw no other alternative under all the circumstances than to provide the funds which had been requested. This is to be the last installment.

Mr. HALL. Mr. Chairman, if the gentleman will yield further, I realize that over the vote of some of us it was authorized on September 2. In fact, I think there was a little more authorized than this. But the distinguished gentleman, the chairman of the Committee on Appropriations, is telling me that we have overruns in the arts and humanities and in the cultural area just as we have overruns in the military and industrial production? Is a fair figure of 43 percent to which the gentleman referred correct insofar as this matter is concerned?

Mr. MAHON. I referred to that overrun a few days ago, it is 43 percent. As you know, and as the committee report on page 13 states, these funds would be matched by private contributions.

Mr. HALL. Mr. Chairman, would the gentleman go a little further and advise us whether those same men that were in charge—that were put in charge originally—have been rather loose with the grants and loose with the overruns as well as loose with the construction? Referring the gentleman again to my first question, can the gentleman answer whether in his opinion this is a true emergency or not?

Mr. MAHON. Under the circumstances I think it could be called an actual emergency.

Mr. GRAY. Mr. Chairman, will the gentleman from Texas yield to me for the purpose of responding to the question which has been propounded by the gentleman from Missouri (Mr. HALL)?

Mr. MAHON. I yield to the gentleman.

Mr. GRAY. If I may have the attention of the gentleman from Missouri, I would like to state that the overrun at the John F. Kennedy Center is being investigated by the General Services Administration as well as the Department of Justice. The matter is being looked into at the request of our Committee on Public Works and the very distinguished minority leader, the gentleman from Michigan (Mr. FORD), who raised a question about this when the authorizing committee brought out the bill. If there is any wrongdoing in the overruns of cost, it certainly will be brought out. However, as the gentleman knows and has been pointed out, this money is needed because the building is 61 percent complete and it will cost another $10 million if they stop construction at this point. So, we must go ahead and advance it although we may be able to recoup some of this overrun.

Mr. HALL. I note that the gentleman from Illinois is dressed in formal attire and, perhaps, he is planning to attend a function at the Center, and I appreciate

this. I am glad though that we are looking into this overrun. I do not wish to be characterized as one being against culture, but the question is, why is it an emergency.

Second, why does the Federal taxpayer have to pick up the tab for a mistake made by someone else, first in the selection of the site and, second, dealing with the contracts during a period of time when labor costs are mounting and are spiraling, during an inflationary period?

It looks to me like there has been a serious question of judgment with reference to this matter.

Would not the gentleman agree with me that an amendment would be in order to take this out of the supplemental appropriation bill?

Mr. GRAY. Mr. Chairman, if the gentleman from Texas will yield further, the original authorizing legislation called for a 50–50 matching basis; that is, for every dollar of private contribution, we would put up 1 Federal dollar. This is a bargain. I wish all buildings were built this way for the Federal Government.

Mr. HALL. Mr. Chairman, if the gentleman will let me correct the record right there, the original legislation which we passed—and I was here—we were promised by many people that it would never cost the Federal taxpayer 1 cent because the funds would be donated and collected and raised in any manner that anyone else raises such private funds, but they came back the second time and secured additional funds over the vote of many Members of this body, especially in view of the matching fund question. Is that the history of the situation?

Mr. GRAY. I stand corrected. The 1958 act which was the original act was based upon private contributions alone. However, after President Kennedy was killed, in 1963, the Congress did set up a matching formula. This is the only national monument to President Kennedy. The overruns were $15 million and all we did was to authorize $7.5 million in order to keep our commitment.

Mr. MINSHALL. Mr. Chairman, will the gentleman yield?

Mr. MAHON. I yield to the gentleman from Ohio.

Mr. MINSHALL. The gentleman realizes as a helicopter pilot and one who can operate in all directions—up and down and back and forth—I would like to ask the gentleman: How does one recoup overruns? If you solve this, you have got it made.

Mr. GRAY. Mr. Chairman, if the gentleman will yield further, I do not want to take too much time but, actually, what happened was that the architects made an error in judgment in estimating the cost of the project. Second, after the site was selected we had the advent of the jet service at National Airport and they had to go in and restrengthen the steel supporting structure because it is in the flyway of National Airport; both for sound and strength.

Some have said that the architect made a mistake and, therefore, the Department of Justice is now investigating to see whether or not they did make a mistake, and if they did, some of this cost will be charged to them.

Mr. ROGERS of Florida. Mr. Chairman, will the gentleman yield?

Mr. MAHON. I yield to the gentleman from Florida.

ALASKAN PIPELINE

Mr. ROGERS of Florida. Mr. Chairman, I want to commend the committee and particularly the gentlewoman from Washington State for cooperating with the Committee on Merchant Marine and Fisheries and especially the Fish and Wildlife Subcommittee with reference to a question which has been raised in our hearings dealing with the problem that a pipeline would be built by the oil companies across Alaska and the territory of the United States.

And all of the expense attendant upon that was going to have to be borne by the taxpayers to take care of those reports and those inspections, and investigations as to the effect on the wildlife, and we do not believe that ought to be done, it ought to be borne by the pipeline company. And we see that language is in the committee report which I know the gentlewoman from Washington (Mrs. HANSEN) has been most responsible for, and I want to commend the gentlewoman for that, and also the committee, and that they will continue to see that in these negotiations the proper fees for reimbursement purposes are made.

Again I commend the gentlewoman, and also the Committee on Appropriations, and I hope that they will follow it up, as I am sure that they will.

Mrs. HANSEN of Washington. Mr. Chairman, will the gentleman yield?

Mr. MAHON. I will yield to the gentlewoman from Washington, who chairs the subcommittee that heard this item.

Mrs. HANSEN of Washington. Mr. Chairman, may I say to the distinguished gentleman from Florida that we have followed upon the report and, as a result of our hearings, received a letter from Under Secretary Train, the essence of which says:

> The Solicitor has advised me that, to the extent this Department reasonably incurs supervisory and other associated costs which are necessitated by the unique problems presented by the TAPS project and which are not expenses which this Department otherwise would incur in the normal operations, there is adequate statutory authority for us to charge such reasonable costs to TAPS.

Then he goes on:

> It is my opinion that you have the discretionary authority, under the appropriate circumstances, to impose on a pipeline right-of-way applicant reasonable charges to reimburse the Department for expenses necessarily incurred by it in connection with the application and the subject matter thereof.

Mr. ROGERS of Florida. Mr. Chairman, I thank the gentlewoman from Washington.

Mr. MAHON. Mr. Chairman, I yield to the gentleman from Michigan (Mr. DINGELL).

Mr. DINGELL. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I would like to commend the gentleman from Texas and the distinguished gentlewoman from Washington for the outstanding job they have done in assuring that the costs that have been mentioned insofar as protecting the ecology and environment in connection with the Trans-Alaska Pipeline project will be borne by the pipeline company itself rather than by the taxpayers.

As the gentleman from Florida indicated, this was a matter of grave concern in our Subcommittee on Fisheries and Wildlife of the Merchant Marine and Fisheries Committee, and we had Secretary Train and other Department of Interior representatives before us to brief us. Subsequently, a letter was sent, signed by a number of Members of the House, including the gentlewoman from Washington, to the Secretary of the Interior stressing our position that these matters should be borne by the pipeline company.

Again I wish to commend the gentlewoman from Washington, and it is also my hope that she and the distinguished Committee on Appropriations will be most vigorous in insuring that the Department of the Interior in its negotiations insist on these matters being carried out as suggested.

I do not know if the pipeline companies have signed the stipulations, but I would point out, and I would hope the gentlewoman will comment on this, that it is my impression that none of the conglomerate companies have signed the stipulations. I wonder if the gentlewoman from Washington has any comment on that?

Mrs. HANSEN of Washington. Mr. Chairman, will the gentleman yield?

Mr. MAHON. I yield to the gentlewoman from Washington.

Mrs. HANSEN of Washington. The record will show that there have been no stipulations actually agreed to in writing by any of the oil companies involved.

COMMISSION ON GOVERNMENT PROCUREMENT

Mr. MAHON. Mr. Chairman, I yield to the gentleman from California (Mr. HOLIFIELD).

Mr. HOLIFIELD. Mr. Chairman, on page 8 of the report the matter of the Government procurement appropriation is commented on. I want to thank the committee for making the initial appropriation, and to call to the attention of the Chairman that the committee has approved the purpose of this matter, but due to the lateness of the year they cut the budget estimate by $2 million, but that is in no way to be considered as being in opposition to the commission. As soon as the commission is appointed, and the plans properly presented, we will have the opportunity to come before the committee for an additional appropriation.

Mr. Chairman, I thank the gentleman for yielding.

Mr. MAHON. Mr. Chairman, I yield to the gentleman from Tennessee (Mr. EVINS).

Mr. EVINS of Tennessee. Mr. Chairman, I thank the gentleman for yielding. The purpose of the commission has been approved, but because of the lateness of the year we did not feel that full funding was necessary. We can take a look at it again next year.

We think there is a sufficient amount in the bill to get it organized and get the planning underway.

Mr. Chairman, I thank the gentleman for yielding.

CONGRESSIONAL SUMMER INTERNS

Mr. MAHON. Mr. Chairman, the gentleman from Alabama (Mr. ANDREWS), the chairman of the Legislative Subcommittee, would wish to point out what the committee has recommended in the bill in regard to the congressional summer intern program.

Mr. ANDREWS of Alabama. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I think we have made a satisfactory resolution of the question of allowances for summer interns. There is no added money in the bill for this purpose, but we are recommending an additional place in each Member's office. We have provided language which will permit Members to increase the number of employees during the summer months. Quoting from the committee report:

The committee is proposing a new arrangement with respect to financing the cost of congressional summer interns. It would increase—by one—the maximum allowable number of employees in a Member's office (during 2½ months of the 3-month period June 1–August 31 each year) so as to fully accommodate the personnel provisions of House Resolution 416 of the 89th Congress, but without adding to the maximum basic clerk-hire monetary allowance now authorized for the offices.

Under the provision, the many Members who have been employing one or more congressional summer interns on their regular office clerk-hire roll could continue to do so next summer within the limits permitted by H. Res. 416, but without impinging upon the limit now imposed by law on the number of clerks otherwise authorized to them. The cost, however—which is limited by H. Res. 416 to not over $750 *gross* per Member each summer—would be chargeable against the aggregate *basic* allowance of $34,500 now authorized for congressional districts of less than 500 thousand constituents and $37,000 for districts above that. This absorption should not be a strain on office budgets in view of the additional allowance of $2,500 *basic* voted last June in H. Res. 357.

The restriction in the regular annual appropriation bill against use of the contingent fund would continue.

Mr. MAHON. Mr. Chairman, I thank the gentleman for his statement.

Mr. Chairman, I do not have any requests for further time at the moment.

The CHAIRMAN. The gentleman from Texas has consumed 21 minutes.

Mr. BOW. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I may say that in most details we support this supplemental appropriation bill.

I was delighted that my good friend, the gentleman from Missouri, Dr. HALL, took care of the Kennedy Center. I tried to do it a few months ago in the authorization bill and ended up by his having to take care of me.

I should like to discuss it in much more detail, but fearful that I may have to call upon him again, I shall not do it.

I think this item certainly should be investigated. I am delighted that the gentleman from Illinois (Mr. GRAY) thinks he is going to recoup—but I do not think he is going to recoup.

My opinion, in spite of some of the testimony in the hearings, is that this is the end and there will not be any more.

They did make the statement in the hearings that there would be no more Federal funds for construction. I do not know what that means. But I would assume that this item is going to be with us for a long, long time.

I think a very careful study should be made of the entire situation down there. It should be investigated very carefully and I would support the good doctor's amendment, if he offers one.

Otherwise, I think this is a good bill.

Mr. Chairman, most of the details are well explained in the report.

Mr. Chairman, I have no requests for time that I know of on this side.

The CHAIRMAN. The gentleman from Ohio has consumed 2 minutes.

Mr. MAHON. Mr. Chairman, I have no further requests for time and ask that the Clerk read.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

SMITHSONIAN INSTITUTION

THE JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

For additional expenses, not otherwise provided, necessary to enable the Board of Trustees of the John F. Kennedy Center for the Performing Arts to carry out the purposes of the Act of September 2, 1958 (72 Stat. 1698), as amended, including construction, to remain available until expended, such amounts which in the aggregate will equal gifts, bequests, and devises of money, securities and other property received by the Board for the benefit of the John F. Kennedy Center for the Performing Arts under such Act, not to exceed $7,500,000.

AMENDMENT OFFERED BY MR. HALL

Mr. HALL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HALL: On page 5, strike out all of line 8 through 18.

Mr. HALL. Mr. Chairman, this amendment speaks for itself. It simply amputates line 7 through 18 until such time as we can have the necessary investigations that have been referred to by the distinguished gentleman from Illinois here, and know exactly how we are using, and whether or not we are properly using, the taxpayers' money—even in accordance with the authorization which was passed by the majority in good faith.

Mr. Chairman and Members of the Committee, this certainly is not an emergency. They are proceeding with the buildings. They can proceed with the donated funds, or those that are raised otherwise, with the construction, until the investigation of the Department of Justice and the investigation of the General Services Administration is completed.

This is a time of austerity, budget balancing, and emergency. Mr. Chairman, this is a time when we in Congress have placed a ceiling of expenditures on the Chief Executive of the United States. Certainly this is one area where we can defer and tighten our belts and withhold. If we, the Congress, are not going to establish the priorities by which the President shall reduce these expenditures in order to come within the amount within the appropriated funds.

Congress must not limit spending on the one hand and continue these niceties—no matter how nice they are—that are in excess of the budget. Therefore, I am in favor of removing this, without any prejudice, for the time being, as a means of saving.

I am glad to know it is under investigation. I am glad the committee has been informed that no stoppage of construction would be in order, but that there have been "overruns," and that they are being investigated. I personally hope construction will not be stalled on the basis of funds available from others, or on the contractor's responsibility. Be that as it may, our great responsibility is to the Treasury of the United States and to the taxpayers of America, and I hope this amendment does pass.

KENNEDY CENTER FOR THE PERFORMING ARTS

Mr. MAHON. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the bill provides "not to exceed $7,500,000." That is for the completion of the John F. Kennedy Center. It says "not to exceed" because these funds have to be matched by private contributions before they become available. This project has been under construction for a long time. If we do not proceed now with the project, if construction is interrupted, it is estimated additional unnecessary costs will be incurred. That is the situation.

Mr. Chairman, I yield to the gentleman from Illinois (Mr. GRAY) to comment on the additional cost that may be incurred if the construction schedule is delayed.

Mr. GRAY. Mr. Chairman, I thank the gentleman from Texas for yielding.

Mr. Chairman, we went into this matter very carefully when the Subcommittee on Public Buildings and Grounds brought out the authorizing legislation. The General Services Administration testified that if we stop this project now, at 61 percent completion, and start it up again, even 1 year hence, it will cost about $12 million more.

Mr. Chairman, these are all special craftsmen. For example, over a dozen countries are supplying various hardware, including pieces of stone, various drapery materials, and chandeliers and things of this nature, and they have engaged the subcontractors to install this. If we stop now and disengage them and cancel the contracts, we will be having to start this up plus the $7½ million in this bill. So anyone who votes against this is not voting for economy. They are voting for $19.5 million instead of $7.5 million, if we go over to next year or some future date.

Mr. MAHON. Mr. Chairman, I thank the gentleman from Illinois for his contribution. It seems to me that under all the circumstances we must go forward and complete this work. I trust the project will not be delayed.

Mr. Chairman, when President Nixon submitted this supplemental budget estimate he limited it more or less to urgent items. He did not wish to have a supplemental, but he found it impossible to avoid. This is a relatively small supplemental. The President would not have included this item unless he felt compelled to do so, because the President knows this project is not popular with all Members. It has encountered considerable dif-

ficulty, but it will be best to proceed with it.

Mr. Chairman, I yield now to the distinguished Speaker of the House.

Mr. McCORMACK. Mr. Chairman, in addition to the reasons advanced by the gentleman from Texas and the gentleman from Illinois, there is a sentimental side to this appropriation. The reasons advanced seemed to me to be convincing, but I think we are justified in not overlooking the sentimental side, that this memorial is named in honor of a man whose life was drastically taken away from us by an evil-minded assassin. It is named in honor of a man whose memory will always occupy the foremost pages in American history and occupy a foremost position in the minds of Americans of all generations.

Mr. MAHON. Mr. Chairman, I thank the Speaker.

Mrs. HANSEN of Washington. Mr. Chairman, I rise in opposition to the amendment. The authorization for this additional appropriation for the John F. Kennedy Center passed the House on July 8, 1969, by a record vote of 210 yeas to 162 nays. The appropriation of funds for the Center is the next logical step in our legislative process.

Certainly I am as disappointed as any one of the cost overrun experienced in connection with this project. We went into this very thoroughly in the hearings the subcommittee conducted on this budget request. While some portion of the cost overrun may be questionable, testimony developed during the hearing indicated that certainly some part of the cost overrun was beyond the reasonable control of anyone.

The history of this project has been somewhat stormy. There has been discussion as to where it should be built, how it should be built, when it should be built, and how it should be operated.

Be that as it may, we are now faced with a situation where we have half a building standing on the shore of the Potomac. I think it would make good sense to complete it. To do otherwise, would be foolhardy.

The committee has been informed that the John F. Kennedy Center cannot be operated on a limited basis. That is to say, it is not feasible or practical to finish off the space now under construction. Witnesses further testified during the hearing that if the construction schedule is interrupted for 1 or 2 years, millions of dollars of additional costs will be incurred unnecessarily. Eliminating this item from the supplemental bill will result in no saving to the American taxpayer. Believe me, this structure is going to be completed sooner or later, and the later it is completed the more it will cost.

I make no apology whatsoever for my support of this appropriation item. This is the people's Capital. When they come here it is important that we present the best face of America, not only to natives of this land, but to visitors from all countries of the world. Certainly it will not hurt our image to be associated with "culture."

I earnestly refer all Members to the in-depth hearings we conducted on this request which begin on page 387 and run through page 422 of the printed hearings on this bill. In my opinion, the record established during that hearing warrants the support of this appropriation.

Mr. GROSS. Mr. Chairman, I move to strike the necessary number of words, and rise in support of the amendment of my good friend from Missouri.

Mr. GROSS. Mr. Chairman, I, too, want to be sentimental. I want to be sentimental in behalf of the taxpayers of this country. I am not unaware and others ought not to be unaware, although they may seem to be, that we have about $370 billion of Federal debt. We have a Bureau of the Public Debt and it will need next year between $18 to $19 billion, simply to pay the annual interest on that Federal debt.

Mr. Chairman, when will some of the sentimentalists in the House of Representatives say a few words in behalf of the taxpayers? When are they going to speak out and vote in behalf of balancing the budget and stopping inflation?

Only an actual balancing of the budget will stop interest charges and inflation from going right on up. It is time for some sentimentalism in behalf of those who pay the bills.

The gentleman from Illinois (Mr. GRAY) keeps repeating that failure to approve this $7,500,000 will cost us so much more; that "we" have to do this, and "we" have to do that. Why do we have to do anything—we, the Members of Congress—by way of appropriating money for this project?

Mr. GRAY. Mr. Chairman, will the gentleman yield?

Mr. GROSS. The gentleman recently took the lead in establishing a so-called visitor's center in Washington, and already we are being told that multimillion-dollar boondoggle is in financial trouble and will have to come to Congress for more money.

Mr. GRAY. Mr. Chairman, will the gentleman yield?

Mr. GROSS. I yield.

Mr. GRAY. I beg the gentleman's pardon, but that visitors' center is not costing the taxpayer one red cent.

Mr. GROSS. I suggest you wait until you get through with it.

Mr. GRAY. All right. Will the gentleman yield further?

Mr. GROSS. Do not stake your reputation on it here this evening, that it will not.

Mr. GRAY. Will the gentleman yield further?

Mr. GROSS. Briefly, because I have a few other things to say.

Mr. GRAY. Let me say to the gentleman, in the case of the John F. Kennedy Center, those taxpayers he is bleeding for, and for whom I bleed, have put in, as of today, $9 million more than the Federal Government. The gentleman did not tell that.

Mr. GROSS. And the taxpayers of the Nation will have about $40 million in this cultural castle if this $7,500,000 is approved.

Mr. GRAY. Thirty-two millions dollars that the American taxpayers have donated for construction of the John F. Kennedy Center to date. That is $9 million more than we have paid.

Mr. GROSS. With this money, the taxpayers of the country will have somewhere around $35 million or $40 million in it. In addition, they will be carrying the load for the tax-exempt foundation money that has gone into it.

Mr. GRAY. Twenty million dollars of which will be repaid from the bonds.

Mr. GROSS. You hope so. It will probably be just the way the bonds on the Washington stadium are being paid off. They are not. We are putting up at least 17 percent of the interest each year on the $20,000,000 worth of stadium bonds and we were told that that white elephant would not cost us any money.

Members of Congress were told that this cultural center would cost the taxpayers of the country not one dime when it was started. The gentleman admitted it a moment ago. I guess I have lived too long; have been around too long, or have too long a memory. I can remember the start of both those deals. All of us were assured it was not going to cost the taxpayers a cockeyed dime for either the cultural center or the stadium.

Do not deceive us. I know the gentleman would not do that. Do not deceive us again on propositions of this kind.

Let me tell you where they can get the money to finish the Kennedy Center. They can go out and get it where they said they were going to obtain it in the first place—from the people who are interested in this sort of thing. That is the place to get the money; that is where you said you would get it, not from all the taxpayers.

Get your hands out of the pockets of the taxpayers of the Third Congressional District of Iowa, for cultural centers and stadiums in Washington, D.C. All I ask you to do: get off the backs of my taxpayers.

The gentleman from Missouri (Mr. HALL) is to be commended for offering his amendment and attempting to save the taxpayers $7,500,000; for trying to do what he can to save this Nation from a financial crisis. Unless this kind of nonessential spending is stopped and stopped now there is nothing to save this country from a confrontation with insolvency.

Mr. Chairman, I urge adoption of the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri (Mr. HALL).

The question was taken; and on a division (demanded by Mr. HALL) there were—ayes 22, noes 54.

So the amendment was rejected.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

MEMBERS' CLERK HIRE

After June 1, 1970, but without increasing the aggregate basic clerk hire monetary allowance to which each Member and the Resident Commissioner from Puerto Rico is otherwise entitled by law, the appropriation for "Members' clerk hire" may be used for employment of a "student congressional intern" in accord with the provisions of House Resolution 416, Eighty-ninth Congress.

POINT OF ORDER

Mr. GROSS. Mr. Chairman, I make a point of order against the language on page 6, beginning with line 11 and

through line 18, as being legislation on an appropriation bill.

The CHAIRMAN. Does the gentleman desire to be heard in support of the point of order?

Mr. GROSS. I thought I made the point of order, Mr. Chairman.

The CHAIRMAN. Does the gentleman from Texas desire to be heard on the point of order?

Mr. MAHON. Mr. Chairman, the Committee on Appropriations put this legislation in the bill for the purpose of accommodating Members. It is subject to a point of order, and the point of order is conceded.

The CHAIRMAN. The gentleman from Texas has conceded the point of order, and the Chair sustains the point of order.

The Clerk will read.

The Clerk read as follows:

CHAPTER IX

CLAIMS AND JUDGMENTS

For payment of claims settled and determined by departments and agencies in accord with law and judgments rendered against the United States by the United States Court of Claims and United States district courts, as set forth in House Document Numbered 91–199, Ninety-first Congress, $15,323,261, together with such amounts as may be necessary to pay interest (as and when specified in such judgments or provided by law) and such additional sums due to increases in rates of exchange as may be necessary to pay claims in foreign currency: *Provided*, That no judgment herein appropriated for shall be paid until it shall become final and conclusive against the United States by failure of the parties to appear or otherwise: *Provided further*, That unless otherwise specifically required by law or by the judgment, payment of interest wherever appropriated for herein shall not continue for more than thirty days after the date of approval of the Act.

AMENDMENT OFFERED BY MR. EDMONDSON

Mr. EDMONDSON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. EDMONDSON: On page 10, line 13, strike out "$15,323,261" and insert "$24,491,433".

Mr. EDMONDSON. Mr. Chairman, I shall not take the 5 minutes allocated to me to discuss this amendment.

The able and distinquished chairman of the Committee on Appropriations explained at the outset of this bill the matter which is covered by this amendment.

It represents the sum of a judgment which was awarded under docket No. 72 and docket No. 298, to the Delaware Tribe of Indians and the absentee Delaware Tribe of Oklahoma by the Indians Claims Commission. It is a final award. It has been submitted by the Treasury Department to the Bureau of the Budget on November 19 as a final award. It is my understanding that it is to be transmitted by the Bureau of the Budget either today or tomorrow. I believe that the custom is in these cases to have the House of Representatives originate appropriations items and I have offered the amendment for that purpose.

Mr. MAHON. Mr. Chairman, will the gentleman yield?

Mr. EDMONDSON. I am happy to yield to the distinguished gentleman from Texas.

Mr. MAHON. Mr. Chairman, the gentleman from Oklahoma is correct in his statement that this is a judgment, and a final judgment. The Treasury Department and the Bureau of the Budget have approved a request which is en route to Congress for the payment of this sum.

So I have no objection to the amendment.

Mr. BOW. Mr. Chairman, will the gentleman yield?

Mr. EDMONDSON. I am happy to yield to the gentleman from Ohio.

Mr. BOW. I have been advised by the White House that this request is on its way here. It represents a final judgment and must be paid. We on this side have no objection to acceptance of the amendment.

Mr. EDMONDSON. I thank the gentleman.

Mr. Chairman, I insert at this point in the RECORD the letter which I have received from the Treasury Department with reference to this matter.

The letter referred to follows:

THE DEPARTMENT OF THE TREASURY,
FISCAL SERVICE, BUREAU OF ACCOUNTS,
Washington, D.C., December 5, 1969.

Hon. ED EDMONDSON,
House of Representatives,
Washington, D.C.

DEAR MR. EDMONDSON: This is in response to a telephone call received December 4, from Mr. Richard H. White of your staff requesting a status report concerning payment of the final award ordered by the Indian Claims Commission in favor of the Absentee Delaware Tribe of Oklahoma, et al. (Docket No. 72) and the Delaware Tribe of Indians (Docket No. 298), in the principal amount of $9,168,171.13. Our office received a certified copy of the award from the Indian Claims Commission on November 19.

We can pay such awards only from funds appropriated by the Congress specifically for this purpose. Our request for the funds needed to pay this award was sent to the Bureau of the Budget on December 4 for inclusion in the President's next request to the Congress for a supplemental appropriation. The timing of the submission of these appropriation requests by the Treasury to the Bureau of the Budget is determined by the Bureau of the Budget. We have been advised by officials of that office that our request will be forwarded to the Congress in the very near future.

As soon as the necessary funds are appropriated by the Congress, we will take prompt action to pay this award.

Very truly yours,

S. L. COMINGS,
Comptroller.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oklahoma.

The amendment was agreed to.

Mr. CONTE. Mr. Chairman, I want to say a few words about the $8.7 million the distinguished Subcommittee on the Treasury and Post Office, on which I am the ranking minority member, has recommended and the full committee has approved, for the Bureau of Customs.

The problem of drug abuse has reached critical proportions in this country. One of the best ways to put a stop to it is by halting the flow of drugs into the United States from abroad. This is precisely the very difficult job that the Bureau of Customs must carry out.

I commend them for the great efforts they are making, and for the even greater efforts they will be making in the future. The problem is perhaps not fully recognized by enough people. For example, almost all of the marihuana, all of the heroin, all of the hashish, all of the cocaine, and all of the smoking opium used in the United States is smuggled into this country. Stopping this flow, as you can imagine, is no easy job.

The profits are huge for the drug smuggler. An ounce of 50-percent-pure heroin worth $350 when it crosses the border will be cut to 16 ounces of 3-percent-pure heroin for retail distribution.

This will provide approximately 1,800 doses which will be retailed at between $5 and $10 each—for a retail total of roughly $13,500, or $40 for each $1 invested.

I know from first hand observations that the customs officials are working day in and day out, far from their families, to stop the flow across the Mexican border in Operation Intercept. Their dedication is remarkable and I commend them for it.

We have got to try to put a stop to the drug traffic crossing our borders. That is why I strongly support the committee's recommendations for enough men, money, cars, boats, planes, and all related equipment. It is one of the most worthwhile investments we can make.

The Clerk concluded the reading of the bill.

Mr. MAHON. Mr. Chairman, I move that the Committee do now rise and report the bill back to the House with an amendment, with the recommendation that the amendment be agreed to and that the bill as amended do pass.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. ALBERT) having assumed the chair, Mr. O'HARA, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 15209) making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes, had directed him to report the bill back to the House with an amendment, with the amendment, with the recommendation that the amendment be agreed to and that the bill as amended do pass.

Mr. MAHON. Mr. Speaker, I move the previous question on the bill and the amendment thereto to final passage.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT

Mr GROSS. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. GROSS. Unqualifiedly and unequivocally.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. GROSS moves to recommit the bill H.R. 15209, to the Committee on Appropriations wtih instructions to report the bill back forthwith with the following amendment: On page 5, strike out all of lines 7 through 18.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. GROSS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant-at-Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 142, nays 243, not voting 48, as follows:

[Roll No. 318]

YEAS—142

Abbitt	Edwards, Ala.	Mizell
Abernethy	Erlenborn	Montgomery
Anderson, Ill.	Eshleman	Myers
Andrews, Ala.	Fish	Nichols
Arends	Fisher	O'Konski
Beall, Md.	Flowers	O'Neal, Ga.
Belcher	Flynt	Poage
Bell, Calif.	Foreman	Poff
Berry	Fountain	Pollock
Betts	Frey	Price, Tex.
Bevill	Goldwater	Quillen
Blackburn	Gonzalez	Railsback
Bow	Goodling	Rarick
Bray	Griffin	Reid, Ill.
Brinkley	Gross	Roth
Brock	Gubser	Roudebush
Brown, Mich.	Hagan	Ruth
Broyhill, N.C.	Haley	Satterfield
Buchanan	Hall	Saylor
Burke, Fla.	Hammer-schmidt	Schadeberg
Burlison, Mo.	Hansen, Idaho	Scherle
Burton, Utah	Harsha	Scott
Bush	Hastings	Sebelius
Cabell	Henderson	Skubitz
Camp	Hogan	Smith, Calif.
Carter	Hunt	Snyder
Chappell	Hutchinson	Steiger, Ariz.
Clancy	Johnson, Pa.	Steiger, Wis.
Clawson, Del	Jones, N.C.	Stubblefield
Collier	Kleppe	Stuckey
Collins	Landgrebe	Talcott
Conable	Landrum	Taylor
Corbett	Langen	Thompson, Ga.
Coughlin	Latta	Waggonner
Cowger	Lennon	Wampler
Crane	Lloyd	Watkins
Daniel, Va.	Long, La.	Watson
Davis, Wis.	Lujan	Weicker
de la Garza	Lukens	Whalley
Dellenback	McClure	Whitehurst
Denney	McCulloch	Widnall
Dennis	McEwen	Wiggins
Derwinski	Martin	Winn
Devine	Meskill	Wold
Dickinson	Michel	Wylie
Dowdy	Miller, Ohio	Zion
Downing	Minshall	Zwach
Duncan		

NAYS—243

Adair	Boland	Casey
Adams	Bolling	Cederberg
Addabbo	Brademas	Chamberlain
Albert	Brasco	Chisholm
Alexander	Brooks	Clark
Anderson, Calif.	Brotzman	Clausen, Don H.
Annunzio	Brown, Calif.	Cleveland
Aspinall	Brown, Ohio	Cohelan
Ayres	Broyhill, Va.	Conte
Barrett	Burke, Mass.	Conyers
Bennett	Burleson, Tex.	Corman
Biaggi	Burton, Calif.	Cramer
Biester	Button	Culver
Blanton	Byrne, Pa.	Cunningham
Blatnik	Byrnes, Wis.	Daddario
Boggs	Caffery	Daniels, N.J.
Delaney	Carey	Dawson
Dent	Kyros	Reuss
Dingell	Leggett	Rhodes
Donohue	Long, Md.	Rivers
Dorn	Lowenstein	Roberts
Dulski	McClory	Robison
Eckhardt	McCloskey	Rodino
Edmondson	McDade	Roe
Edwards, La.	McDonald, Mich.	Rogers, Colo.
Esch	McFall	Rogers, Fla.
Evans, Colo.	McKneally	Rooney, N.Y.
Evins, Tenn.	Macdonald, Mass.	Rooney, Pa.
Farbstein	MacGregor	Rosenthal
Feighan	Madden	Rostenkowski
Findley	Mahon	Roybal
Flood	Mann	Ryan
Foley	Marsh	St Germain
Ford, William D.	Mathias	St. Onge
Fraser	Matsunaga	Sandman
Frelinghuysen	May	Scheuer
Friedel	Mayne	Schwengel
Fulton, Pa.	Meeds	Shipley
Fuqua	Melcher	Shriver
Galifianakis	Mikva	Sikes
Gallagher	Miller, Calif.	Sisk
Garmatz	Mills	Slack
Gaydos	Minish	Smith, Iowa
Gettys	Mink	Smith, N.Y.
Giaimo	Mollohan	Springer
Gibbons	Monagan	Stafford
Gilbert	Moorhead	Staggers
Gray	Morgan	Stanton
Green, Oreg.	Morse	Steed
Green, Pa.	Mosher	Stephens
Griffiths	Moss	Stokes
Grover	Murphy, Ill.	Stratton
Gude	Murphy, N.Y.	Sullivan
Hamilton	Natcher	Symington
Hanley	Nedzi	Taft
Hanna	Nelsen	Teague, Calif.
Hansen, Wash.	Nix	Teague, Tex.
Harrington	Obey	Thompson, N.J.
Harvey	O'Hara	Thomson, Wis.
Hathaway	Olsen	Tiernan
Hays	O'Neill, Mass.	Tunney
Hechler, W. Va.	Ottinger	Udall
Heckler, Mass.	Passman	Ullman
Helstoski	Patten	Van Deerlin
Hicks	Pelly	Vanik
Holifield	Pepper	Vigorito
Horton	Perkins	Waldie
Howard	Pettis	Watts
Hull	Philbin	Whalen
Hungate	Pickle	White
Ichord	Pike	Whitten
Jacobs	Pirnie	Williams
Jarman	Podell	Wilson, Charles H.
Johnson, Calif.	Preyer, N.C.	Wolff
Jonas	Price, Ill.	Wright
Jones, Ala.	Pryor, Ark.	Wyatt
Karth	Pucinski	Wydler
Kastenmeier	Quie	Wyman
Kazen	Randall	Yates
Kee	Rees	Yatron
Keith	Reid, N.Y.	Young
		Zablocki

NOT VOTING—48

Anderson, Tenn.	Edwards, Calif.	Lipscomb
Andrews, N. Dak.	Eilberg	McCarthy
Ashbrook	Fallon	McMillan
Ashley	Fascell	Mailliard
Baring	Ford, Gerald R.	Mize
Bingham	Fulton, Tenn.	Morton
Broomfield	Halpern	Patman
Cahill	Hawkins	Powell
Celler	Hébert	Purcell
Clay	Hosmer	Reifel
Colmer	Jones, Tenn.	Riegle
Davis, Ga.	King	Ruppe
Dawson	Kirwan	Schneebeli
Diggs	Kluczynski	Utt
Dwyer	Koch	Vander Jagt
	Kuykendall	Wilson, Bob
	Kyl	

So the motion to recommit was rejected.

The Clerk announced the following pairs:

On this vote:

Mr. Ashbrook for, with Mr. Celler against.

Mr. Colmer for, with Mr. Broomfield against.

Mr. Davis, of Georgia for, with Mr. Ashley against.

Mr. McMillan for, with Mr. Reifel against.

Mr. Utt for, with Mr. Mize against.

Mr. Bob Wilson for, with Mr. Kluczynski against.

Mr. Schneebeli for, with Mr. Ruppe against.

Mr. Hébert for, with Mr. Halpern against.

Mr. Kuykendall for, with Mr. Koch against.

Mr. King for, with Mr. Fallon against.

Mr. Hosmer for, with Mr. McCarthy against.

Until further notice:

Mr. Purcell with Mr. Andrews of North Dakota.

Gerald R. Ford with Mr. Kirwan.

Mr. Anderson of Tennessee with Mrs. Dwyer.

Mr. Bingham with Mr. Mailliard.

Mr. Fulton of Tennessee with Mr. Morton.

Mr. Baring with Mr. Lipscomb.

Mr. Patman with Mr. Kyl.

Mr. Edwards of California with Mr. Riegle.

Mr. Eilberg with Mr. Vander Jagt.

Mr. Fascell with Mr. Cahill.

Mr. Hawkins with Mr. Clay.

Mr. Diggs with Mr. Dawson.

Mr. MICHEL, Mr. RAILSBACK, Mr. COUGHLIN, and Mr. WIDNALL changed their votes from "nay" to "yea."

Mr. WYMAN, Mr. McDONALD of Michigan, Mr. AYRES, and Mr. ESCH changed their votes from "yea" to "nay."

The result of the vote was announced as above recorded.

The doors were opened.

The SPEAKER pro tempore. The question is on the passage of the bill.

The bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE TO EXTEND

Mr. MAHON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the supplemental appropriation bill.

The SPEAKER pro tempore. Without objection, it is so ordered.

There was no objection.

GENERAL LEAVE

Mr. MAHON. Mr. Speaker, I ask further unanimous consent that all Members speaking on the bill may revise and extend their remarks and include extraneous matter.

The SPEAKER pro tempore. Without objection, it is so ordered.

There was no objection.

REREFERENCE OF S. 3180 TO COMMITTEE ON POST OFFICE AND CIVIL SERVICE

Mr. DULSKI. Mr. Speaker, I ask unanimous consent that the Committee on the District of Columbia be discharged from further consideration of the bill, S. 3180, and that the bill be rereferred to the Committee on Post Office and Civil Service.

Mr. Speaker, we have a letter from the chairman of the committee who is in accord with this request.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 13270, TAX REFORM ACT OF 1969

Mr. MILLS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 13270) to reform the

income tax laws, the so-called Tax Reform Act of 1969, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference requested by the Senate.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

Mr. VANIK. Mr. Speaker, reserving the right to object, and I do not object at this time, I would like to reserve the right to offer a preferential motion in which I would urge that the conferees or the managers on the part of the House be instructed with respect to increasing exemptions and insisting on the House provisions on the oil and gas depletion allowances.

Mr. Speaker, will such a preferential motion be in order?

The SPEAKER pro tempore. It will be if the unanimous-consent request on the conference is agreed to.

Mr. VANIK. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

Mr. MADDEN. Mr. Speaker, reserving the right to object. I might for the information of the gentleman from Ohio and the House membership state that by reason of the broadcast of the President last Monday night, telling maybe millions of people that he was going to veto the 15-percent raise in social security if it came before him and also that he was going to veto the $200 tax exemption raise I called a special meeting of the Democratic Steering Committee today. I received expressions of so much consternation and complaint by the Members on this side of the aisle and a great deal of criticism of the broadcast especially where the President referred to a veto of these bread and butter issues, we Democratic Members became alarmed. Approximately 25,500,000 recipients of social security over the Nation also became alarmed at that threat, and millions upon millions of wage earners and salary earners who are paying big taxes, were also shocked. As chairman of the Democratic Steering Committee and because of the pressure of the Members on this side I called a special meeting of the committee this afternoon during which this veto matter was taken up.

Mr. Speaker, I will read the resolution that was adopted—almost unanimously with the exception of one vote:

Resolved, That the House Democratic Steering Committee hereby endorses and recommends enactment of proposed legislation providing for a $200 increase in the personal income tax execption, to the House Tax Reform Bill and a 15 percent increase in Social Security Insurance System benefits effective as of January 1, 1970.

RAY J. MADDEN,
Chairman,
House Democratic Steering Committee.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

PREFERENTIAL MOTION OFFERED BY MR. VANIK

Mr. VANIK. Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. VANIK moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill H.R. 13270 be instructed to insist on the House provisions relating to the oil and gas depletion allowance and to provide tax relief by way of increased dependency exemptions.

Mr. VANIK. Mr. Speaker, I would like to be heard on my motion.

The SPEAKER pro tempore. The gentleman from Ohio is recognized.

Mr. VANIK. Mr. Speaker, I offer this motion to instruct the conferees in order to assure that the managers on the part of the House will stand by the House provisions on oil and gas depletion—which the Ways and Means Committee reduced to 20 percent—along with elimination of the foreign depletion allowance.

The action of the House and the Ways and Means Committee was reasonable and a minimum reduction of the special tax privilege of oil and gas. To do less would be to totally disregard one of the most urgent needs of tax reform. There can be no tax reform if oil and gas is to continue to escape a reasonable degree of taxation.

In the action of the Ways and Means Committee, we did not do very much about the intangible drilling costs—we did not do anything about the bookkeeping methods of the industry. In the Ways and Means Committee we gave oil privilege a very light touch. The other body almost totally destroyed our efforts by reducing its tax reform efforts on oil and gas to a "will of the wisp."

The 23-percent reduction of the oil depletion allowance provided by the other body is nothing at all. The testimony before the Ways and Means Committee clearly established that the average industry utilization of the oil depletion allowance is no more than 23 percent. A reduction of the depletion allowance to 23 percent is no burden at all to an industry that has more tax privilege than any other segment of American economic life.

The vote in the Ways and Means Committee on the 20-percent reduction on the depletion allowance was reported out by a vote of 18 to 7. The vote in the House was overwhelming and almost unanimous. It seems to me that the managers on the part of the House must be mindful of the House position and insist on the House provisions which constitutes a modest and reasonable approach to the oil tax issue.

Mr. Speaker, ever since I have been in this Congress I have sponsored legislation to provide for an increase of the dependency tax exemption. It is incredible to assume that any taxpayer or head of family can support his dependents within the $600 limitation. Inflation has multiplied the problems of family support.

In approaching the problem of tax justice—we must consider how a taxpayer must divide his income in supporting his dependents. Many taxpayers support dependents who would otherwise become public charges. The dependency exemption is in some measure a recognition of this fact.

There are other plans like tax credits, increased deductions, reduced tax rates, but no other alternative can so effectively operate to recognize the assumption of obligation as a matter of family life and family survival.

This year 259 Members of this body have introduced legislation to increase exemptions. Some proposals would increase dependency exemptions as much as $1,200 per dependent, which is indeed a realistic determination of what it costs to support a dependent under minimum standards today.

In the last several weeks, 233 Members of this body have signed a petition indicating their support of increased exemptions.

Among the various proposals for tax relief—I have found only two proposals which have sought a reduction of tax rates. Quite obviously an overwhelming portion of the Members of this body—prefer increased exemptions as a form of tax relief.

I do not believe we should instruct the managers of the House on the specifics of exemption relief—but the other body has reported out a proposal which can provide a good format for the final proposal. I hope the managers will consider the position of the overwhelming majority.

Mr. Speaker, I have a deep and profound respect for my distinguished chairman, the gentleman from Arkansas (Mr. MILLS). He is a man of unexcelled experience, wisdom, and dedication.

Our distinguished chairman led us through the most thorough and comprehensive review of the tax laws of our country through month after month of careful deliberation. This difficult task constitutes one of the great experiences of my life. It is an experience that occurs perhaps but once in the lifetime of a legislator.

Along with my colleagues, I have a great stake in the adoption of a fair and equitable tax bill. It would be my hope that it might not have to be done again next year—or in the next session—or in the next Congress.

If we can truly make this a tax reform bill—if we can truly provide a more equitable tax on those who have had unfair preference—if we can truly provide tax relief to those most deserving—our work may prevent the taxpayers' revolt which former Secretary of the Treasury Joe Barr said would soon occur.

Mr. MILLS. Mr. Speaker, will the gentleman yield?

Mr. VANIK. I am happy to yield to my distinguished chairman.

Mr. MILLS. I would much prefer, of course, at all times not to go to a conference under instructions, but if I were going to this conference under instructions from my colleagues in the House there are many, many items I would have included in such a motion which the gentleman does not include in his motion. I believe that the instructions of my colleagues in the House should be to the conferees—at least to me as a conferee—that I fight as hard in the con-

ference to preserve what the House passed as I, along with my colleagues on the committee, fought to develop the bill initially in the committee and to pass it in the House.

I think my friend from Ohio has been on the Ways and Means Committee long enough to know that I do not like to labor in futility—work and work as hard as we did—and then in conference capitulate. I do not like to ask the Members of the House to go up the hill with us and take all of the heat we have taken with respect to the provisions in this bill and then ask my colleagues to march down the hill. I have never done that to you and I do not intend to do it now.

And, Mr. Speaker, if the gentleman will yield further—

Mr. VANIK. I am happy to yield further to my distinguished chairman.

Mr. MILLS. When I go to a conference I consider myself pledged when I get to conference to uphold the position of the House, not my position, but the position of the House. The position of the House in this instance is the bill that the House passed by such an overwhelming vote. We set out as the gentleman knows to do something in each area that provided a tax shelter, and we did. Some of those areas have been amended in a way that I do not like. Some of them, I understand from talking to our people who have followed their actions over there, have been improved actually by the other body, because I understand in some areas they expressed interest in strengthening tax reform provisions and in the development of additional revenue. So, you can see that there were some good amendments adopted.

Now, we will analyze those amendments and those that we believe are destructive of the bill, we will fight. I think I can assure the gentleman that is the feeling of all of those who will be conferees—I have worked with too many of them too long not to feel that all of us will be in there fighting as hard as we can fight to retain in the conference report as much of the House bill as anyone can. Furthermore, the House will have an opportunity to see the conference report and, since the conference has been asked for by them, the report will be considered first here and if it does not meet with the approval of our colleagues, we can recommit it to the conference.

So, I would like that degree of flexibility which I think we need more in this conference than any other conference I can remember ever having attended.

I would hope that my good friend, in light of this and the statement I have made and knowing of the work we did in the committee, and my intention to uphold that work, would withdraw his motion to instruct the conferees.

Mr. VANIK. Would the gentleman indicate whether or not we can expect tax relief by way of increased exemptions, because that matter was not considered in our committee?

Mr. MILLS. We did not take that topic up in the Committee on Ways and Means, as the gentleman knows. We preferred in the committee by a vote—I have forgotten what the vote was—to do it by rate reductions. The Senate on the other hand has preferred to do it by an increase in personal exemption.

I have as much interest in increased exemptions as anyone in this House. It is a question of timing with me. I do not want us to do something that will permit the President to possibly say that a Democratic-controlled Congress has made it impossible for him in the year 1970 to do anything to stop inflation. However, if we do something that will put his budget out of balance for fiscal year 1970, I daresay that would be the charge he would make. I do not want us to get into that position. I think my friend from Ohio would agree with me that any tax reductions that we finally agree to in the conference should be tax reductions that do not affect the fiscal year 1970 and, perhaps, do not affect even calendar year 1970.

There is one that is frozen insofar as 1970 is concerned that we cannot do anything about and that is the minimum standard deduction. Their change is nearly the same as ours. So there will be this change in 1970, in any event which will have an effect on revenues in the calendar year 1970.

Mr. VANIK. Am I correct in understanding the distinguished chairman and believing that it is your intention to provide some system of relief by way of increased exemptions?

Mr. MILLS. Oh, yes. We have that definitely in mind.

Mr. VANIK. Am I correct in my further understanding that the distinguished gentleman from Arkansas will insist upon the House provision which dealt with oil depletion?

Mr. MILLS. I will insist on not just that. Why does the gentleman not ask me about all of them?

Mr. VANIK. How about all of them?

Mr. MILLS. As far as I am concerned, I am going to insist on all of them, if I can get them all.

Mr. MADDEN. Mr. Speaker, will the gentleman yield?

Mr. VANIK. I yield to the gentleman from Indiana.

Mr. MADDEN. Mr. Speaker, I want to commend the chairman of the Committee on Ways and Means for the work that he and his committee have done this year on bringing up tax reform. I want to correct the gentleman on a statement that he has just made.

The gentleman said that he did not want to have the President feel that a Democratic-controlled Congress resort to politics and jeopardize his legislative program. It has been my observation, and the observation of most Members on this side of the House, that when most Democratic platform issues are debated the Republican leadership and a few of the southern Democrats get together, that they can outvote us by about 15 to 20 votes, so this session is not in reality a Democratic-controlled Congress.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. VANIK. I yield to the gentleman from Iowa.

Mr. GROSS. Mr. Speaker, I wonder if the gentleman from Arkansas could tell us or give us any idea on whether he will be able to wring these concessions out of the other body by New Year's Day?

Mr. MILLS. Mr. Speaker, would the gentleman yield?

Mr. VANIK. I yield to the distinguished chairman, from Arkansas.

Mr. MILLS. Mr. Speaker, I appreciate the gentleman yielding to me.

I want to keep all my colleagues advised, as we go along on this matter. It is my understanding that we will begin our conference with the Senate on this matter at 10 o'clock next Monday morning.

I had hoped that we could begin our conference in the morning, and that we could work Saturday, but I can understand the reluctance of any Member of the other body—after having labored with this bill as long as they have—wanting to get a little bit of rest from the tax bill, at least over the weekend.

So, Mr. Speaker, I agreed to resist my own feelings and lay them aside, and accommodate the Senate Members on timing. So we will go to conference at 10 o'clock on Monday morning. That means that we may be able to have a conference report before Christmas, but it is going to be quite difficult for us to reach agreement on a conference report, to have the report filed, and to have an opportunity for the House to vote on it before Christmas.

I think my friend, the gentleman from Iowa, knows that it takes some little time for our technicians to prepare the conference report after the decisions are all completed.

Mr. GROSS. Mr. Speaker, would the gentleman yield further?

Mr. VANIK. I yield to the gentleman from Iowa.

Mr. GROSS. Mr. Speaker, one Member of the other body has described it as a Christmas tree. I just wondered if that was an accurate description.

Mr. MILLS. If the gentleman will yield further, Mr. Speaker, if it is a Christmas tree it should be all right for it to remain so through the Christmas season, even if we have to remove the trimmings after Christmas. That is a common practice, I understand.

But we intend to do some removing of these trimmings even before Christmas.

Mr. GROSS. Mr. Speaker, I thank the gentleman from Ohio for yielding.

Mr. VANIK. Mr. Speaker, I want to thank my distinguished chairman. The conferees and managers on the part of the House have our best wishes, and I ask that they speak for the average taxpayers of America who need to get some relief out of this tax program which will be before the conference.

Mr. Speaker, I withdraw my motion.

The SPEAKER. The gentleman from Ohio withdraws his preferential motion.

The Chair appoints the following conferees: Messrs. MILLS, BOGGS, WATTS, ULLMAN, BYRNES of Wisconsin, UTT, and BETTS.

PROVIDING FOR THE CONSIDERATION OF H.R. 12321, ECONOMIC OPPORTUNITIES ACT AMENDMENTS OF 1969

Mr. MATSUNAGA. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 734 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 734

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 12321) to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed three hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Education and Labor as an original bill for the purpose of amendment under the five-minute rule and to read such amendment in the nature of a substitute by titles instead of by sections. At the conclusion of such consideration, the committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments there to final passage without intervening motion except one motion to recommit with or without instructions. After the passage of H.R. 12321, the Committee on Education and Labor shall be discharged from further consideration of the bill S. 3016, and it shall then be in order in the House to move to strike out all after the enacting clause of the said Senate bill and insert in lieu thereof the provisions contained in H.R. 12321 as passed by the House.

The SPEAKER. The gentleman from Hawaii (Mr. MATSUNAGA) is recognized for 1 hour.

Mr. MATSUNAGA. Mr. Speaker, I yield to the gentleman from Nebraska (Mr. MARTIN) 30 minutes, pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 734 provides an open rule with 3 hours of general debate for consideration of H.R. 12321, Economic Opportunity Act Amendments of 1969. The resolution also provides that it shall be in order to consider the committee substitute as an original bill for the purpose of amendment and that, after passage of the House bill, it shall be in order to discharge the Committee on Education and Labor from further consideration of S. 3016, move to strike all after the enacting clause and amend it with the House-passed language.

The purpose of H.R. 12321 is to amend and extend the Economic Opportunity Act. The bill as reported contains a committee amendment which substitutes a new text for the bill and adds three new parts to emphasize and strengthen Headstart and Follow Through, the manpower training programs, Mainstream and New Careers, and the emergency food and health service program. The bill provides a 2-year extension of all programs.

The bill authorizes $1,563 million for fiscal year 1970 and such amounts as may be necessary for fiscal year 1971. In addition, there are specific authorizations for fiscal year 1970 for new features of the act, as follows:

New part E of title I—special work and career development programs—$110 million.

New title IX—special comprehensive preschool programs and programs providing for intensive followthrough education for primary schoolchildren—$578 million.

New title X—intensive programs to eliminate hunger and malnutrition—$92 million.

The areas affected by the legislation include: work training and work-study programs; urban and rural community action programs; special programs to combat poverty in rural areas; employment and investment incentives; work experience training, and day care programs; domestic volunteer service programs; special comprehensive preschool programs and programs providing for intensive followthrough education for primary schoolchildren; and intensive programs to eliminate hunger and malnutrition.

Mr. Speaker, in a bill as comprehensive as H.R. 12321, there are bound to be shortcomings as viewed by individual Members of the House, who, as we know, represent many divergent interests. As a matter of fact, I myself am not fully satisfied with certain provisions of the bill as reported and hope to offer corrective amendments at the proper time. But, all in all, the Committee on Education and Labor did a commendable job, and the bill deserves our support.

Mr. Speaker, I urge the adoption of House Resolution 734 in order that H.R. 12321 may be considered.

Mr. HALEY. Mr. Speaker, will the gentleman yield?

Mr. MATSUNAGA. I yield to the gentleman from Florida.

Mr. HALEY. Mr. Speaker, does the gentleman from Hawaii know of any opposition to this rule?

Mr. MATSUNAGA. No, there is no opposition.

Mr. MARTIN of Nebraska. Mr. Speaker, I yield myself 10 minutes.

Mr. Speaker, as the gentleman has indicated, House Resolution 734 provides for an open rule with 3 hours of debate on the bill, H.R. 12321, to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964.

Mr. Speaker, I realize the hour is late and we do have several speakers on our side of the aisle who would like to have the opportunity to express themselves on this legislation.

This legislation has been considered in the Committee on Education and Labor for many, many months. It has been on a merry-go-round—a merry-go-round in the committee itself and climaxed by the merry-go-round which occurred on the floor of the House last Wednesday when the chairman of the committee abruptly withdrew this legislation from consideration last week.

The purpose of the bill is to extend the "war on poverty" for 2 years.

The bill authorizes considerably more money than requested in the budget for fiscal year 1970 and provides for an open-end authorization for fiscal year 1971.

Title I authorizes $1,536,000,000, whereas the budget estimate was $2,048,000,000. This reduction is due primarily to the closing of many Job Corps camps throughout the country.

Title II, which contains the programs "Operation Mainstream" and "New Careers," doubles the authorization to $110,000,000 from the $55,300,000 in the budget estimates.

Title III also has a substantial increase which provides special comprehensive preschool programs and programs providing for intensive followthrough education for primary schoolchildren is a $578,000,000 authorization versus of $389,700,000 budget estimate.

Title IV, which includes programs to eliminate hunger and malnutrition, has a 300-percent increase over the budget, increasing to $92,000,000 from $30,000,000 in the budget. Consequently, there is a total authorization in the bill of $2,343,000,000 versus a total budget estimate of $2,048,000,000.

The Education and Labor Committee conducted hearings on this legislation beginning March 24 and extending through June 2. The chairman of the committee, in testifying before the Committee on Rules, stated that he expected in 1970 to hold comprehensive hearings on all Federal manpower programs with an aim toward eliminating duplication, wasted funds, and more efficient operation of the programs.

At the present time, there is a great proliferation of Federal manpower programs. There are at least 31 different Federal programs administered by 20 different Federal offices and authorized under some dozen different laws. There is duplication of effort and waste of taxpayer's dollars in this hodgepodge of current Federal manpower programs.

The Education and Labor Committee has had the last 11 months in which to make a comprehensive study of all of our manpower programs and policies. This should have been done before the bill was marked up. Greater efficiencies and economies could have been accomplished if the Committee had taken this action. As so often happens, however, in reports from the Education and Labor Committee, such a study is promised for the following year, but the following year comes and goes and no such comprehensive study has been made.

As I pointed out, the authorization for Operation Mainstream and New Careers has been doubled in the legislation before us today. Operation Mainstream is a job creation and work training program which enables enrollees to participate in projects for the betterment or beautification of the community or area served by the program and in activities which contribute to the management, conservation, or development of natural resources, recreational areas, parks, and highways in rural areas or towns.

The report states that $60,000,000 is to be made available for Operation Mainstream activities.

You will note from the above that these are simply created jobs which do not teach a skill or train the enrollees in acquiring a skill which would be of aid in securing employment in private industry. It is exactly the same as the WPA projects which we had back in the 1930's.

It is interesting to note from the figures in the report that in 2 years of operation, the Mainstream program has provided nearly 20,000 enrollment opportunities at a Federal cost of $72,000,000. This is an average cost of $3,600 per enrollee. It might be better if we simply gave the enrollee the money, as it would save the taxpayers since we could thus eliminate the overhead or administrative expense of the program.

A program such as this which does not train the enrollee is simply a stopgap approach. This sort of program does not get to the root of the problem, which is lack of a skill.

On-the-job training programs provide permanent answers to unemployment, and a decrease in our welfare rolls. The on-the-job training programs which the Federal Government is currently operating show that the average cost per enrollee is approximately $800 against $3,600 for Operation Mainstream.

There is no justification for doubling the authorization for the Operation Mainstream and New Careers programs, and I hope that by an amendment offered on the floor that this program will be cut back at least to the Bureau of the Budget figures.

In addition, the bill before us sets up Operation Mainstream and the New Careers program in a new section of the law. Heretofore, it has always been included in title I–b. More efficient operation can be attained by not separating it from other manpower programs.

Title III of the bill authorizes $578 million to carry on the Headstart and Follow Through programs. This is a $188.3 million increase over the President's budget which is almost a 50-percent increase. Of all the programs under OEO, Headstart has had less criticism than any of the others.

Another new section of the bill would make available legal services to members of the armed forces at their request "in cases of extreme hardship" with the cost of such services to be reimbursed by the Secretary of Defense. No testimony was heard from the DOD.

The gentleman from Minnesota (Mr. QUIE), a distinguished member of the Education and Labor Committee wrote a letter to the Acting General Counsel of the Department of Defense on November 19. The Acting General Counsel replied stating:

> It would be preferable for the Department of Defense to provide this service to its personnel rather than have them using programs operated by the Office of Economic Opportunity. Accordingly, the Department of Defense recommends against the adoption of the amendment.

When the amendment to delete is offered, it also should be adopted by the House.

The bill, in title IV, authorizes $92,000,000 for fiscal year 1970 to carry out programs to eliminate hunger and malnutrition. This is a 300-percent increase over the budget figures. In view of the fact that the House recently passed legislation substantially increasing the food stamp program, it seems to me that this increase in title IV is ill-considered, ill-timed, and inappropriate.

Some features of the Economic Opportunity Program are good programs, but there is much to be desired, and I fault the Committee in not making the in-depth study this year which should have been made before this legislation came to the floor of the House. I approve the rule, but oppose the legislation as it is currently written.

Mr. Speaker, I yield 5 minutes to the gentleman from Minnesota (Mr. QUIE).

Mr. HALEY. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. The Chair will count.

Mr. ANNUNZIO. Mr. Speaker, I move that the House do now adjourn.

The SPEAKER. The Chair is counting.

Mr. HALEY. Mr. Speaker, I withdraw my point of order.

The SPEAKER. The gentleman from Florida withdraws his point of order.

Mr. MATSUNAGA. Mr. Speaker, unless there are further requests for time on the other side——

Mr. MARTIN. Mr. Speaker, I yield 5 minutes to the gentleman from Minnesota (Mr. QUIE).

Mr. QUIE. Mr. Speaker, considering the mood of the House, I would really find myself in a little bit of danger here to be standing up speaking for my full 5 minutes.

What I am going to say is that we do have a substitute, and we have worked out some accommodations with our colleagues which have not changed the substance of the substitute.

My colleague BILL AYRES has the next time, and he is going to put this in the RECORD tonight so that Members can all see it tomorrow.

If the gentleman from Illinois would like to have me yield to him, to get in a short comment on his part, I will yield, and we will try to move this along as fast as we can.

Mr. ERLENBORN. Mr. Speaker, will the gentleman yield?

Mr. QUIE. I yield to the gentleman from Illinois.

Mr. ERLENBORN. I thank the gentleman for yielding.

Mr. Speaker, the gentleman from Minnesota correctly states that several of us on the Committee on Education and Labor have over the past several days gone over the proposed substitute, which was inserted in the RECORD last week. We have made some changes which I believe make the proposed substitute much more acceptable. I intend to support the substitute, which will be placed in the RECORD tonight by the gentleman from Ohio.

Amendments will be offered in an attempt to allow the House to work its will tomorrow, and to make further improvement in the substitute.

I thank the gentleman for yielding.

Mr. QUIE. I thank the gentleman for his comments. I would say to the gentleman that he is one of the most able members of our committee and I appreciate the help he has given us in order to enable us to come forth with a substitute which we will present to the House on tomorrow.

Mr. AYRES. Mr. Speaker, will the gentleman yield?

Mr. QUIE. I yield to the gentleman from Ohio.

Mr. AYRES. Mr. Speaker, rather than take up the time of the House at this late hour, I will state that there have been certain accommodations made already. As the Members of the House know there was to have been offered last week an amendment in the nature of a substitute which the Members will find at page 36830 of the CONGRESSIONAL RECORD of December 3, 1969. The bill that will be substituted tomorrow or offered as a substitute will contain these accommodations.

Mr. Speaker, I ask unanimous consent to insert the substitute at this point in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

There was no objection.

AMENDMENT TO H.R. 12321 IN THE NATURE OF A SUBSTITUTE

(Offered by Mr. AYRES, to strike out everything following the enacting clause and insert in lieu thereof the following:)

That this Act may be cited as the "Economic Opportunity Act Amendments of 1969".

TITLE I—EXTENSION OF AUTHORIZATION

SEC. 101. For the purpose of carrying out programs under the Economic Opportunity Act of 1964, there is hereby authorized to be appropriated $2,048,000,000 for each of the fiscal years ending June 20, 1970, and June 30, 1971.

SEC. 102. Sections 161, 245, 321, 408, 615, and 835 of the Economic Opportunity Act of 1964 are each amended by striking out "1967" and by inserting in lieu thereof "1968". Section 523 of such Act is amended by striking out "June 30, 1968, and the two succeeding fiscal years" and by inserting in lieu thereof "June 30, 1969, and the two succeeding fiscal years".

TITLE II—STATE PARTICIPATION IN ANTI-POVERTY PROGRAMS

SEC. 201. Title II of the Economic Opportunity Act of 1964 is amended by striking out section 231 (relating to "State Agency Assistance") and by inserting at the end of the title a new part, as follows:

"PART E—PARTICIPATION OF STATES

"STATEMENT OF PURPOSE

"SEC. 250. It is the purpose of this part to provide an effective mechanism for the positive involvement of State officers, agencies, and administrative resources in the development, carrying out, and coordination of anti-poverty programs within each State, but only if and to the extent a State excercises the options set forth in this part. Accordingly, no State shall be required to establish a State Economic Opportunity Office described in section 251, or to take the further actions outlined in this part, as a condition for the support of programs under this Act in the State. In the event a State shall not choose to participate in the manner provided in this part, or is unable to satisfy the requirements for such participation set forth in this part, the Director shall continue to support eligible programs and projects in such State. However, the Director shall take every appropriate action to encourage effective State participation under this part in accordance with the finding of the Congress that such participation will strengthen the programs authorized by this Act.

"STATE AGENCY ASSISTANCE

"SEC. 251. (a) The Director shall provide financial assistance to the State Economic Opportunity Office (hereinafter referred to as the 'State Office') designated in accordance with State law, to enable such agency—

"(1) to advise the Governor of the State with respect to the policies and programs of the Office of Economic Opportunity and other resources available to combat poverty within the State, and at the request of the Governor to advise and assist him in carrying out his responsibilities under this Act;

"(2) to assist in coordinating State activities related to this title and to title VIII;

"(3) to provide technical assistance to communities and local agencies in developing and carrying out programs under this title and under title VIII;

"(4) to evaluate programs assisted under this title and under title VIII with a view to improving the capacity of their sponsors to fulfill the purposes of this Act and to utilize with maximum efficiency the financial assistance provided;

"(5) to evaluate State poverty-related programs and State administrative procedures and to develop mechanisms for making them more responsive to the needs of the poor;

"(6) to conduct financial audits of programs within the State supported under this title or under title VIII, at such times and in such a manner as to promote responsible financial management of such programs;

"(7) to mobilize and develop available resources at the State level needed to assist anti-poverty measures within the State;

"(8) to encourage the development of career opportunities for the poor within agencies of State government;

"(9) to advise and assist the Director in developing procedures and programs to promote the participation of States and State agencies under this Act; and

"(10) to advise and assist the Director, the Economic Opportunity Council established by section 631 of this Act, and the heads of other Federal agencies, in identifying problems posed by Federal statutory or administrative requirements that operate to impede effective State involvement in or coordination of programs related to this title, and in developing methods or recommendations for overcoming those problems.

"(b) The Director shall take steps as will assure that:

"(1) all applications for assistance under this title and under title VIII within a State are submitted through the State Office, and that the Office is afforded a reasonable opportunity (but not to exceed 30 days) to review such applications before transmitting them to the Director (or to his delegate) with such comments and recommendations as the State may deem appropriate;

"(2) each State Office receives advance notice of the proposed approval of any application for assistance or of the proposed funding in the State of any program, project, or other activity under any other title in this Act, and is afforded a reasonable opportunity to comment upon such proposed approval or funding; and

"(3) Each State Office receives such other information and technical assistance, and is afforded such other opportunities to play an affirmative role in the programs financed under this Act, as may be required to carry out effectively the functions specified in subsection (a).

"(c)(1) Whenever a State Office (with the concurrence of the Governor) shall recommend against the approval of an application submitted under subsection (b)(1), such application shall not be approved (or shall not be approved without changes suggested by the State Office) for funding under this title unless the Director shall have made a finding that approval of such application would strengthen the overall program plan of a local community action agency, or with respect to applications submitted by other eligible applicants, that the approval of such application would be in furtherance of the purposes of this Act.

"(2) The Director shall not delegate the resonsibility for making the finding required in paragraph (1) except to the heads of other Federal agencies, and he shall not make such finding without having first afforded the State Office notice and opportunity for a hearing.

"(d) In any grants to or contracts with State agencies, the Director shall give preference to programs or activities which are administered or coordinated by the State Offices established under subsection (a), or which have been developed by and will be carried on with the assistance of those Offices.

"(e) In order to promote coordination in the use of funds under this Act and funds provided or granted by State agencies, the Director may enter into agreements with States or State agencies for purposes of providing financial assistance to community action agencies or other local agencies in connection with specific projects or programs involving the common or joint use of State funds and funds under this Act.

"STATE ECONOMIC OPPORTUNITY COUNCIL

"SEC. 252. (a) Any State which desires to participate in the development and carrying out of a State developmental and coordinating program for rural and urban community action, as provided by section 253, shall establish a State Economic Opportunity Council (hereinafter referred to as the 'State Council'), appointed by the governor, which shall be broadly representative of the economic, educational, health, religious, and social services resources of the State and of the public, including persons representative of—

"(1) urban areas;

"(2) rural areas;

"(3) the poor (including representatives both of the urban and rural poor and of racial and ethnic groups in the State which experience a high incidence of poverty);

"(4) business, industry, and labor;

"(5) elected municipal officials;

"(6) elected county officials;

"(7) Federally assisted programs, such as Model Cities and manpower training, related to the problems of the poor; and

"(8) fields of professional competence (including both public and private education) in dealing with the problems of poverty.

"(b) The State Council shall advise the State Office on the development of and policy matters arising in the administration of the State developmental and coordinating programs submitted pursuant to section 253, and shall evaluate the programs, services, and activities assisted under this title and make a public report (at least annually) of the results of such evaluations.

"(c) The State Council shall prepare a long-range program plan (or, as may be appropriate from time to time, revisions of or supplements to such plan) for use of funds under sections 221 and 222 and title VIII of this Act which plan (1) is prepared in consultation with the State Office, (2) extends over a period of not less than five years and (3) taking into consideration available resources, sets forth a program of action which, in the judgment of the Council, would assure substantial progress toward achievement of the objectives of the plan.

"(d) From the sums appropriated under the authority of this Act for any fiscal year the Director shall (in accordance with regulations) pay to each State Council an amount equal to the reasonable amounts expended by it in carrying out its functions under this part in such fiscal year, except that the amount available for such purpose shall not exceed $150,000 and shall not be less than $50,000.

"STATE DEVELOPMENTAL AND COORDINATION PROGRAMS

"SEC. 253. (a) Any State desiring to carry out a developmental and coordination program for urban and rural community action shall submit to the Director (at such time and in such detail as he may specify and containing such information as he may deem necessary) an outline for such a program which—

"(1) has been prepared by the State Office in consultation with the State Council of that State and has been approved by the State Council;

"(2) designates the State Office as the sole agency for administration of the State program, or for supervision of the administration thereof by local community action agencies;

"(3) sets forth in detail the policies and procedures to be followed by the State in the distribution of funds to local community action agencies in the State and for the uses of such funds for the various programs and program components specified in sections 221 and 222, which policies and procedures assure that—

"(A) due consideration will be given to the relative needs of urban and rural areas within the State, and to the needs of various categories of persons living in poverty, in accordance with criteria supplied by the Director; and

"(B) due consideration will be given to periodic evaluations of programs, services, and activities assisted under this title;

"(4) describes how the activities and projects to be carried out under the program are related to the long-range program plan developed by the State Council pursuant to section 251(c) (except that such requirement may be waived during the first year the program is in operation);

"(5) sets forth policies and procedures satisfactory to the Director for approval of applications for assistance under sections 221 and 222 of this title and under title VIII submitted by local community action agencies and other qualified applicants, and for the review and monitoring of the program conducted by such applicants (including procedures to assure that such programs conform to the requirements of this Act);

"(6) sets forth procedures designed to improve the coordination of programs funded under this part with State-administered programs affecting the poor;

"(7) provides that any community action agency, or other public or private agency which is a qualified applicant for program assistance under this title, dissatisfied with a final action with respect to any application for funds under this title shall be given reasonable notice and opportunity for a public hearing by the State Office;

"(8) provides assurances that Federal funds made available under this part will be so used as to supplement, and to the extent possible increase the amount of State, local, and private funds that would in the absence of Federal funds be made available for programs supported under this part, and in no case supplant such State, local, and private funds;

"(9) provides assurances satisfactory to the Director that all relevant requirements of this Act shall be complied with, and provides for making such reports in such form and containing such information and affording such access thereto as the Director may reasonably require to carry out his functions under this Act; and

"(10) sets forth such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid to the State (including such funds paid by the State to qualified applicants) under this title.

"(b)(1) The Director shall by regulation establish criteria for approval of State developmental and coordination programs submitted pursuant to subsection (a), and when he finds that such a program complies with such criteria and the requirements of this part and when he is satisfied that adequate procedures are set forth to insure that the assurances and provisions of such program

will be carried out, he shall approve such program, and the Director shall not finally disapprove any program submitted under subsection (a), or any modification thereof, without first affording the State Office reasonable notice and opportunity for a hearing.

"(2) The Director shall take such steps as he deems necessary to assure that in the formulation and carrying out of State programs there is close liaison between the State Offices and the Office of Economic Opportunity.

"(3) The Director shall take final action to approve or disapprove a State developmental and coordination program submitted under subsection (a) within ninety days after the date of its submission (or resubmission in the event it should have been withdrawn by the State), and he may not delegate the authority to approve or disapprove such programs to any other person.

"(c)(1) For any fiscal year in which any State has in operation a State developmental and coordination program approved in accordance with this part the Director shall make available to such State for carrying out the approved program the sums allotted to such States for such year under section 225 (a) and (b); *Provided, however,* That, until June 30, 1971, the Director may reserve not more than one-fourth such amount, to assist (in accordance with the provisions of this title) activities and projects in such State which are not funded under the State program, but only if the Director has determined that the failure to support such activities and projects during the period in which he may reserve funds would result in a substantial disruption of efforts directed toward the elimination of poverty in such State, or that it is necessary to assist programs authorized under section 222 of this Act.

"(2) The Director shall pay, from the amount available to the State for assistance under this part, to each State the amount required to pay the Federal share of carrying out activities and projects under the approved State program, and for administration of the State program (except that sums paid for State administration shall not exceed 5 per centum of the amount available to the State for assistance under this title in any fiscal year), and such payments may be made in installments and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments.

"(3) the term "State administration" in paragraph (2) means those costs attributable to the supervision, auditing, coordination, and servicing of activities carried out under this part or to the provision of technical services (including the training of personnel needed to provide such services), and similar costs related to carrying out an approved State program, but shall not include the costs of State operation of a substantive program authorized by this Act.

"(d)(1) Whenever the Director, after reasonable notice and opportunity for hearing to the State Office administering a State program approved under subsection (a), finds that—

"(A) the State program has been so changed that it no longer complies with the provisions of subsection (a), or

"(B) in the administration of the program there is a failure to comply substantially with any such provision, "the Director shall notify such State Office that no further payments will be made to the State under the State program (or, in his discretion, that further payments to the State under the program will be limited to activities under or portions of such program not affected by such failure) until he is satisfied that there will no longer be any failure to comply. Until he is so satisfied, the Director shall support eligible community action and VISTA volunteer programs in such State in accordance with other provisions of this title (except that he may support those activities under or portions of the State program not affected by such failure).

"(2) A State Office which is dissatisfied with a final action of the Director under this subsection or subsection (b) may appeal to the United States court of appeals for the circuit in which the State is located, by filing a petition with such court within sixty days after such final action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Director, or any officer designated by him for that purpose. The Director thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Director or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record the Director may modify or set aside his action. The findings of the Director as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Director to take further evidence, and the Director may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence. The judgment of the court affirming or setting aside, in whole or in part, any action of the Director shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code. The commencement of proceedings under this subsection shall not, unless so specifically ordered by the court, operate as a stay of the Director's action.

TITLE III—TECHNICAL AND PERFECTING AMENDMENTS

PART A—AMENDMENTS TO TITLE II ("COMMUNITY ACTION")

COMPOSITION OF COMMUNITY ACTION AGENCIES

SEC. 301. Section 211 of the Economic Opportunity Act of 1964 is amended as follows:

(1) Clause (3) of subsection (b) is amended to read—

"(3) the remainder of the members (which shall consist of not less than one-quarter of the total membership of such board) are appointed by the elected public officials who serve on or have representatives serving on the board, and are officials or members of business, industry, labor, religious, welfare, education, or other major groups and interests in the community"; and

(2) the first sentence of subsection (c) is amended to read—

"Where a community action agency places responsibility for major policy determinations with respect to the character, funding, extent, and administration of and budgeting for programs to be carried on in a particular geographic area within the community in a subsidiary board, council, or similar agency, such board, council, or agency shall be broadly representative of such area, and it shall be so constituted as to assure that at least one-third of the members are public officials, appointed by the elected public officials who serve (or appoint representatives to serve) on the board of the community action agency, unless the number of such officials reasonably available or willing to serve is less than one-third of the membership of the subsidiary board."

COSTS OF DEFENDING LAW SUITS

SEC. 302. Section 222(a) of such Act is amended by adding to paragraph (3) (relating to "Legal Services") the following:

"Whenever a lawsuit or other legal action is initiated by a plaintiff or plaintiffs with assistance under this program, and such action results in a verdict or other outcome favorable to the defendant in such lawsuit or other legal action, and the United States shall be liable for such costs (to be paid out of funds made available for the Legal Services program) as are ordered in accordance with the law of the jurisdiction, by the court or other board or agency which has jurisdiction of the matter), the same as a private person."

AUTHORIZATION OF ALCOHOLIC RECOVERY PROGRAM

SEC. 303. Section 222(a) of such Act is further amended by adding at the end thereof the following new paragraph:

"(8) An 'Alcoholic Recovery' program designed to discover and bring about treatment for the disease of alcoholism. Such a program shall be community based, serve the objective of maintaining the family structure as well as recovery of the individual alcoholic, encourage the use of neighborhood facilities and the services of recovered alcoholics as program workers and emphasize the reentry of alcoholics into society rather than the institutionalization of alcoholics. Such a program shall also emphasize the coordination and full utilization of existing appropriate community services which pertain to the treatment of alcoholism and/or related disorders."

SPECIAL ASSISTANCE TO FAMILIES OF MEMBERS OF ARMED FORCES IN HARDSHIP CASES; PILOT PROJECTS OF ASSISTANCE FOR THE ELDERLY FOOR

SEC. 304. Section 232 of such act is amended by adding at the end thereof the following new subsections:

"(g) The Director shall conduct projects, either directly or through grants or other arrangements, under which funds available under this section will be used to raise the income levels of families of members of the Armed Forces, when such families reside in the United States and through exceptional circumstances have an income level below the poverty level (as determined by the Director), and preference shall be given to cases of greatest hardship. Projects under this subsection shall be developed jointly by the Director and the Secretary of Defense.

"(h) The Director shall also conduct, either directly or through grants or other arrangements, pilot projects under which funds available under this section will be used to raise the income levels of persons over 65 years of age above the poverty level (as determined by the Director), with preference given to cases of exceptional hardship, in order to examine and evaluate systems of income maintenance for the elderly poor as an alternative to welfare assistance."

TECHNICAL AMENDMENT OF GOVERNOR'S VETO PROVISION

SEC. 305. Section 242 of such Act is amended by striking out the period at the end of the first sentence and inserting:

": *Provided, however,* That this section shall not apply with respect to any application which the State Office has recommended not be approved under section 251(c)(1)."

AUTHORIZATION OF STATE AUDIT

SEC. 306. Section 243 of such Act is amended by adding a new subsection as follows:

"(e) The Director shall take such steps as may be necessary to insure that programs assisted under this title shall be subject to financial audit by appropriate State officials and agencies at the request of such officials and agencies, and he shall direct the governing board of each community action agency to cooperate in carrying out such audits."

PART B—AMENDMENTS TO TITLE VI (ADMINISTRATION)

PROHIBITION OF POLITICAL ACTIVITY STRENGTHENED

SEC. 321. Section 603(a) of the Economic Opportunity Act of 1964 is amended to read as follows:

"(a) For purposes of chapter 15 of title 5 of the United States Code any overall community action agency which assumes responsibility for planning, developing, and coordinating community-wide antipoverty programs, or any agency assuming part or all of such responsibilities (including the administration of components of a community action program) under delegation from an overall community action agency, and receives assistance under this Act, shall be deemed to be a State or local agency."

ANTI-RIOT PROVISION STRENGTHENED

SEC. 322. Section 613 of such Act is amended to read as follows:

"SEC. 613. No individual employed or assigned by any community action agency or any other agency assisted under this Act shall (whether or not pursuant to or during the performance of services rendered in connection with any program or activity conducted or assisted under this Act) plan, initiate, participate in, or otherwise aid or assist in the conduct of any unlawful demonstration, rioting, or civil disturbance, and the Director shall take such steps as may be necessary to assure that any individual who violates this provision is removed from his employment or assignment in programs conducted or assisted under this Act."

PROHIBITIONS ON UPWARD BOUND PROGRAMS

SEC. 323. Section 621 of such Act is amended by inserting "(a) after "Sec. 621." and by adding at the end thereof the following new subsection:

"(b) The Director shall give full effect to the intent of Congress that 'Upward Bound' programs, however described, shall be administered by the Commissioner of Education, and the Director shall not carry out or fund any program described in section 222(a)(5) (as in effect on June 30, 1969), or any comparable program, whether under the authority of that section or any other section of this Act, and whether or not carried on by or in a school, institution of higher education, penal or correctional institution, or any other agency or institution."

SEC. 324. Title VI of such Act is further amended by adding at the end of part A the following new subsections:

"EVALUATION OF PROGRAMS OF THE OFFICE OF ECONOMIC OPPORTUNITY

"SEC. 622. (a) The Director shall (1) at the time of entering into any contract or arrangement with nongovernmental organizations or individuals for the evaluation of programs or projects administered by him under this Act, or entering into any substantial modification of any existing such contract or arrangement, furnish to the Comptroller General of the United States a copy of the contract or modification thereof or a description of the arrangement or modification thereof, together with a statement of the bases upon which he considers the evaluation work involved and the estimated cost thereof justified, and upon which he has determined that it was necessary to contract or arrange with a nongovernmental organization or individual for its performance;

"(2) require each Community Action Agency designated under Section 201 of this Act, to advise him of each contract or arrangement entered into by it with nongovernmental organizations or individuals for the evaluation of programs or projects administered by it under this Act, including information regarding the purpose, cost, scope, evaluation methodology, and organizations or individuals involved in such contract or arrangement; and

"(3) furnish to the Comptroller General of the United States at the end of each calendar quarter a listing of all contracts or arrangements reported to him in accordance with paragraph (2) of this subsection during such calendar quarter, including identification of the program or project, the organization or individual, and the cost involved in each contract or arrangement.

"(b) The Comptroller General shall conduct evaluations of programs carried out under this Act, and upon request by a committee of the Congress, or to the extent personnel are available, by Members of Congress shall (1) conduct studies of existing statutes and regulations governing programs carried on under this Act, (2) review the policies and practices of Federal agencies administering such programs, (3) review the evaluation procedures adopted by such agencies carrying out such programs, (4) initiate evaluation projects of particular programs, and (5) compile data necessary to carry out the preceding functions.

"(c) In carrying out the studies and evaluations herein authorized, the Comptroller General shall give particular attention to the practice of the Office of Economic Opportunity and of Community Action Agencies designated under Section 201 of this Act of contracting with private firms, organizations, and individuals for the provision of a wide range of studies and services (such as personnel recruitment and training, program evaluation, and program administration), and shall report to the Director and to the Congress his findings with respect to the necessity for such contracts and their effectiveness in achieving the objectives of this Act.

"(d) The Comptroller General or any of his duly authorized representatives shall have access for the purpose of audit had examination to any books, documents, papers, and records that are pertinent to the financial assistance received by any agency under this Act.

"(e) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of these sections.

"PREVENTION OF CONFLICTS OF INTEREST

"SEC. 623. The Director shall issue regulations and take such other steps as may be necessary to assure that the Office of Economic Opportunity (or any other agency utilizing funds appropriated under the authority of this Act) shall not contract with, make a grant to, or enter into any other type of financial arrangement with, any individual who has been an officer or employee of the Office of Economic Opportunity or any other agency of the executive branch of the United States Government which administers funds appropriated under the authority of this Act (or with a partner of such individual, or with a firm or business organization in which such individual holds a substantial financial interest or in which he serves as an officer), within one year after such employment, for any service or activity (other than reemployment as an officer or employee of a department or agency of the United States Government) in which such person participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise.

"PAYMENT OF DUES PROHIBITED

"SEC. 624. No funds appropriated under the authority of this Act shall be used for or on behalf of any person, organization, or agency to make any payment in the nature of dues or membership fees in any public or private organization or association.

"NEPOTISM PROHIBITED

"SEC. 625. No person shall be employed (or continue in employment(with funds appropriated under the authority of this Act in a position (1) over which a member of his immediate family exercises supervisory authority, or (2) while he or a member of his immediate family serves on a board or committee which has authority to order personnel actions affecting such position, or (3) while he is a member of his immediate family serves on a board or committee which, either by rule or practice, regularly nominates, recommends, or screens candidates for the agency or program in which such position is located. For the purposes of this section, a member of an immediate family shall include any of the following persons: husband, wife, father, mother, brother, sister, son, daughter, uncle, aunt, nephew, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law."

PART C—AMENDMENTS TO TITLE VIII ("VISTA")

RESTRUCTURING ADMINISTRATION OF PROGRAM

SEC. 331. Section 810 (a) of the Economic Opportunity Act of 1964 is amended by striking out that part of the first sentence which precedes the numbered paragraphs and by inserting in lieu thereof the following:

"The Director is authorized to make grants to State and local public agencies to recruit, select, train and assign persons to serve in full-time volunteer programs. Such programs shall be those established by the grantee agency or (upon satisfactory assurance that the work of such volunteers will be supervised by competent individuals) by other public agencies or private nonprofit organizations, which involve the assignment of volunteers to work—"

ASSISTANCE IN LEGAL SERVICES PROGRAMS

SEC. 332. Section 834 of such Act is amended by inserting at the end thereof a new subsection, as follows:

"(f) Persons serving as volunteers under this title shall provide legal services or legal counsel only as a part of a legal services program (and at the request and under the supervision of the directors of such program) supported under section 222(a)3 of this Act."

Mr. MATSUNAGA. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

REQUEST FOR HOUR OF MEETING TOMORROW

Mr. ALBERT. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at 10 o'clock tomorrow.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

Mr. MESKILL. Mr. Speaker, I object.

The SPEAKER. Objection is heard.

Mr. ALBERT. Mr. Speaker, would the gentleman object if I made the unanimous-consent request for the House to meet at 11 o'clock tomorrow? I think we might finish this bill.

Mr. MESKILL. I would object, Mr. Speaker.

The SPEAKER. Does the gentleman from Oklahoma make the unanimous-consent request that the House meet at 11 o'clock a.m. tomorrow?

Mr. ALBERT. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at 11 o'clock tomorrow.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

Mr. MESKILL. Mr. Speaker, I object.

EXTENSION OF THE VOTING RIGHTS ACT

(Mr. ABBITT asked and was given permission to address the House for 1 min-

ute and to revise and extend his remarks.)

Mr. ABBITT. Mr. Speaker, I am very much opposed to H.R. 4249, which would extend for another 5 years the Voting Rights Act of 1965.

When this matter was before the House for several days in 1965, it was my feeling that it was punitive legislation, designed to place restrictions on the voting machinery in certain States for the benefit of political interests in the big urban centers elsewhere in the country. It was an effort to demonstrate to certain pressure groups, for political expediency, that the Federal Government could exercise powers far beyond anything that had been used heretofore.

Four years have passed and here we are again considering the matter of voting rights, with the claim being made that this bill merely extends existing law for another 5 years. In my opinion, it was a bad law when it was enacted and its acceptability is not enhanced by extending it another 5 years.

In the first place, the basis upon which the affected States were to be brought under the act was questionable. It supposed that since less than 50 percent of the eligible voters in these particular areas did not go to the polls on election day in 1964, it was presumed that some irregularities existed. This was, of course, a ridiculous assumption and thus established in the law a premise based entirely on a presumption of guilt.

Now we have before us a bill which would continue the discrimination against those States that were considered targets in the beginning. This again is punitive legislation which ignores progress and fans the fires of indignation felt by the electorate of these States. I am even more opposed to the extension than I was to the original enactment because there is absolutely no justification for extending it another 5 years. All that has been accomplished in the last decade in increasing voter participation, and so forth is completely ignored in an effort to justify this bill.

It is interesting and revealing that many of those who are most in favor of continuing the provisions of the present law are opposed to applying it on a nationwide basis. The data used in 1965 was questionable then and has no relevance to the situation today. Yet, it is being used. This outdated data cannot be justified by any sense of logic or fairness and would not stand the test of acceptability if the shoe were on the other foot. There has been far too much punitive legislation of this type in recent years and the only way that we will ever solve the problem of protecting the rights of all is to deal fairly with everyone concerned.

I feel that if any action is to be taken at all by Congress it should seek to protect the right of every qualified voter in the United States to vote the way he chooses—not to take punitive action against a few.

The use of the 1964 figures may be questioned as a basis since there may have been all kinds of reasons why people did not choose to vote in that particular presidential election—many of which had nothing whatever to do with registration. Thousands of new voters have been registered in the affected States since 1964 and many of these voted last year. Yet, this bill proposes to continue the same penalties which grew out of the vindictive 1965 legislation. This is not fair; it is not just; and it is not in the tradition of American legal treatment.

The Southern States are being used as a lever to keep alive an issue which can be used to advantage in the big urban areas in other sections of the country, all for political expediency. I feel that we should try to get the Federal bureaucracy out of the affairs of the States and to extend a law of this type, where the need for such an extension has not been demonstrated, is beyond the realm of reasonableness.

QUESTIONNAIRE RESULTS IN 25TH DISTRICT OF CALIFORNIA

(Mr. WIGGINS asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. WIGGINS. Mr. Speaker, in November of this year I mailed a questionnaire to the residents of the 25th Congressional District of California asking their views on a number of issues. The district includes the eastern portion of Los Angeles County and northern Orange County. More than 25,000 people took the time to reply, including 5,000 high school students.

It pleases me to report that the results of the poll show that the majority of the people of the district, adults and teenagers alike, support President Nixon's phased reduction of troops in Vietnam. The adults voted 71 percent in favor of the plan, the teenagers 61 percent.

In order that my colleagues and others may know the complete results of the poll, I would like to place in the RECORD my newsletter which is being sent to more than 200,000 residents this week.

The newsletter follows:

QUESTIONNAIRE RESULTS

There has been considerable discussion lately about a body of public opinion known as the "Great Silent Majority."

Proponents of controversial points of view often claim the support of a majority of Americans, knowing that the assertion is difficult to disprove. The majority by its very nature suffers in silence, since there is no acceptable way to voice its frustrations. The average person does not march in the streets even for worthy causes; nor does he occupy public buildings as a protest against bad ones. Only at election time is the voice of the majority heard and respected. Between elections, it is only possible to make informed guesses concerning public opinion, based upon samples of that opinion.

I have just concluded the second sampling of public opinion in my District this year. It is not claimed that the results represent the voice of the "Great Silent Majority," but I believe the nearly 25,000 responses to a series of seven questions to be a more reliable gauge of the majority view than the "sound of marching effete."

Here are the results.

1. *If inflation continues, should wage, price and profit controls be imposed?* Yes, 57%; no, 30%; undecided, 13%.

Although the present plans of the Nixon Administration do not include economic controls over wages, prices, and profits, it is clear that most citizens would accept these drastic restraints in order to curb inflation. Both men and women feel about the same on this issue, but a wide variance exists between age groups. The older citizens suffering the most from inflation because of fixed incomes are much more willing to accept wage, price, and profit controls than the younger citizens.

2. *To help fight inflation by reducing government spending, the President has asked cutbacks in federal construction, including several projects in the 25th District. Do you approve?* Yes, 70%; no, 22%; undecided, 8%.

My purpose in asking this question was to determine the willingness of the citizens of the 25th District to accept government economies, even when it affected our depressed construction industry.

Although the affirmative response was decisive, there was a greater degree of reluctance in Los Angeles County where the number of families dependent upon the building industry exceeds that of Orange County.

The Presidential order applied only to future construction and the number of projects involved in the 25th District is few.

3. *From what you have read about the tax reform bill, are you in general agreement with its provisions?* Yes, 48%; no, 22%; undecided, 30%.

The most important conclusion from these responses is that a great many people either do not know about the tax reform legislation or are unsure of their views. Although I know a great deal about this controversial subject, I am not sure of my views either.

The tax reform legislation considered by the Congress this year is so incredibly complex and deals with such a variety of subjects, it is nearly impossible to be satisfied with either a "yes" or "no" vote. The bill contains both tax reform aimed at closing loopholes and tax relief provisions. On balance, I am persuaded that it represents an improvement in the tax law and intend to support the measure unless unreasonable inflationary amendments are added prior to the final vote.

4. *The Congress will soon consider a new approach to the welfare problem. Initially it will cost more money than the present system, but may have the long range effect of taking people off welfare. Would you support this bill?* Yes, 66%; no, 17%; undecided, 17%.

The President's welfare proposals are well received but I believe that the support may be even greater than the figures indicate.

To many, welfare programs in any form are unacceptable. The frequent response on many returns was "Put 'em to work!" Compulsory labor may be a workable alternative to welfare when able-bodied welfare recipients are involved, but the problem becomes more complicated when the sick, the aged, and mothers of young children abandoned by their fathers are considered.

In essence, the Nixon welfare proposals require registration for work as a precondition to the receipt of benefits. The proposals deal with many facets of the problem, including uniform national benefits, vocational training, and expanded day care centers. If enacted, the program will be very expensive, but the present laws are a costly failure. It is important that a fresh approach, based upon requiring availability for work in appropriate cases, be given a fair trial.

5. *Would you favor a lottery draft law, with no student deferments, which only calls upon 18 and 19 year olds to serve?* Yes, 54%; no, 35%; undecided, 11%.

Since the preparation of the questionnaire, a form of lottery—the random selection system—has been implemented. Under the random selection system, student deferments are retained.

A true lottery system and the elimination

of student deferments as a means of achieving near equality of the obligation to serve will be considered next Spring, together with other draft proposals, including the consideration of the volunteer army concept. Uniform military training for all, without deferment, remained the preference of many citizens; but it is not likely that this proposal will be implemented for the principal reason that the number of young men available for such training far exceeds our defense needs.

This question was the only one in which substantial differences were noted between the answers given by men and women. Women, it seems, are decidedly more cool toward the lottery proposal. The differences may be occasioned by a general attitude of opposition to any form of military service, which is more commonly held by women than men.

6. *Do you support President Nixon's phased reduction of troops in Vietnam?* Yes, 71%; no, 22%; undecided, 7%.

7. *Do you support continued military assistance to South Vietnam only to the extent necessary to prevent a communist military takeover in South Vietnam?* Yes, 69%; no, 23%; undecided, 8%.

These two questions are considered together, since they both deal with Vietnam.

The first was intended to measure the acceptability of President Nixon's policies in dealing with this vexing war. Approval was quite general throughout the District, with the Los Angeles County citizens again demonstrating slightly greater "hawkish" tendencies. The only variance from the District pattern was evident in the 21–35 female age group in Orange County. In this group, the President's policies received only 51% acceptance and a 36% negative response.

Admittedly, the question was not clearcut on the war, since advocates of immediate withdrawal may have accepted "phased reduction" as a compromise in the absence of other alternatives. This possible ambiguity, however, was dispelled by the substantially identical answers received to the second Vietnam question. To that question, the dedicated "doves" could cast an unambiguous "no" response. Only the strong "hawks" believing in prompt action to achieve a military victory were frustrated by the lack of a clear opportunity to voice their views.

Public opinion trends in the District on Vietnam since July, 1967 make it plain, however, that strong hawkish views prevail.

In April, 1967, 80.5% voted to accept the risk of Red Chinese intervention and increase our military effort to include a blockade of the Port of Haiphong; 92.6% rejected a unilateral cessation of the bombing of North Vietnam.

In August, 1967, 65% supported an increase in our troop commitment, if requested by field commanders; and 67% were willing to accept the risk of Chinese intervention by advocating an invasion of North Vietnam, if necessary to achieve a military victory.

In April, 1968, 77% rejected unilateral United States withdrawal in Vietnam, if it became necessary to achieve an end to the fighting. Only 4% believed that such a withdrawal would result in "peace" in Southeast Asia. Finally, 78% urged strong military pressure during any period of negotiations.

In June, 1969, 78% recommended a resumption of the bombing of North Vietnam, if negotiations in Paris were unproductive.

* * * * *

In addition to the questionnaires mailed to each postal patron in the District, approximately 5000 were circulated to high school students. Participation was entirely voluntary and included most high schools in the Los Angeles County portion of the District and the Placentia schools in Orange County.

Answers from the students were remarkably like the adult replies except in one predictable area: the draft. Hardly anyone who may be drafted likes the idea, and we all regret the necessity of involutary military service. But it is necessary, and all the demonstrations and peace symbols to the contrary will not remove the evil in the world which creates the necessity.

On Vietnam, 65% of the students supported the President's policies and 54% were willing to continue necessary military support to South Vietnam.

It may be a matter of comfort to many concerned adults that teenagers, on the whole, mirror the views of their elders. To others, this observation may prove disquieting.

* * * * *

Thank you for your continued assistance in helping me represent your views in Congress.

Sincerely yours,

CHARLES E. WIGGINS,
Member of Congress.

INVITATION TO THE PRESIDENT FOR JANUARY 1 IN THE MISSOURI LOCKER ROOM AT MIAMI

(Mr. BURLISON of Missouri asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURLISON of Missouri. Mr. Speaker, demonstrating the gridiron form that won him a secure spot on the Whittier College bench, the President made a daring end run to Fayetteville, Ark., a few days ago. In a brilliant display of broken field running, he sidestepped Penn State, brushed aside Missouri University and headed straight for the Texas locker room. Oh, it was heady stuff and the Texas fans loved it, but the President's score may not be enough to win. The game is not over yet. The final gun does not sound until the night of January 1.

What if Notre Dame beats Texas in the Cotton Bowl, Mississippi beats Arkansas in the Sugar Bowl, and Missouri beats Penn State in the Orange Bowl? Who then deserves the plaque, Mr. President?

Let me make myself perfectly clear. The Longhorns are an exceptional team and worthy of praise. It is just that we think the award for the final standing should be reserved until January 1. It is like giving an award for the No. 1 baseball team with the World Series yet to be played or inaugurating the President after his party's national convention.

It is interesting to note that in recent weeks the Tigers have been rated fifth and sixth in the national polls while Penn State enjoyed second and third ratings. But now we find the Miami bookmakers favoring Missouri by 2½ points. You can be sure that this prediction in Miami is not based on political expediency.

Therefore, I take this occasion, Mr. Speaker, to invite the President to the Missouri locker room in Miami at the conclusion of the game on the evening of the first to present a plaque to the Nation's No. 1 team. Only by this gesture can the President bring us together and get us to lower our voices.

My constituents, John Brown, Poplar Bluff, Mike Carroll, Ste. Genevieve, and Tom Shryock, Fredericktown, advise that they desire to associate themselves with my remarks.

SUBSTANTIAL UTILIZATION OF ACADEMIC TALENT BY THE NIXON ADMINISTRATION

(Mr. TAFT asked and was given permission to address the House for 1 minute and to revise and extend his remarks).

Mr. TAFT. Mr. Speaker, although it has certainly escaped widespread attention, one of the distinguishing features of the Nixon administration is the extent to which it is utilizing the talents of outstanding and respected individuals from academic life. This movement of professional personnel and ideas between government and the campus is an element of strength in our society. Responsive and effective government requires the most component men and the best ideas the Nation can provide. I am, therefore, pleased with President Nixon's extensive recruitment of academic personnel into this Republican administration. Clearly this administration is keeping open the channels of communication between itself and the intellectual community.

Persons from academic backgrounds are serving at the very highest levels in the White House in the Cabinet, and in key positions in the various departments. The following list is by no means inclusive, but I think it demonstrates the commitment of the Nixon administration to utilize the intellectual resources on our Nation's campuses.

THE WHITE HOUSE

Prof. Arthur F. Burns of Columbia University serves as counselor to the President, a position holding Cabinet rank. The former president of the National Bureau of Economic Research has made significant contributions to our understanding of business cycles. The President recently announced that he will appoint Dr. Burns to the chairmanship of the Federal Reserve System. I believe this is the first time a university professor has been appointed to this policymaking post.

Also serving as counselor to the President with special responsibilities for urban affairs is Daniel Patrick Moynihan, the sociologist who formerly served as director of the Joint Urban Center of Harvard University and MIT. Dr. Moynihan has been director of the President's Urban Affairs Council.

In the field of national security affairs, a key role is being played by Dr. Henry A. Kissinger of Harvard, the President's Assistant for National Security Affairs.

Additional distinguished academians serving at the White House include: Prof. Martin Anderson of Columbia University—Special Assistant to the President; Prof. Roger Freeman of Stanford University—Special Assistant to the President, and Prof. Richard Cooper of Yale University—an assistant to Professor Kissinger.

Earlier this month a difficult and extremely significant task was performed by Dr. Jean Mayer, the former French Resistance leader and now an international authority on hunger and nutrition. Dr. Mayer took leave from his position at Harvard University to direct the White House Conference on Food, Nutrition, and Health.

THE EXECUTIVE OFFICE OF THE PRESIDENT

In those key executive agencies of the Executive Office of the President which report directly to the President, there is also a group of distinguished intellectuals. The President's Science Advisor and head of the Office of Science and Technology is a renowned scientist, Dr. Lee A. DuBridge, who resigned the presidency of California Institute of Technology to assume his present position.

The outstanding economists on the Council of Economic Advisers are: Prof. Paul W. McCracken of the University of Michigan, Prof. Hendrik S. Houttaker of Harvard, and Dr. Herbert Stein of the Brookings Institution.

Two assistant directors of the Bureau of the Budget also have academic backgrounds. Dr. Richard Nathan came to the Bureau from the Brookings Institution and Dr. James R. Schlesinger of the Rand Corporation formerly served on the University of Virginia faculty.

CABINET DEPARTMENTS

The various Cabinet departments have also had a healthy and substantial infusion of academic talents. The most outstanding examples are Secretary of Labor George P. Shultz, the former dean of the school of business at the University of Chicago, and Secretary of Agriculture Clifford Hardin, who resigned as chancellor of the University of Nebraska to accept his current post. Each of these men has brought into his respective department a significant number of professional persons from academia. For example, in the Department of Labor, Assistant Secretary for Manpower Arnold R. Weber was formerly a professor of economics at the University of Chicago. Under Secretary George H. Hildebrand is currently on leave from the economics faculty at Cornell University.

In the Agriculture Department, the Assistant Secretary for Rural Development, Thomas Cowden, was dean of the School of Agriculture at Michigan State University, and Prof. Donald A. Pearlberg, professor of agricultural economics at Purdue University, serves as Director of Agricultural Economics.

At the Department of Defense, Roger C. Seamans, Jr., held the Jerome Clarke Hunsaker professorship at MIT prior to becoming Secretary of the Air Force, and Assistant Secretary of the Air Force Curtis Tarr was formerly president of Lawrence University. Assistant Secretary of Defense Warren Nutter came to the Department from the department of economics, University of Virginia.

Deputy Assistant Secretary of Defense, Policy Planning and National Security Council, International Security Affairs, Dr. Yuan-li Wu is on leave from the department of economics, University of San Francisco. Dr. Robert J. Pranger, Deputy Assistant Secretary of Defense for Near Eastern and South Asian Affairs, International Security Affairs, was formerly associated with the department of political science, University of Seattle. Special Assistant for International Security Affairs, Dr. William R. VanCleve is from the department of political science, University of Southern California. John S. Foster, Director of Defense Research and Engineering was formerly director of the Livermore Laboratory of the University of California and Dr. Roland F. Herbst, the Deputy Director, Strategic and Space Systems was associate director for nuclear design of the Lawrence Radiation Laboratory, University of California.

Myron Tribus, the former dean of the school of engineering at Dartmouth College, is now Assistant Secretary of Commerce for Science and Technology.

In the Department of Health, Education, and Welfare, Assistant Secretary for Health and Science Affairs is Dr. Roger Egeberg, previously dean of the medical school at the University of Southern California. Deputy Assistant Secretary for Planning, Research, and Evaluation, James F. Gallagher, was professor and director of the Institute of Research on Exceptional Children, University of Illinois. The Special Assistant to the Secretary for International Affairs is Dr. George Grassmuck, who at the time of his appointment was a professor of political science and assistant vice president of the University of Michigan. In 1960–61, Dr. Grassmuck served as Special Consultant to then Vice President Nixon and in 1960 was research director of the presidential campaign.

Prof. Paul Cherington of Harvard's School of Business Administration is an Assistant Secretary of Transportation. Dr. Secor D. Browne, professor of aeronautical engineering at MIT, served as an Assistant Secretary of Transportation and has recently been appointed Chairman of the Civil Aeronautics Board.

At the Post Office Department, Assistant Postmaster Ronald E. Lee previously served as director of the center for urban affairs at Michigan State University.

At the Department of the Treasury, Prof. Murray L. Wiedenbaum of the economics department of Washington University is Assistant Secretary for Economic Policy, and Prof. Edwin S. Cohen of the Law School, University of Virginia, is Assistant Secretary for Tax Policy. Prof. Henry Wallich of Yale University is a senior consultant to the Department.

Former Dean Erwin N. Griswold of the Harvard Law School serves as the Solicitor General in the Department of Justice.

In the Interior Department, a key policymaker is Dr. Carl McMurray, the Assistant to the Secretary and former professor of political science at Florida State University. Dr. Leslie Glasgow, Assistant Secretary for Fish and Wildlife, Parks, and Marine Resources, was on the faculty at Louisiana State University.

In the international affairs field, men from university life are also serving in this administration. For example, former president of Michigan State University John A Hannah is Administrator of AID. The U.S. Ambassador to Burundi is Thomas Melady, a professor of Afro-Asian affairs at Seaton Hall University. Dr. Glenn Olds, the U.S. Representative on the Economic and Social Council of the United Nations, was formerly dean of international studies at the State University of New York. Professor of political science and vice president of Indiana University David Derge is a member of the U.S. Advisory Committee on International, Educational, and Cultural Affairs.

Father Theodore M. Hesberg, the president of Notre Dame University, was designated by President Nixon to be Chairman of the U.S. Commission on Civil Rights, and Stephen Horn, dean of graduate studies at American University was appointed vice chairman.

Dr. William McElroy, the Director of the National Science Foundation, is a distinguished biologist from the Johns Hopkins University, who chaired the National Academy of Sciences population study committee.

Academicians are also serving as volunteers on Presidential task forces that were established to assist the administration with ideas and recommendations for 1970 and beyond. A distinguished group of college presidents are serving on the Task Force on Priorities in Higher Education chaired by President James M. Hester of New York University. Members of this task force include: President George F. Budd, Kansas State University; President James C. Fletcher, University of Utah; President Luther H. Foster, Tuskeegee Institute; Chancellor Alexander Heard, Vanderbilt University; President James A. Howard, Rockford College; President Howard W. Johnson, Massachusetts Institute of Technology; President Edward H. Levi, University of Chicago; Vice Chancellor for 2-year Colleges, Sebastian Martorana, State University of New York; President Malcolm C. Moos, University of Minnesota; Vice Chancellor for Educational Planning and Program Rosemary Park, UCLA; President John E. Sawyer, Williams College; President Paul E. Waldschmidt, University of Portland; and President John C. Weaver, University of Missouri.

Other persons from academic life serving on presidential task forces include the following:

Task Force on Problems of the Aging: Dean Walter M. Beattle, Jr., school of social work, Syracuse University; Prof. Colin D. Campbell, department of economics, Dartmouth College; Dr. Woodrow Morris, director, institute of gerontology, The State University of Iowa.

Task Force on Air Pollution: Chairman Arie Jan Haagen-Smit, professor of bio-organic chemistry, California Institute of Technology; Prof. Willard F. Libby, institute of geophysics and planetary science, UCLA; Dr. Norton Nelson, director, institute of environmental medicine, New York University; Prof. Ernest S. Starkman, department of mechanical engineering, University of California-Berkeley; Prof. John W. Tukey, department of statistics, Princeton University; and Prof. James L. Whittenberger, school of public health, Harvard University.

Task Force on Business Taxation: Prof. Dan Throop Smith, graduate school of business, Stanford University.

Task Force on Economic Growth: Chairman Neil Jacoby, professor of business and economic policy, UCLA; Prof. Moses Abramovitz, department of economics, Stanford University; Mr. Edward F. Denison, senior fellow, the Brookings Institution; Prof. John W. Kendrick, department of economics, George Washington University; Dr. Eli Shapiro, professor of financial management, Harvard University.

Task Force on Highway Safety: Vice President for Medical Affairs John Conger, University of Colorado Medical Center; Mr. Harmer E. Davis, director, institute of transportation and traffic engineering, University of California; Dr. Ross A. MacFarland, professor of public health, Harvard University.

Task Force on Low-Income Housing; Chairman Raymond J. Saulnier, department of economics, Columbia University; professor of real estate and urban land economics Leo Grebler, UCLA; Dr. George S. Sternlieb, director of urban studies center, Rutgers University; Mr. Arthur M. Weimer, special assistant to the president of Indiana University.

Task Force on Model Cities: Chairman Edward C. Banfield, department of government, Harvard University; Prof. Bernard Frieden, department of city planning, MIT; Prof. James Q. Wilson, department of government, Harvard University; Prof. James M. Buchanan, department of economics, Virginia Polytechnic Institute.

Task Force on Oceanography: Vice President John C. Calhoun, Jr., Texas A. & M. University; Prof. Emeritus Norman J. Padelford, department of political science, MIT.

Task Force on Problems of the Physically Handicapped: Dr. William A. Spencer, department of rehabilitation, Baylor College of Medicine.

Task Force on Prisoner Rehabilitation: Mr. Norval Morris, director, center for studies in criminal justice, University of Chicago.

Task Force on Science Policy: Dr. Solomon Fabricant, department of economics, New York University; Dean Robert J. Glaser, Stanford University School of Medicine; Dean Chauncey Starr, school of engineering and applied science, UCLA; Dr. H. Guyford Stever, president, Carnegie-Mellon University; Prof. Charles H. Townes, department of physics, University of California-Berkeley.

Task Force on Improving the Prospects of Small Business: Prof. Frank L. Tucker, graduate school of business administration, Harvard University.

Task Force on Urban Renewal: Prof. Richard F. Muth, department of economics, Washington University; Prof. George S. Tolley, department of economics, University of Chicago; Dr. Archibald M. Woodruff, chancellor, University of Hartford.

Task Force on Women's Rights and Responsibilities: Sister Ann Ida Gannon, B.V.M., president, Mundelein College; Dr. Alan Simpson, president, Vassar College.

Task Force on Rural Development: Dr. C. E. Bishop, vice president for research and public service programs, University of North Carolina; Dean Ray M. Kottman, college of agriculture and home economics, Ohio State University; Dr. Emiel W. Owens, department of agricultural economics, University of Minnesota; Prof. Henry A. Wadsworth, Jr., department of agricultural economics, University of Minnesota.

The impact of academicians on policy in the Nixon administration has already been substantial. They were involved in formulating the President's programs to reform the welfare system and share revenues with the States and localities. The administration Task Force on Revenue Sharing, for example, operated under the guidance of Dr. Arthur Burns and was chaired by Dr. Murray L. Wiedenbaum. Among its most active members were Dr. Richard Nathan and Dr. Martin Anderson. The revenue-sharing proposal had strong academic ties since at both the conceptual and development stage academic economists made major contributions.

This academic involvement in our public life is a healthy situation which will, I believe, assure vitality to Government and fresh approaches to public problems.

Should these gentlemen at a later date return to academic life, I would also hope that the perspectives gained from active participation in policymaking would make them even more valuable scholars, teachers, and administrators.

I take particular pride in calling attention to the desire of this Republican administration to utilize the resources and talents of the Nation's leading colleges and universities. For too long there has been a popular misconception that academic infusion into public life began and ended during the Kennedy administration. The partial list of intellectuals serving in the Nixon administration clearly demonstrates that this is not true.

Personally, I am pleased at the liaison which the Nixon administration has established with the academic community and I am confident that it will be a mutually rewarding relationship.

VETERANS OF FAMED 100th INFANTRY BATTALION URGE REPEAL OF TITLE II

(Mr. MATSUNAGA asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. MATSUNAGA. Mr. Speaker, the momentum of support for legislation to repeal title II of the Internal Security Act of 1950 is developing into an avalanche, and cannot be ignored any longer.

Civic and veterans organizations throughout this Nation are rallying to the call for eliminating from our Federal statute books a law which is repugnant to our American way of life. The detention law has been called "un-American" by the New York Times, and "an abomination" by the Washington Sunday Star.

Among the many organizations seeking repeal of title II is the Club 100, an organization of veterans of the famed 100th Infantry Battalion, which eventually became the first battalion of the 442d Infantry Regiment, and which covered itself with unparalleled glory in World War II. I am pleased to offer for the RECORD a resolution which my former comrades in arms recently adopted to urge the repeal of title II:

RESOLUTION

Whereas, Americans of Japanese ancestry, from previous experience in emergency detention, recognize the danger of Sub-Title II of the Internal Security Act of 1950 (Emergency Detention Act), to the civil rights of all Americans, and

Whereas, the Emergency Detention Act provides that, during periods of "Internal security emergency", any person who "probably will engage in, or probably will conspire with others to engage in, acts of espionage or of sabotage" can be incarcerated in detention camps, and

Whereas, a person detained under the Emergency Detention Act will not be brought to trial under law, but instead will be judged by a Preliminary Hearing Officer and a Detention Review Board, where the detainee must prove his innocence but the government is not required to furnish evidence or witnesses to justify the detention, now therefore, be it

Resolved by the Club 100, an organization comprised of World War II veterans of the 100th Battalion, 442nd Regiment, that it hereby affirms it's opposition to Sub-Title II of the Internal Security Act of 1950 (Emergency Detention Act), and be it further

Resolved that in conformity with it's opposition to said Sub-Title II of the Internal Security Act of 1950, that it hereby urges the members of the 91st Congress of the United States of America to repeal said Sub-Title II of the Internal Security Act of 1950, and be it finally

Resolved that duly certified copies of this resolution shall be forwarded to the following:

(1) The President of the United States,

(2) Honorable Spiro T. Agnew, President of the Senate of the United States,

(3) Honorable John W. McCormack, Speaker of the House of Representatives,

(4) Senator Hiram L. Fong,

(5) Senator Daniel K. Inouye,

(6) Representative Spark M. Matsunaga, and,

(7) Representative Patsy T. Mink.

Dated: Honolulu, Hawaii, September 10, 1969.

HENRY M. KAWAND,
President.

HUBERT W. YAMAMOTO,
Executive Secretary.

CLOSINGS OF SHOE FACTORIES

(Mr. BURKE of Massachusetts asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. BURKE of Massachusetts. Mr. Speaker, on December 8, the Brockton Daily Enterprise of Massachusetts announced the fact that the area's newest shoe factory was closing.

This is the first new shoe factory to be built in over half a century in the Brockton area, but it will close its doors permanently as of that date.

Mr. Speaker, this shoe factory was built 2½ years ago and was equipped with the most modern equipment available in the world. This company could not stand up to the low wage competition of foreign imports. They could not stand the gaff of foreign imports of footwear flooding the market here in America.

Mr. Speaker, this company had a payroll of over $1 million a year in the small community of Avon. The company purchases from other related companies amounted to over $500,000 per year.

The Plymouth Shoe Co., of Middleboro, Mass., notified its workers and the union president that they would cease production at its Middleboro plant very shortly.

There is another shoe factory that employs over 1,200 people that is expected to close its doors at the end of this year and there are rumors that three

other shoe factories are about to close their production.

Mr. Speaker, these factories are the backbone of small communities throughout the Nation. In fact in the city of New York we have those who are pressing for free trade, the city of New York employs more than 200,000 shoe workers. Yet we find in that State those who are pressing for lower and lower tariffs on footwear.

Mr. Speaker, we see these people who are wearing certain types of T-shirts, calling for boycott of grapes, but when you look at the T-shirts you find that they were made in Taiwan or Korea or Japan at a pay scale of from 14 cents to 50 cents per hour. One wonders what is happening in this country. One wonders where this country is going to be when defense spending slows down. One wonders where the people are going to get jobs.

Mr. Speaker, I am a member of the Committee on Ways and Means and I have raised my voice for the past 8 years with reference to this problem. There are orderly marketing bills pending before that committee and I want to serve notice on the chairman and the entire membership of that committee that I expect action on these bills.

It is about time we did something before an entire industry is wiped out.

Mr. Speaker, I insert at this point the item from the Brockton Daily Enterprise to which I referred earlier:

AREA'S "NEWEST" SHOE FACTORY CLOSES TODAY

(By Peter Watson)

The first new shoe factory to be built in over half a century in the Brockton area will close its doors permanently, it was announced this morning.

Herbert S. Nagle, president of the Victory Shoe Co., Inc., said today its 2½-year-old plant in Avon ceased production as of this morning.

"The closing was necessitated principally by the surge of imported shoes into this country over the past few years," Nagle said.

As a result, 165 shoe workers will be thrown out of work and a total payroll of just under $1 million will be lost to the area.

Notified of the closing, the Brotherhood of Shoe Workers and Allied Craftsman sent a telegram to President Nixon, with copies to Sens. Kennedy and Brooke, asking that every effort be made to keep the plant in operation.

"As yet we have not heard a word," Union President Kenneth W. Johnson said this morning. "It would appear the politicians in this area and even the President don't want to take action," he added.

According to Nagle, the decision to close followed consultations with high-level officials from the Dept. of Commerce.

In a prepared statement, Nagle said "after consultations with high government officials of the Dept. of Commerce it was concluded from our discussions that the future of shoe manufacturing in this area is very uncertain and that if and when any relief does come from the deluge of imported footwear it will not be of sufficient magnitude nor in sufficient time to help the small independent manufacturer.

According to statistics prepared by the National Footwear Manufacturers Assn., the present level of imports is 37 per cent of domestic production and rising every month.

Nagle noted that the total impact locally of the closing would be even greater than the loss of the Victory Shoe Co. payroll.

"Other businesses as well will be affected such as the little fellow who supplies us with soles, upper leather, laces, thread, buckles and boxes. Our total expenditures in these areas ran to approximately $500,000 per year," Nagle said.

Geared to produce men's shoes to retail from $14.95 to $25, the Avon plant had total sales of over $2 million annually to chain stores, mail order houses and other shoe manufacturing firms.

The closing of Victory Shoe marks the third factory to close in this area in the last six months.

"The day is coming soon when the congressional delegation from New England will have to answer to the shoe and leather workers, and not just with words," Nagle said.

The first modern shoe factory in the Brockton area in over 50 years, the Avon plant was a one-floor, air conditioned facility designed to produce a certain level of output each day in order to run profitably.

"Obtaining orders to maintain this level had become increasingly difficult, and we attribute this difficulty to the rising number of imports," Nagle said.

Nagle charged that the "government has shown a callous disregard to the problems of the shoe and leather industry in relation to the question of imports and the small independent manufacturer."

Nagle also charged that the giants of domestic shoe manufacturing were maintaining their profits as shoe production lagged by doing more importing.

"They make up the difference in the tremendous markups available on imported shoes, and as a result are not passing any savings on to the consumer," Nagle charged.

Union President Kenneth Johnson noted that the majority of the 165 shoeworkers to be laid off will be permanently out of work. "We can place some of them in other plants, but the older ones will probably retire and younger ones will go into other industries. Those in the middle are really in trouble," he said.

MIDDLEBORO FIRM

Meanwhile, the Plymouth Shoe Co. of Middleboro has notified its workers in a letter to the union president that it will ccase production at its Middleboro plant.

Negotiations are presently under way for the sale or leasing of the plant, however, so that shoe production may continue under a different management.

V-I-E-T-N-A-M

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. PODELL) is recognized for 60 minutes.

Mr. PODELL. Mr. Speaker, the term "Vietnam" represents more than just a geographic entity. It can also serve as a mnemonic device for the organization and discussion of the issues revolving around that ongoing conflict.

"V": At one time referred to victory, "The overcoming of an antagonist or enemy." The origin is American and dates from the early 20th century: as to win the First or Second World War. Guerrilla fighting in the jungles of Vietnam has made the term obsolete.

Now stands for Vietnamization. Derived from the verb to Vietnamize. It is a tactic used when all else fails.

"I": Intervention or the limits thereof. As in: Intervene wherever freedom is threatened in the world. However, in 1962 we agreed not to intervene in Cuba; last year we agreed not to intervene in Czechoslovakia.

"E": Elections. Often used with the adjective free. Free elections: the choice between alternatives; not the affirmation of what already exists. For elections to be termed "free," the locking up of one's opponents is strictly prohibited.

"T": Tonkin Gulf resolution. Gulf of Tonkin: as in small body of water with a steep and sudden shelf. A body of water where you start with water on your kneecaps and end up with it over your head.

"N": National priorities. A collective noun; that which is supposed to be important; that which everyone discusses but no one does anything about; negatively correlated with the amount of money spent.

"A": Alienation. The estrangement of an individual; often a young person. Used derogatorily to describe a youth who sees the contradictions and hypocrises in our policies and seeks to change them.

"M": MyLai. Called an isolated incident in a war that has killed 33,215 U.S. servicemen and wounded over 250,000; that has killed 97,387 South Vietnamese and 572,041 of the enemy; that lists 300,000 as South Vietnamese civilian deaths over the last 4 years—most due to American and South Vietnamese firepower.

Thus Vietnam, mnemonic device or geographical location, continues to be the American tragedy. As the American and Vietnamese casualty figures continue to mount, the American public refuses to be placated by more optimistic pronouncements. In this case, words that have little bearing to reality have been more divisive and damaging than the truth.

Rumblings from Laos are still being denied; confirmed policy in Thailand has not been reversed. In Vietnam we were assured that we were there only to "advise." The public, therefore, has cause for questions and scepticism, and a right to unambiguous explanations.

What is sad at this late stage is the war continues to rage and still there has been no public redefinition of American policy. To retreat into isolationism as an overreaction to the tragedy would be folly and self-defeating. Yet, we have to realize that our policy of limited war and our slogan of intervention in defense of freedom can be contradictory. We supposedly intervene in defense of freedom; yet too often we have emerged supporting forces of reaction. We must have a definite policy and establish criteria for involvement, When should we send supplies? When should we send arms? When should we send men?

If we learn one thing from Vietnam, let us learn that wars in the second half of the 20th century cannot be fought with the same assumptions and the same weapons as earlier wars; numbers and objective strength are not necessarily the prerequisites for victory. Months of bombing and thousands of American lives have proven this beyond a reasonable doubt.

We have placed our hope for disengagement on Vietnamization. Will the South Vietnamese continue to fight for the Thieu-Ky regime once America leaves? Will they make use of the knowledge, the men, the machinery that America has pumped into that country? What if successful Vietnamization is not forthcoming? The administration has not

discussed this contingency. Our policy at this late date remains in doubt.

Mr. OLSEN. Mr. Speaker, will the gentleman yield?

Mr. PODELL. I yield to the gentleman from Montana.

(Mr. OLSEN asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. OLSEN. Mr. Speaker, during my 9 years here in the House of Representatives I have established a record in committee and here on the floor of the House. It has been a consistent record. I am proud of it and I have campaigned on it in the last four elections.

Last week a nationally syndicated columnist released certain allegations and implications which, if left unanswered, could cast a shadow on that record. For that reason I have asked Chairman DULSKI of the House Post Office and Civil Service Committee to release a review of my position on the legislation in question during executive committee sessions over the last 9 years. Chairman DULSKI directed counsel to prepare a summary of the previously unreported and confidential record and, with the advice and permission of my chairman, I am inserting this document in the RECORD today for the information of all of my distinguished colleagues. Let me first note, and emphasize, that I have always supported postal rate revenue measures, in committee and on the floor of the House, at least as high as those recommended by the Post Office administration, regardless of its party affiliation. I have always been satisfied that the legislation reported from my subcommittee and subsequently reported to the House by the Post Office and Civil Service Committee has resulted from fair, intensive and thoughtful deliberation on the part of our members. I thought then, and I think now, that these proposals were in the best interest of the Post Office Department and the American people.

Mr. Speaker, I do not know the source of this attempt to tarnish my record and this is not the place for speculation. The fact of the matter is, however, that in this body we have 435 Members, all of whom are bound by a system that demands that we stand for reelection every 2 years. For most of us, that means expensive campaigns—occasionally a primary campaign tossed in for good measure—and expenditures ranging from $30,000 to perhaps $100,000 every other year.

In the State of Montana, I am bound by a law which demands that I spend no more than 5 percent of my annual salary from personal funds in a single campaign. The rest must be provided by campaign contributions from thousands of well-wishers. I might note in passing that 5 percent of my salary, $2,125, would not pay for a single half page advertisement inserted in all of the newspapers in my district. And even if I were a man of independent wealth, which I am not, I would be bound by the same legal limitation upon personal spending in a campaign.

For the most part, gentlemen, the contributions received by the campaign committees, whether we are liberal or conservative, come from individuals and groups who share our political convictions and who support our views.

The question that must be asked—and answered—not only by the few under current attack or those who might be the subject of smears tomorrow or next week, but also by those who would attack is this: does a campaign contribution become a payoff when a Member of Congress votes for legislation supported by a contributor? Are we limited to contributions from those with whom we disagree? Does a contribution from AMPAC—American Medical Association—become a bribe when a Member of this body votes against medicare, or does a contribution from COPE—AFL–CIO—become a bribe when a Member votes against compulsory arbitration? If the answer to those questions is "yes," then the system cries out for a change which would protect present and future Members of this body and enable them to continue to vote their convictions free of such ominous vulnerability.

Personally, I believe now is the time for the Congress to turn its attention to consideration of some form of public campaign financing. I do not think any proposal short of public campaign financing with absolute prohibition of individual contributions to elected officials or candidates for public office will provide the protection which recent allegations indicate is necessary.

In the present situation I believe I am fortunate in being able to cite a voting record which is actually contrary to the wishes of individuals and groups who allegedly contributed to me in exchange for favors. But this is really beside the point. If my convictions and my votes had been for lower third-class mail rates over the years and if contributions in any amount from third-class users were established, what defense would I have to attacks in and out of the press regardless how unfounded these charges might be?

These are serious questions. This is a serious situation which, I submit, all of us must reckon with.

Mr. Speaker, I ask that notwithstanding the rules of the House that the following documents be inserted at this time in the CONGRESSIONAL RECORD: First, the statement I released to the press last Friday following publication of the column in question; second, the letter from Committee Counsel Charles E. Johnson transmitting a compilation of my voting record in executive committee sessions and here on the floor of the House; and third, the record compiled by Mr. Johnson at the direction of Chairman THADDEUS J. DULSKI.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Montana?

There was no objection.

The matter referred to is as follows:

PERSONAL STATEMENT FROM CONGRESSMAN ARNOLD OLSEN, DECEMBER 5, 1969

I have been engaged in public life for more than 20 years. During that time there have been many campaigns and many hundreds of well-wishers have contributed to the campaign funds.

But nobody has ever had the courage to offer a contribution in exchange for actions on my part which were contrary to my convictions. Many contributors no doubt approve of my voting record and share my views on issues. However, it is equally true that many contributors to my campaign funds have been disappointed with my position and my vote on a variety of issues.

As Attorney General of Montana I closed up very lucrative commercial gambling enterprises. Nobody attempted to bargain for favors. They didn't dare.

During the years I have served on the House Committee on Post Office and Civil Service I have consistently voted for the postal rates recommended by the Post Office Department. Sometimes I supported higher rates for 2nd, 3rd, and 4th class.

Finally, if any contributor to my campaign ever had the notion that he was buying anything, he was very much mistaken. And if anyone had ever revealed such a notion, his contribution would have been refused.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C., December 8, 1969.

Hon. ARNOLD OLSEN,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN: I am enclosing a report from Mr. Dulski which I complied at his instructions and which deals with your voting record on the matter of postal rates from the time you began service on the Post Office and Civil Service Committee. Chairman Dulski has reviewed this report and approved it in its entirety.

Sincerely yours,

CHARLES E. JOHNSON,
Chief Counsel and Staff Director.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C., December 8, 1969.

MEMORANDUM

To: Chairman Thaddeus J. Dulski.
From: Charles E. Johnson, Chief Counsel and Staff Director.
Subject: Record of Representative Arnold Olsen on Postal Rates Applicable to Third-Class (Advertising) Mail.

The official records of the Committee on Post Office and Civil Service disclose that Representative Olsen, throughout his tenure in the Congress, has voted consistently in support of legislation to increase postage charges for the mailing of bulk third-class (advertising) mail matter.

The official records of the House of Representatives, as contained in the Congressional Record, disclose similar support by Mr. Olsen in votes in the House of Representatives.

THE 1961 POSTAL RATE INCREASE BILL

During the Committee executive sessions on the official recommendation of former Postmaster General J. Edward Day for general postal rate adjustments in August and September of 1961, the Committee had before it for official consideration H.R. 7927, in accordance with unanimous agreement shown in the minutes of Executive Session No. 13, August 17, 1961.

H.R. 7927 included, among other matters, an increase from 2½ cents to 3 cents in the minimum charge per piece for regular bulk third-class (advertising) mailings.

In Executive Session No. 17, on September 6, 1961, Mr. Lesinski offered, as a general amendment to H.R. 7927, the provisions of H.R. 9052. H.R. 9052 included, among other matters, provision for continuing the then-existing minimum charge per piece of 2½ cents for regular bulk third-class mailings, with only two exceptions. The minimum charge was to be 3 cents for any bulk third-class mail on which "time value" (pref-

erential) service was requested by the mailer and on any such mail that was not addressed to a specific individual address.

The effect of this provision in H.R. 9052, therefore, was to provide no minimum per piece increase in a very large proportion of third-class bulk mailings.

The official Committee minutes of Executive Session No. 18, on September 7, 1961, disclose that, on the record vote on adoption of the Lesinski Amendment (including the softened bulk third-class minimum charge per piece), Representative Olsen voted *No.*

A no vote, of course, was in support of the original provision of H.R. 7927, to fix the minimum charge per piece for *all* regular bulk third-class mailings at 3 cents, as recommended by former Chairman Tom Murray.

H.R. 7927, as amended, was reported by the Committee to the House of Representatives.

H.R. 7927 IN THE HOUSE OF REPRESENTATIVES

The Congressional Record discloses the following with respect to consideration of the Rule (H. Res. 464)—which, had it been adopted, would have provided for House consideration of H.R. 7927 as reported from the Committee on Post Office and Civil Service.

On September 15, 1961, a Member of the House Committee on Rules, by direction of that Committee, called up House Resolution 464 and asked for its immediate consideration.

House Resolution 464 provided for the consideration of H.R. 7927 under a *closed rule,* waiving points of order, with two hours of general debate.

The effect of the proposed closed rule was that H.R. 7927, as reported from the Committee on Post Office and Civil Service, would be subject to no amendments and, therefore, would have to be voted up or down.

At the conclusion of debate on H. Res. 464, the previous question was ordered and, on a record vote, Representative Olsen voted *No.*

The effect of a no vote in that case was to kill the proposed "closed rule," and open the way for presentation of an "open rule," under which H.R. 7927 *would be* open for amendments.

Immediately thereafter, a Member of the Committee on Rules offered an amendment to House Resolution 464 to provide for consideration of H.R. 7927 under an "open rule."

The open rule was agreed to on a voice vote.

On January 23, 1962, H.R. 7927 was called up in the House of Representatives and Chairman Tom Murray offered a substitute to restore all major provisions of the bill as originally introduced.

During the debate on the Murray substitute, Representative Olsen said:

"Now, I think that * * * the bill now before us [the Murray substitute] does not increase second or third class as much as perhaps it ought to." (Congressional Record January 23, 1962, Page H646)

The Murray substitute proposed raising the 2½ cent bulk third-class minimum per piece charge from 2½ cents to 3 cents. It was amended by the House to raise the rate to 3½ cents (CONGRESSIONAL RECORD, vol. 108, pt. 1, p. 765). This amendment was adopted on a voice vote. It was not opposed by Mr. Olsen under the five minute rule.

THE 1967 POSTAL RATE INCREASE BILL

Representative Olsen was elected Chairman of the standing Subcommittee on Postal Rates for the 90th Congress.

The former Postmaster General on April 5, 1967, submitted Executive Communication No. 610, a general postal rate increase proposal.

Chairman Dulski on the same date introduced H.R. 7977, to carry out the Postmaster General's proposal.

Subcommittee Chairman Olsen held public hearings on 21 separate hearing dates, during the period May 9 to June 28, 1967, and heard more than 100 witnesses.

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The Olsen Subcommittee then held 7 executive sessions during the period July 12 to July 27, and voted to report H.R. 7977 with a number of major improvements made by the Olsen substitute, offered in the first executive session.

The general effect of the Olsen substitute was to provide substantially greater revenues than would have resulted from the Postmaster General's official recommendation. The Olsen substitute specifically included increases in all third-class mailing rates as recommended by the Postmaster General.

At the conclusion of the Subcommittee executive sessions, the Subcommittee unanimously approved a formal motion by the Ranking Minority Member commending Chairman Olsen on his extremely able and fair handling of this legislation in the public interest.

The full Post Office and Civil Service Committee took up the Olsen Subcommittee general rate increase bill, H.R. 7977, and completed action on it after 17 executive sessions, extending over the period from August 9 to September 21, 1967.

The first official action in the first such executive session was a motion by Mr. Olsen that the full Committee report H.R. 7977, as reported by his Subcommittee—including all third-class rate adjustments requested by the Postmaster General.

At one sesssion (August 16) Mr. Olsen successfully opposed an amendment that would have struck out of his Subcommittee bill a requirement that "bills and statements of account produced by electronic data processing equipment" must pay first-class postage. Mr. Olsen offered a substitute to that amendment, specifying that all bills and statements of account must pay first-class postage when mailed, regardless of how they are produced. The Olsen substitute carried on a close record vote.

H.R. 7977, after being perfected by the Olsen subcommittee and the full Committee, provided for gross annual postal revenue increases totaling $884.1 million—*$59.2 million more than the $824.9 million requested by the Postmaster General.*

H.R. 7977 was called up in the House of Representatives October 10, 1967. Mr. Olsen strongly supported the bill, including the entire third-class mail recommendations of the Postmaster General, during the debate (CONGRESSIONAL RECORD, vol. 113, pt. 21, pp. 28416–28418).

An amendment was offered by Mr. Hechler (Page H13153) to increase the regular bulk third-class minimum charge per piece from 3.8 cents, as provided in the Committee bill, to 4.5 cents. During the debate under the five minute rule, Mr. Hechler asked unanimous consent to proceed for an additional five minutes. He was supported in this request by Mr. Olsen (CONGRESSIONAL RECORD, vol. 113, pt. 21, p. 28612).

A substitute amendment by Mr. Anderson of Illinois (Page 28614) to provide a three-phase increase in the minimum charge per piece—3.2 cents, 3.6 cents, and 3.8 cents in three successive years—was opposed by Mr. Olsen (Pages 28615–28616) and he strongly supported the Committee bill.

The Anderson substitute was defeated, 69 to 145, on a teller vote (Page 28625). The amendment by Mr. Hechler was defeated, 64 to 147, on a division (Page 28625).

CHARLES E. JOHNSON,
Chief Counsel and Staff Director.

REPORT ON TRIP TO GREECE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. WILLIAMS) is recognized for 10 minutes.

Mr. WILLIAMS. Mr. Speaker, during the August 1969 recess of the House, my wife, and I, in company with other Congressmen and their wives, attended the annual convention of the Pan-Arcadian Federation of America in Athens, Greece. Our visit to Athens also gave us the opportunity of visiting other parts of Greece.

Prior to our departure for Greece we were familiar with the takeover of the Greek Government by the military junta. We had read about alleged atrocities and torture of the Greek people by the present Government under the military junta, and we had read about bombings in some public places in Greece. We were generally under the impression that the country of Greece was in a rather viselike grip of a military government.

We flew directly to Athens from John F. Kennedy Airport in New York and landed in Athens at approximately 2 p.m. in the afternoon, Athens' time. We were expedited through customs at the beautiful new Athens Airport and we were directed to the restaurant area for a reception in our honor. Assistant Prime Minister Constantine Vovolinis was our host at the reception and the reception was adequately covered by the various news media.

Subsequent to the reception we proceeded to the Grand Bratagne Hotel on Constitution Square. We stayed at this hotel during our entire time in Greece and we found the accommodations to be excellent and this hotel had a most gracious atmosphere with excellent service.

During our stay in Greece we visited all of the historical spots in and around Athens. We found the Acropolis to be most interesting and informative. We were surprised to learn for the first time that the Parthenon had survived in excellent condition until the latter part of the 18th century when, at a time when Greece was occupied by the Turks, the Turks used the Parthenon as a storage place for gun powder. The Venetians were attacking the Turks and a Venetian artillery shell went through the roof of the Parthenon and exploded the gun powder. Thus, more damage was caused to the Parthenon in a few seconds than had occurred down through the centuries.

We found the Greek people to be extremely friendly, industrious, and courteous, and we made many friends in Greece. Mr. Christ Mitchell, president of the Pan-Arcadian Federation of America, made certain that our visit to Greece was most enjoyable.

We all had complete freedom of movement in Greece and no members or units of the military were in evidence, other than a few servicemen on leave. This was, of course, exactly the contrary to what we had been led to believe. Also, there is no section of Athens in which people cannot move with complete safety at any hour of the day or night.

We spent 1 day on the island of Crete and visited Khania and a NATO base in the immediate vicinity of Khania. We also visited Iraklion and the Minoan archeological site immediately south of Iraklion. It is at the Minoan archeological site that the palace of the Minos

kings has been excavated and partially restored. This palace dates back to approximately 1400 B.C. and is reputed to be the birthplace of modern civilization.

We also spent some time visiting the various Greek islands, such as Idra and Spetse, and we traveled by hydrofoil boat and cruise ship. We found the islands to be beautiful and picturesque. The Greek people use these islands as resort and vacation areas.

During our stay in Greece we had an opportunity to talk to hundreds of Greek people. Many of these people spoke English and we were even able to converse with Greeks who did not speak English as two of the Congressmen who accompanied us spoke Greek and we always had some Pan-Arcadian Federation members with us who also spoke Greek. We found the overwhelming opinion to be that the present Greek Government is doing an excellent job for the people of that country. The lot of the people of Greece is steadily improving and the present Greek Government has instituted some long-needed reforms. The progress in Greece is readily apparent through the large amount of construction that is taking place in every section of Greece that we visited.

Also, during our stay in Greece we had an opportunity to talk to George Popadopoulos, Prime Minister; Stylianos Pattakos, First Deputy Prime Minister; and Nickolas Makarezos, Minister of Economic Coordination. These men are the former Greek Army colonels who formed the military junta which took over the Greek Government in 1967.

We spent approximately 1½ hours discussing conditions in Greece with Prime Minister Popadopoulos. From our frank discussion with him we learned of the steps that the Greek Government is taking to strengthen Greece and to maintain it as a free nation. The reforms which the Greek Government is effecting are as follows:

First, a complete reorganization of the administration with training courses to improve the ability of all civil servants;

Second, an acceleration of the economic and industrial growth in Greece and a better economic return to the farmers;

Third, a more fair distribution of the tax burden with high income families and companies paying, for the first time, their fair share of taxes;

Fourth. Social services such as social insurance, welfare, and medical care are now being provided to all Greek citizens with the same retirement benefits for everyone. Prior to this reform, some Greek citizens were drawing an annual pension of 100,000 drachmas after only contributing one-half of 1 percent of their salaries. While other Greek workers had to pay 18 percent of their wages in order to get an annual pension of 2,000 drachmas. Also, hospital units and health stations are being established throughout Greece. Formerly, the hospitals and health stations were concentrated in the Athens area.

Fifth. The entire Greek educational system has been vastly improved.

Sixth. The debts owed to the Government by all farmers have been forgiven.

During our discussion with Prime Minister Popadopoulos he expressed his determination to have free elections in Greece at the earliest practical date. He stressed that the difficulties in Greece which his government is attempting to overcome developed over many years and had greatly weakened Greece. In order to see that Greece is maintained as a strong country the reforms which are being put into effect must be producing results before free elections can be held. Therefore, the Prime Minister stressed that he could not tell us exactly when free elections would be held in Greece.

When questioned about the reports of the torture of some Greek political prisoners, the Prime Minister vigorously denied them. I later learned that Congressman ROMAN PUCINSKI had visited the Island of Yaros where the prisoners were supposed to have been tortured and actually talked to the political prisoners through the Greek speaking U.S. consul. I checked with Congressman PUCINSKI upon my return to Washington and learned that he had found no evidence of any torture of prisoners, even though he had talked to the prisoners himself. Congressman PUCINSKI also informed me that the political prisoners had not even been subjected to any mistreatment at all.

While we were in Athens the U.S. 6th Fleet put into the harbor and we saw many American sailors enjoying the sights of Athens. It is interesting to note that Athens is the only port available to the U.S. 6th Fleet in the Western Mediterranean as the Turks will not permit our fleet to use the Turkish ports. This points up the fact that Greece is a most important NATO ally of this country and one of the few countries that we could rely on in that section of the world in case of any difficulty.

It is generally recognized that Greece is the cradle of democracy. However, the Greek Government that was overthrown in 1967 was anything but a democracy. Rather, it was a strong monarchy form of government.

King Constantine remained in Greece under the administration of the military junta with full pay and all other forms of remunerations for the entire royal family. Just before the referendum on the new Greek Constitution, King Constantine attempted a countercoup in an effort to overthrow the military junta When the countercoup failed, King Constantine and his family fled to Rome where they are now living in self-imposed exile. The present Greek Government continues to pay the royal family, and King Constantine and his family have a standing invitation to return to Athens, in complete safety, at any time.

Under the old Greek Constitution the King was designated as "supreme head of the state." He was commander of the Armed Forces and had the power to declare war. Also, he was authorized to enter into most types of treaties without the consent of Parliament.

Under the old Constitution the King could appoint and dismiss his ministers as he saw fit, and the King could veto any law passed by the Parliament. The King's failure to publish any such law within 2 months from the end of a parliamentary session caused the law to become null and void.

The new Greek Constitution approved by referendum on September 29, 1968, provides that the Council of Ministers must propose a declaration of war and that the King's treatymaking power can be limited by law. The new Constitution provides that the King's veto of any law passed by the Parliament may be overridden by a vote of the majority of Parliament and the King can only dismiss his government if it does not enjoy the confidence of Parliament.

This new Constitution also contains many other desirable provisions and can be the vehicle through which Greece will achieve a truly democratic form of government. Various sections of the new Constitution have already been placed into effect and the present Greek Government is constantly placing more sections of the new Constitution in effect.

Prior to the takeover of the Greek Government by the present regime, the strength of communism was steadily increasing in Greece. The reforms which the present government is placing in effect are strengthening Greece to a point where the people of Greece will be able to adequately govern themselves and have the ability to resist outside influences such as communism.

From my observations in Greece, I am confident that these conditions will be established in the near future and that the Government of Greece will become a true democracy.

In the meantime it is my considered opinion that we must be patient with the present Greek Government and make every effort to assist it in the accomplishment of its objectives.

COLOMBIA COLLECTING MATERIAL TO DEFEND ITS INTERESTS IN PANAMA CANAL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. FLOOD) is recognized for 15 minutes.

Mr. FLOOD. Mr. Speaker, information of unquestionable reliability has been received that the Colombian Government has been, and still is, collecting authoritative books and documents relating to the Panama Canal, including statements in the CONGRESSIONAL RECORD. Diplomats from other Latin American countries consider that this development is highly significant.

In the Thomson-Urrutia Treaty of 1914–22 Colombia, the sovereign of the isthmus before the Panama Revolution of 1903, recognized that the title of the Panama Canal and Railroad, is vested "entirely and absolutely" in the United States of America without any encumbrances or indemnities whatsoever. The United States, in return, granted in this treaty important rights to Colombia, including toll-free transit of the Panama Canal for Colombian "troops, materials of war, and ships of war," and the use of the Panama Railroad in the event of interruption of ship transit.

In the negotiations between the United States and Panama following the 1964

Panamanian mob attacks on the Canal Zone for three recently proposed new canal treaties, which were never signed, the negotiators completely ignored the treaty rights of Colombia and that country has protested that it would defend its rights. Also the treaty interests of Great Britain under the Hay-Pauncefote Treaty were similarly disregarded. These are among the factors that led more than 100 Members of this body in the present session to introduce identical resolutions opposing any surrender by the United States of its sovereign rights over the Panama Canal to any other nation or to any international organization—House Resolutions 592, 593, 594, and so forth.

In connection with the ignoring of U.S. treaty obligations, it is important to know that the Panama Canal Reorganization Act of 1950—Public Law 841, 81st Congress—included in section 12, subparagraph 412(d) the following:

The levy of tolls is subject to the provisions of Section 1 of Article III of the treaty between the United States of America and Great Britain concluded on November 18, 1901, of Articles XVIII and XIX of the convention between the United States of America and the Republic of Panama concluded on November 18, 1903, and of Article I of the Treaty between the United States of America and the Republic of Colombia proclaimed on March 30, 1922.

In view of the facts previously enumerated, it is clear that Colombia is preparing to defend its vital interests in the Panama Canal that were ignored in the recent treaty negotiations with Panama and, at the appropriate time, to enter the controversy.

The facts also emphasize the importance for the United States, in all its actions concerning the Panama Canal, to be legally correct and not to ignore or disregard the vital treaty rights of other nations or of interoceanic commerce. Anyone who thinks that Colombia will surrender its treaty rights as regards the Panama Canal and Railroad is a "babe in treaty land."

Because the terms of the Thomson-Urrutia Treaty between the United States and Colombia and the obligations of our country thereunder are not as well known as the provisions of the other two canal treaties, I quote the full text of the treaty with Colombia, together with the notice of its publication and protocol of exchange, as follows:

[Treaty series, No. 661]

TREATY BETWEEN THE UNITED STATES AND COLOMBIA: SETTLEMENT OF DIFFERENCES

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA—A PROCLAMATION

Whereas a Treaty between the United States of America and the Republic of Colombia, for the settlement of their differences arising out of the events which took place on the Isthmus of Panama in November, 1903, was concluded by their respective Plenipotentiaries at Bogota on the sixth day of April in the year one thousand nine hundred and fourteen, which Treaty, in the English and Spanish languages, and as amended by the Senate of the United States, is word for word as follows:

Treaty between the United States of America and the Republic of Colombia for the settlement of their differences arising out of the events which took place on the Isthmus of Panama in November 1903.

The United States of America and the Republic of Colombia, being desirous to remove all the misunderstandings growing out of the political events in Panama in November 1903; to restore the cordial friendship that formerly characterized the relations between the two countries, and also to define and regulate their rights and interests in respect of the interoceanic canal which the Government of the United States has constructed across the Isthmus of Panama, have resolved for this purpose to conclude a Treaty and have accordingly appointed as their Plenipotentiaries:

His Excellency the President of the United States of America, Thaddeus Austin Thomson, Envoy Extraordinary and Minister Plenipotentiary of the United States of America to the Government of the Republic of Colombia; and

His Excellency the President of the Republic of Colombia, Francisco José Urrutia, Minister for Foreign Affairs; Marco Fidel Suárez, First Designate to exercise the Executive Power; Nicolás Esguerra, Ex-Minister of State; José María González Valencia, Senator; Rafael Uribe Uribe, Senator; and Antonio José Uribe, President of the House of Representatives;

Who, after communicating to each other their respective full powers, which were found to be in due and proper form, have agreed upon the following:

Article I

The Republic of Colombia shall enjoy the following rights in respect to the interoceanic Canal and the Panama Railway, the title to which is now vested entirely and absolutely in the United States of America, without any incumbrances or indemnities whatever.

1.—The Republic of Colombia shall be at liberty at all times to transport through the interoceanic Canal its troops, materials of war and ships of war, without paying any charges to the United States.

2.—The products of the soil and industry of Colombia passing through the Canal, as well as the Colombian mails, shall be exempt from any charge or duty other than those to which the products and mails of the United States may be subject. The products of the soil and industry of Colombia, such as cattle, salt and provisions, shall be admitted to entry in the Canal Zone, and likewise in the island and mainland occupied or which may be occupied by the United States as auxiliary and accessory thereto, without paying other duties or charges than those payable by similar products of the United States.

3.—Colombian citizens crossing the Canal Zone shall, upon production of proper proof of their nationality, be exempt from every toll, tax or duty to which citizens of the United States are not subject.

4.—Whenever traffic by the Canal is interrupted or whenever it shall be necessary for any other reason to use the railway, the troops, materials of war, products and mails of the Republic of Colombia, as above mentioned, shall be transported on the Railway between Ancon and Cristobal or on any other Railway substituted therefor, paying only the same charges and duties as are imposed upon the troops, materials of war, products and mails of the United States. The officers, agents and employees of the Government of Colombia shall, upon production of proper proof of their official character or their employment, also be entitled to passage on the said Railway on the same terms as officers, agents and employees of the Government of the United States.

5.—Coal, petroleum and sea salt, being the products of Colombia, for Colombian consumption passing from the Atlantic coast of Colombia to any Colombian port on the Pacific coast, and vice-versa, shall, whenever traffic by the canal is interrupted, be transported over the aforesaid Railway free of any charge except the actual cost of handling and transportation, which shall not in any case exceed one half of the ordinary freight charges levied upon similar products of the United States passing over the Railway and in transit from one port to another of the United States.

Article II

The Government of the United States of America agrees to pay at the City of Washington to the Republic of Colombia the sum of twenty-five million dollars, gold, United States money, as follows: The sum of five million dollars shall be paid within six months after the exchange of ratifications of the present treaty, and reckoning from the date of that payment, the remaining twenty million dollars shall be paid in four annual installments of five million dollars each.

Article III

The Republic of Colombia recognizes Panama as an independent nation and taking as a basis the Colombian Law of June 9, 1855, agrees that the boundary shall be the following: From Cape Tiburón to the headwaters of the Rio de la Miel and following the mountain chain by the ridge of Gandi to the Sierra de Chugargun and that of Mali going down by the ridges of Nigue to the heights of Aspave and from thence to a point on the Pacific half way between Cocalito and La Ardita.

In consideration of this recognition, the Government of the United States will, immediately after the exchange of the ratifications of the present Treaty, take the necessary steps in order to obtain from the Government of Panama the despatch of a duly accredited agent to negotiate and conclude with the Government of Colombia a Treaty of Peace and Friendship, with a view to bring about both the establishment of regular diplomatic relations between Colombia and Panama and the adjustment of all questions of pecuniary liability as between the two couutries, in accordance with recognized principles of law and precedents.

Article IV

The present Treaty shall be approved and ratified by the High Contracting Parties in conformity with their respective laws, and the ratifications thereof shall be exchanged in the city of Bogotá, as soon as may be possible.

In faith, whereof, the said Plenipotentiaries have signed the present Treaty in duplicate nad have hereunto affixed their respective seals.

Done at the city of Bogotá, the sixth day of April in the year of our Lord nineteen hundred and fourteen.

THADDEUS AUSTIN THOMSON.
FRANCISCO JOSÉ URRUTIA.
MARCO FIDEL SUÁREZ.
NICOLAS ESGUERRA.
JOSÉ M. GONZÁLEZ VALENCIA.
RAFAEL URIBE URIBE.
ANTONIO JOSÉ URIBE.

And whereas the advice and consent of the Senate of the United States to the ratification of the said Treaty was given also with the "understanding, to be made a part of such treaty and ratification, that the provisions of section 1 of Article I of the treaty granting to the Republic of Colombia free passage through the Panama Canal for its troops, materials of war and ships of war, shall not apply in case of war between the Republic of Colombia and any other country";

And whereas the said Treaty as amended by the Senate and the above recited understanding of the Senate made a part of such Treaty have been duly ratified on both parts, and the ratifications of the two Governments were exchanged at Bogota on the first day of March, one thousand nine hundred and twenty-two;

Now, therefore, be it known that I, Warren G. Harding, President of the United States of America, have caused the said Treaty, as amended, and the said understanding, made a part thereof, to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In Testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this thirtieth day of March, in the year of our Lord one thousand nine hundred and twenty-two, and of the independence of the United States of America the one hundred and forty-sixth.

WARREN G. HARDING.

By the President:

CHARLES E. HUGHES,
Secretary of State.

PROTOCOL OF EXCHANGE

The undersigned Plenipotentiaries having met for the purpose of exchanging the ratifications of the Treaty signed at Bogota, on April 6, 1914, between the United States of America and Colombia, providing for the settlement of differences arising out of the events which took place on the Isthmus of Panama in November, 1903, and the ratifications of the Treaty aforesaid having been carefully compared and found exactly conformable to each other, the exchange took place this day in the usual form.

With reference to this exchange the following statement is incorporated in the present Protocol in accordance with instructions received:

1. In conformity with the final Resolution of the Senate of the United States in giving its consent to the ratification of the Treaty in question, the stipulation contained in the first clause of Article one by which there is ceded to the Republic of Colombia free passage of its troops, materials of war and ships of war through the Panama Canal, shall not be applicable in case of a state of war between the Republic of Colombia and any other country.

2. The said final Resolution of the Senate of the United States signifies, as the Secretary of State in effect stated in the note which he addressed to the Colombian Legation in Washington on the 3rd day of October, 1921, that the Republic of Colombia will not have the right of passage, free of tolls, for its troops, materials of war and ships of war, in case of war between Colombia and some other country, and consequently, the Republic of Colombia will be placed, when at war with another country, on the same footing as any other nation under similar conditions, as provided in the Hay-Pauncefote Treaty concluded in 1901; and that, therefore, the Republic of Colombia will not by operation of the declaration of the Senate of the United States above mentioned, be placed under any disadvantage as compared with the other belligerent or belligerents, in the Panama Canal, in case of war between Colombia and some other nation or nations. With this understanding the said Resolution has been accepted by the Colombian Congress in accordance with the dispositions contained in Article two of Law fifty-six of 1921, "by which is modified Law number fourteen of 1914" approving the Treaty.

In witness whereof, they have signed the present Protocol of Exchange and have affixed their seals thereto.

Done at Bogota, the first day of March, one thousand nine hundred and twenty-two.

HOFFMAN PHILP.
ANTONIO JOSÉ URIBE.

INVALIDATE INCREASE IN AIR FARES

(Mr. MOSS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. MOSS. Mr. Speaker, today 31 of my colleagues and I asked a Federal Court of Appeals to invalidate the increase in air fares that the Civil Aeronautics Board recently permitted all domestic airlines to put into effect.

In a petition and legal memorandum filed with the Federal Court of Appeals in the District of Columbia, we said that the Civil Aeronautics Board had acted improperly and illegally in approving the fare increases. We had earlier unsuccessfully petitioned the CAB not to grant the fare increases, but instead to hold an adequate hearing to determine what were the actual needs of the airline industry.

Our motion today asked that immediate relief be granted by the court to prevent irreparable injury to the traveling public by continuation of the higher fares. Specifically, we asked the court to enter a preliminary order to protect the public while the court decides the appeal which we are taking from the CAB action.

The preliminary order requested that:

The court order the CAB to reinstate the airline fares that had prevailed prior to the recent increase;

Alternatively, the court enter a protective order requiring the airlines to make prompt refunds to passengers of all overcharges, should the court subsequently find that the present fares are illegal;

Or, as a final alternative, the court decide the challenge to the CAB's order on an expedited schedule.

The motion filed with the court today was accompanied by a 100-page memorandum, prepared by our counsel, detailing the legal arguments in support of the requests. We asked that the court hear oral argument on the motion on an expedited basis.

My colleagues who filed this motion are Hon. GLENN M. ANDERSON, THOMAS L. ASHLEY, WALTER S. BARING, GEORGE E. BROWN, JR., PHILLIP BURTON, DANIEL E. BUTTON, JEFFERY COHELAN, JAMES C. CORMAN, JOHN D. DINGELL, DON EDWARDS, RICHARD T. HANNA, AUGUSTUS F. HAWKINS, CHET HOLIFIELD, HAROLD T. JOHNSON, ROBERT L. LEGGETT, JOSEPH M. MCDADE, JOHN J. MCFALL, SPARK M. MATSUNAGA, GEORGE P. MILLER, JOSEPH G. MINNISH, PATSY T. MINK, JERRY L. PETTIS, THOMAS M. REES, PETER W. RODINO, JR., EDWARD R. ROYBAL, BERNIE SISK, CHARLES M. TEAGUE, JOHN TUNNEY, LIONEL VAN DEERLIN, JEROME R. WALDIE, CHARLES H. WILSON, and myself.

The motion and supporting material which we filed follow:

[In the U.S. Court of Appeals for the District of Columbia Circuit]

JOHN E. MOSS, ET AL., PETITIONERS, *v.* CIVIL AERONAUTICS BOARD, RESPONDENT—No. 23,627

Memorandum and support of petitioners' motion for interlocutory relief

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MEMORANDUM IN SUPPORT OF MOTION FOR INTERLOCUTORY RELIEF

I. Issues presented

A. The Issues

The instant motion presents the issue of whether interlocutory relief should be granted pending a decision on the merits that certain airline passenger tariffs currently in effect are illegal and should be rescinded. More specifically, the issues presented by the motion are as follows:

(1) Whether granting appropriate interlocutory relief from the tariffs filed pursuant to an order of the Civil Aeronautics Board

(a) is necessary to avoid defeating this Court's ultimate jurisdiction to review the Board's action, and

(b) is necessary to prevent irreparable injury to passengers who travel by air.

(2) Whether there is a strong likelihood that the Petitioners will prevail on the merits of the case they have initiated in this Court.

(3) Whether the Petitioners satisfy the remaining tests for granting interlocutory relief from administrative agency orders: that the public interest supports such relief and that the affected parties will not be treated unfairly by such relief.

B. Case Not Previously Before the Court

This case has not previously been before the Court under the same or any other title.

II. Statutes and rule involved

The statutes and Rule of Appellate Procedure pertaining to interlocutory relief and the statutes pertaining to the merits of this motion are set forth in Appendix A to this memorandum.

III. Statement of the case

This case involves the process of ratemaking—and specific rates made in this process—by the Civil Aeronautics Board (CAB). Petitioners are thirty-two Members of Congress, who intervened before the Board in the case entitled *Passenger Fare Revisions Proposed by Domestic Trunklines*, number 21322 on the Board's docket.[1] Petitioners are proceeding in their capacities as users of the airways and representatives of their respective constituencies and of other members of the public who travel by air. They contend here, as they contended before the Board, that the Board has made domestic passenger rates and allowed corresponding tariffs to go into effect in contravention of the statutory requirements of the Federal Aviation Act of 1958 and the Administrative Procedure Act.

By this motion for interlocutory relief, Petitioners seek to have set aside, pending this appeal, the tariffs embodying the fare increase granted by the Board, *or*, in the alternative, a protective order requiring the carriers to assure prompt refunds of those portions of airline fares representing the increase, should the new tariffs be invalidated when this case is heard on the merits; *or*, in the alternative, an expedited hearing of the merits of this case. Ultimately, Petitioners seek recission of the Board-made rates and corresponding tariffs and a decision indicating that the Board must adhere to the Federal Aviation Act of 1958 in determining rates.

The thrust of Petitioners' position on the merits is as follows: The Board, when it makes rates, is required to adhere to certain statutory rules. It must first find the prevailing tariffs and those proposed by the carriers to be unlawful, after proper notice is given and an appropriate hearing is held. It must then take certain substantive standards—regarding the carriers' revenue needs, the type of service they are to provide, the efficiency and economy of their operations, and the movement of air traffic—into account. Petitioners contend that the Board has made rates—although it did not proclaim that it was doing so; that it acted in violation of the statutory rules just mentioned; that the Board should not be permitted to evade or avoid its statutory duties by disclaiming an intention to make rates when it in fact does make rates, and that the rates it made were illegal and the specific tariffs based on those rates unjust and unreasonable.

Although docket 21322 was opened only last August *Passenger Fare Revisions* has been many months in developing. Several of the issues raised since August, and now presented to this Court, find their genesis in pre-August events—for example, submission by Petitioners of a 90-page complaint detailing to the Board the legal criteria and factual considerations which should govern the Board's review of passenger tariff proposals. That complaint was incorporated by reference in the Petitioners' post-August presentation to the Board, but there are other matters, not specifically brought up after August, which had a profound influence upon the decisionmaking process and outcome of *Passenger Fare Revisions*. Petitioners submit that it is essential for a proper understanding of the issues raised in this case to comprehend the factual context in which those issues were first presented, and accordingly they have prepared a summary of the background of this case, which is attached to this memorandum as Appendix B.

On August 1, 1969, United Air Lines filed for an increase in fares—the second within six months—marked to become effective on September 15, 1969. New tariffs were soon filed by American Airlines, Continental Air Lines, Eastern Air Lines and Northwest Airlines, with proposed effective dates in late September and early October.

On August 14, 1969, the Board was to hold another of its *ex parte* meetings with the carriers.[2] Having learned of this, and in light of the recent filings for fare increases, Petitioner John Moss requested that he be permitted to attend. (C 8597–98).[3] The response was a flat refusal. Chairman Crooker responded in a letter of Auust 14, 1969, that the scheduled meeting was a continuation of a prior meeting and intended to discuss matters of the domestic fare structure and fare formulas rather than fare level. Chairman Crooker stated that a transcript would be made. (C 8598).[4]

Following the meeting, the Board officially responded to the filings on August 19, 1969, with an order, 69–8–108, calling for "oral argument" on September 4, 1969, on the question of how it should react to the carriers' filings. (C 8602–03). In that order, the Board made the following announcement of its intentions:

Pursuant to section 1002 of the Federal Aviation Act (49 U.S.C. 1482), the Board may, upon its own initiative or in the light of complaints from interested persons, (a) suspend the effectiveness of the proposed tariffs pending investigation of the reasonableness of the proposed rates, (b) permit such tariffs to take effect while it is con-

Footnotes at end of article.

ducting such investigation, or (c) permit the tariffs to become effective without investigation.

The Board stated that it would not restrict argument to any specific issues, but that it was particularly interested in three questions:

1. To what extent, if any, are passenger fare increases warranted, and how should such fare increases be applied?

2. To what extent, if any, should the present promotional or discount fares be modified?

3. What effect, if any, will either the proposed tariff revisions or possible changes in promotional and discount fares have upon the movement of traffic?

No indication was given that the "argument" might be followed by an immediate decision on the merits of the pending tariffs or by a ratemaking effort by the Board. The "argument" was to be a merely preliminary presentation of views for the purpose of advising the Board as to whether it should undertake an investigation of the pending tariffs.

On August 20, 1969, Petitioners renewed the complaint that they had made earlier before the Board.[5] Their principal allegation was that:

The proposals made by the air carriers do not take into consideration any of the statutory standards set forth in the Act. More pragmatically, the Members believe that these fare proposals will further depress load factors and earnings, bring about even greater increases in cash costs, congestion and air pollution, and lead to more uneconomical and inefficient use of the nation's airports and airways, thereby further increasing the burden to the taxpayer and farepayer. (C 8603).

The results reached under the filed proposals would, Petitioners asserted, be "unjust and unreasonable." (C 8603).

In support of this position, Petitioners pointed to the Board's lack of standards which would enable the Board to make a rational interpretation of the Federal Aviation Act of 1958; [6] to the carriers' penchant for creating and employing excess capacity, to the fact that a fare increase would not stimulate additional traffic; and to the injustice of making the traveling public pay for the carriers' cost and scheduling extravagance. Petitioners concluded as follows:

The basic solution to the industry's present financial situation would . . . appear to lie not only in the air carriers exercising restraint in ordering new flight equipment and in the use of schedules of its available capacity, but more importantly in the regulation of the fare level by the Board in accordance with the statutory standards of the Act of 1958, supplemented by appropriate load factors, cash and capital cost guidelines. (C 8604).

They requested that the Board suspend and investigate all pending tariff revisions and that, if the Board should reach the opinion that such tariffs are unjust and unreasonable, the Board determine and prescribe the lawful rate to be charged. Further, Petitioners requested that the Board institute a general rate proceeding to investigate the structure of air passenger fares in order to achieve a sound foundation for arriving at fares for the future that "will at all times be reasonably related to the statutory standards of the Act of 1958, and the rules of ratemaking established by the Board. (C 8604–05).

On August 22, 1969, eight days after the Board's *ex parte* meeting with the carriers and two days after the filing of the Second Complaint, a nationally syndicated article appeared in the Washington Post stating that the Civil Aeronautics Board has indicated to the airlines they may be permitted to raise fares next month to help meet rising costs and dwindling returns. . . . The nature and amount of the increase will be determined after oral argument Sept. 4 on the fare adjustment proposals now before the Board. . . ." (C 8605). Because of this article and other indications that the Board had already reached a decision in regard to the pending traiffs, Petitioners declined to participate in the "oral argument" on September 4 (C 8605–06).[7]

They did not, however, withdraw their opposition to the pending tariffs. On September 5, 1969, Petitioner Moss, as spokesman for all the Petitioners, wrote to Chairman Crooker to remind him that the Board, in its order setting "oral argument," had indicated that it would adopt one of three specified lines of action following "oral argument" and the consideration of complaints from interested persons. (C 8606).[8] Petitioner Moss contended that the Board, "by its act in enumerating three possible courses of action in its order [precluded] any other course of action such as its usual past practice of suspending the effectiveness of the proposed tariffs and then making its position known as to other kinds of tariff proposals it would approve." Petitioner Moss urged Chairman Crooker that the Board confine itself to its statutory functions: "this form of ratemaking by treaty must come to an end. . . . It is not the duty of the Board to propose alternative fare proposals when the person proposing . . . changes cannot show that its proposed change is just and reasonable."

Chairman Crooker's response indicated that, when an order was issued, the decision of the Board might well be the very one against which Petitioner Moss had protested.

"Tariffs filed before our Order No. 69–8–108 may be approved, or the effectiveness of proposed tariffs may be suspended and the Board's position would be made known as to other kinds of tariff proposals it would approve." (C 8606).

Petitioner Moss replied on September 10, 1969.

"The Board did not hedge on the three alternatives when it set them forth in paragraph 2. It did not use the frequently utilized phrase—among others." You were very definite and precise. You sought the public guidance before determining which of the three courses of action to take. You took the initiative by establishing the ground rules. Now abiding by them would be the only means of acting in good faith by the Board.

"You *need not* circumnavigate the Act. Why do so? The Congress has delegated to the Board the authority to prescribe the lawful rates in subsection 1002(d). In point of fact, not only do you have that authority, but the Congress has mandated that the Board *shall* determine and prescribe the lawful rate if it is of the opinion that any rate is or will be unjust or unreasonable, etc.

"You have already reduced the stature of the 'oral argument' to a mere meaningless and redundant presentation of known views and opinions. You have similarly diminished the value of your own Economic Regulations by not enforcing them. Do not now further dilute the Act by attempting to sanctify permanently the policy of ratemaking by treaty." (C 8606–07).

The Board's decision, the major decision in this litigation, was rendered on September 12, 1969.[9] As Petitioner Moss had foreseen in his letter to Chairman Crooker, the Board followed "its usual past practice of suspending the effectiveness of the proposed tariffs and then making its position known as to other kinds of tariff proposals it would approve." Thus, after briefly summarizing the tariff proposals and the complaints filed by various parties, including the complaint of Petitioners, the Board found, without explanation, as follows:

"Upon consideration of the tariff proposals, the complaint and answer thereto, the statements filed prior to the oral argument and comments made thereat, and other relevant matters, the Board finds that the proposals may be unjust, unreasonable, unjustly discriminatory, unduly preferential or unduly prejudicial, or otherwise unlawful and should be investigated. The Board further concludes that the tariffs in question should be suspended pending investigation." (D 3).

The Board went on, however, to announce its "opinion that the carriers have adequately demonstrated a need for some additional revenue and would be disposed to grant an increase computed in accordance with the criteria set out below." (D 3). The sole reason given for this conclusion, in the course of the Board's entire opinion, was that "the carriers have adequately demonstrated a significant increase in costs. . . . Taking into consideration these cost pressures on the carriers, and the marked decline in earnings and profit margin since the February increase, the Board finds that a further increase in fares at this time is necessary from the standpoint of the ratemaking standards of Section 1002(e) of the Act and the need to maintain the financial vitality of the carriers as a group." (D 5, 8).

There ensued what can only be regarded as a prolonged excursus into the making of rates. After noting that it had reviewed both the fare formulas developed by its staff and circulated to the carriers *ex parte* for their comments and the formulas put forward by the carriers in their recent filings, the Board found that the formula proposed by American "produces a reasonable increase in revenues and recognizes the economics inherent in long-haul carriage." (D 4). The American formula was adopted as the Board's "model," with only one slight modification. (D 6, 7).[10] This, despite the fact that the Board had just suspended the tariff filed by American, along with the other pending tariffs, as potentially unjust or unreasonable.

The Board next considered the need for a general fare investigation in order to establish cost and load factor standards. Noting, as it had so often in the past, that a general fare investigation is a "long and complex proceeding," the Board opined that leaving the carriers in *status quo* while such an investigation was conducted might produce "serious and permanent financial damage" to some of them. (D 5). However, the Board did not simply cast aside the Petitioners' suggestion of a general fare investigation:

"Nevertheless, we have decided not to dispose of the request for a general fare investigation at this time. The complainants have raised some questions for which no fully satisfactory answer presently exists, especially the question of load factor standards, and we believe there are other important questions underlying evaluation of fare structure and level, not raised by complainants, which should be given thorough review. However, notwithstanding the existence of these questions, the condition of the industry detailed herein is sufficiently serious as to require immediate fare relief. Moreover, pending our further study of these matters, the Board is unable to conclude at this time that the additional earnings which this order will provide could be achieved by the industry through other courses of action within the carriers' control.

"For these reasons, we have determined to undertake an exploration, within the Board, of a number of matters relating to questions such as: what the appropriate rate of return on a carrier's investment should be computed; how a carrier's rate of return should be computed; should load factor standards be set and if so at what level; should there be a taper in the line haul rate and if so to what degree, what method is most appropriate for determining terminal

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Footnotes at end of article.

charges; and what is the proper differential between first-class and coach fares. At the conclusion of our consideraton of these matters, we should be in a better position to determine whether a fare investigation is appropriate and, if so, to channel such investigation along the most productive patterns so as to expedite completion of the proceeding within a reasonable time span. We expect to complete our consideration of the foregoing matters and thus be in a position to rule upon complaints' request for a fare investigation in December 1969. Accordingly, we will defer action on the complaint until that time." (D5).

The remainder of the Board's opinion is devoted to the details of its formula, which included a number of revolutionary changes in the previously obtaining fare policy:

"1. The "core" of the fare structure would henceforth be coach fares rather than first-class fares." (D7).

"2. The fixed terminal charge element [11] of passenger fares would be increased to $9.00—an increase of 80% over the level of February 20, 1969, and 200% over the January 1969 level." (D6).

"3. The mileage charge element of fares would be calculated on the basis of five 500-mile mileage blocks, with a decreasing per mile charge for each successive block." (D6).

"4. The method of reducing computed rates into published fares would be changed." (D7).

"5. A new 25% differential would be established between first-class and day-coach fares, with the first-class fares set at 125% of coach fares." (D7).

"6. The first-class rate would apply only to services which are truly first class in character and quality and therefore not to local service propeller aircraft, traditionally referred to as providing "first-class" service." (D7).

"7. A new 25% differential between night- and day-coach fares would be established, with night-coach fares set as 75% of day-coach fares." (D7).

"8. New increases in five promotional fares would be allowed." (D8).

On the basis of fiscal 1969 traffic movements, the Board estimated that its formula would produce increased revenues for the trunkline industry of 7.4% in first-class service and 3.6% in coach service. The total revenue increase was estimated to be "approximately 6.35% (assuming no diversion or loss of traffic)." But the Board hastened to add: "To the extent of any such dilution, of course, the revenue increase would be less than 6.35 percent." The Board apparently made no attempt to calculate revenue on the basis of projected 1970 traffic movements. Then, as Petitioner Moss had predicted, the Board announced its conclusion: "to permit tariff filings implementing the fare adjustments described above." (D 9).

The Board declared that it would consider fares produced by the foregoing formula as "a just and reasonable ceiling, and any fare in excess of this ceiling would be viewed *prima facie* as outside the realm of justness and reasonableness and would ordinarily be suspended and ordered investigtaed." (D 9–10). However, the Board also indicated that it would consider increases above the ceiling in special cases, provided that at least 75 days' notice was given by the filing carrier.

Finally, the Board referred to its prior remarks, in its Order 69–5–28 of May 8, 1969, regarding the absence of published joint fares between many domestic points and the need for achieving consistencies in inter-carrier connecting services. The Board noted that "passengers traveling in such markets [where one-carrier service is not available] must pay a combination of local fares, each of which reflects the February increases." (D 10). Following the Board's *ex parte* meeting with the carriers on August 14, 1969, it had granted all domestic carriers antitrust immunity and authority to discuss single-sum joint fares and open routings for such fares for a period of 90 days. The Board now announced that it was not disposed to continue the fares obtained in accordance with its formula for very long in the absence of satisfactory published joint fares. Therefore, it required that any tariff implementing its proposed formula have an expiration date of January 31, 1970, and that such tariff be accompanied by a refilling of existing (ie., pre-formula) fares with a proposed effective date of February 1, 1970. The Board thus indicated that the new increase would be reviewed at the end of January and that, if the industry had not by then arrived at satifsactory joint fares, the Board might find the pre-formula fares "just and reasonable" and fares would revert to the pre-formula level. Antitrust exemption was granted to carriers to discuss division of through fares, and the authorization of discussions among the carriers was extend to January 15, 1970.

Virtually none of the important statements and decisions in the Board's opinion found their way into its subsequent order. As a technical matter, the Board ordered only that the filed tariffs be suspended pending an investigation to determine whether they were unlawful; that the request for the institution of a general rate proceeding be deferred; that the authorization of discussions regarding joint rates be amplified and extended; and that the investigation of the filed rates be assigned to a hearing examiner. (D 11–12).

Three of the five Members of the Board concurred and dissented specially. Mr. Murphy took the position that, although some increase in fares was justified, the increase need not be so large as the Board was disposed to allow. Mr. Murphy submitted that "an increase in regular fares of 3 percent across-the-board limited to markets over 400 miles, when combined with the reductions in the fare discounts and the 4.0 percent increase granted a few short months ago, is as much as this Board can request the traveling public to assume under the present circumstances." (D Murphy). Mr. Murphy went on to criticize the formula adopted by the Board:

"I am particularly opposed to the adoption of an essentially cost-oriented fare formula. The formula produces anomalies and inequities. It ignores value of service and market elasticity. It produces drastic increases in the short haul and medium haul markets where the majority of the public travel. It decreases long haul fares where the value of service is greatest and ignores the factor of cross-subsidization inherent in a system concept of transportation. In my judgment a great deal of further study and analysis is necessary before such a sweeping and permanent regulatory standard is adopted." (D (Murphy).

Mr. Minetti would have permitted the carriers to experiment with their promotional fares but "would go no further at this time, in the absence of an investigation." (D Minetti). Mr. Minetti agreed that the industry's reported earnings did not measure up to the 10.5 percent guideline that the Board had previously set. However, he declared himself "unable to concur in accepting, without an investigation, a fare adjustment package equivalent to an increase in fare levels of over six percent, especially bearing in mind that just a little over six months ago the Board permitted a fare increase approximating four percent of the then existing level." Mr. Minetti referred to the Board's statement of May 8, 1969, that "the basic solution to the industry's present financial situation would appear to lie in exercising restraint in ordering new flight equipment and in the use of its available capacity, rather than in increasing its price to the public." He said he had "not been convinced that the foregoing statement is incorrect":

"We have very little more information today with respect to appropriate load factor standards than at the time of our earlier pronouncement, and unlike the majority, I am reluctant to entertain a general increase in coach fares until after the question of load factor standards has been squarely faced and resolved in an intensive investigation. On the contrary, I fear that the increases sanctioned today may prove to be self-defeating by causing a further drag on traffic growth and by delaying the day when the Board and the industry will come to grips with the basic causes of the industry's present difficulties. Until those causes are squarely met, we face the prospect of still further load factor declines and requests for additional fare increases." (D Minetti).

The dissent of Mr. Adams was limited to his objection to depriving local service carriers of first-class rates.

The carriers proceeded to submit new tariffs based in substance on the formula adopted by the Board.[12] The pending tariffs were withdrawn or dismissed.[13] On September 22, 1969, the Members of Congress—whose numbers had by now grown to 35—filed a "petition for reconsideration . . . with request for suspension and investigation of all tariffs filed pursuant to the Board's order of September 12." [14] The Members took issue with the Board's method of making "the most sweeping revision of airline passenger fares in its 31-year history." (C 8613).

Petitioners pointed to the number and importance of changes in fare level and fare structure that were subsumed in the Board's proposed formula, and rehearsed some of the deficiencies in the Board's opinion of September 12:

(1) Some of the issues touched upon in that opinion had not been announced by the Board in its order calling for "oral argument" and had never before been publicly considered by the carriers or the Board—either in written statements or at "oral argument." The Petitioners pointed specifically to the new provision for a "ceiling of reasonableness" and the 75-day filing requirements for tariffs rising above that ceiling. (C 8613).

(2) The Board's opinion was internally inconsistent, especially in its treatment of the tariff filed by American: the Board had first rejected that tariff, along with all the others, as potentially unjust or unreasonable; then, in the same opinion, it adopted the American formula as the "model" for its decision. (C 8613).

(3) The Board accepted a formula which it claimed was cost-oriented and related to other formulas that its staff had previously submitted to the carriers *ex parte* for comment. These staff formulas were never placed in the record, were not submitted to the industry as designed to relate fares and costs, and were never claimed, even by the staff, to relate fares to "just and reasonable" costs. The formulas in question were obviously based on certain figures for costs and load factors, but it is impossible to detect what figures were used. The figures certainly were not *prima facie* "just and reasonable." The Board itself recognized, in its opinion, that it lacks the necessary standards in these areas. (C 8613–14).

(4) The Board's proposed formula is discriminatory. The increased terminal charge falls hard upon persons traveling between points where one-carrier service is unavailable and where there is no through fare for inter-carrier connecting service. Although this matter may be resolved in the discussions among carriers that the Board authorized, there is no justification for making rates now according to a formula that fails to take

Footnotes at end of article.

the problem into account. "The Board has already found there is no reason for continuing such inequities (Order 69–5–28). The public interest therefore requires that these people should not be further penalized: that such inequities must be eradicated first. The Board can give one ratemaking factor greater weight than others, but it cannot eliminate one, even temporarily." (C 8614).

(5) The Board indicated that an increase in industry revenue is warranted and that the fares it would authorize *might* produce an increase of 6.35% *if there is no diversion or loss of traffic.* But the Board has not established what the impact of its order will be upon airline earnings or movement of traffic, and has indicated that it has no idea what the impact will be. The Board has not showed that its order will be "just and reasonable." Therefore, the Board has abused its broad, but not unlimited, discretionary powers by acting in an arbitrary and capricious manner. (C 8614).

(6) The Board has historically eschewed formal ratemaking proceedings because of their length and has rather sought to arrange rate levels through *ex parte* contacts with carriers. This policy has failed again and again to bring financial health to the industry. "If the air carriers are in financial trouble, it is in part a fault of the Board and its regulating practices." (C 8614).

Petitioners requested the Board to suspend and investigate all tariffs filed by the carriers pursuant to the Board's decision of September 12, as well as all other pending tariffs; if the Board should determine that such tariffs are unjust or unreasonable, to fix the lawful rates; to withdraw the specification that the fares produced by the mathematical formula in the opinion of September 12 will be the maximum rates to be considered "just and reasonable"; and to institute immediately a general rate proceeding to investigate the structure of domestic passenger fares. (C 8614–15). Petitioners were prepared to submit a separate application for a stay of the pending tariffs but were informed orally by the Acting Chairman of the Board that such a separate document would not be necessary, that the Petition for Reconsideration and Suspension would be treated as an application for a stay.[15]

On September 30, 1969, in Order 69–9–150, the Board denied reconsideration.[16] The Board stated that it had "given careful consideration to . . . [Petitioners'] contentions, but remains convinced that the domestic air carrier industry requires an immediate revenue increase in light of its higher cost of doing business and its earnings decline. The Board is also persuaded that there is no risk that the increases will produce excessive earnings in the foreseeable future." (F 1). It concluded that "attempts to improve the passenger fare structure should [not] be further delayed for the substantial period required for evidentiary hearing." (F 2).[17] The Board claimed "there has been general recognition of the need to overhaul the fare structure to remove its inequities and bring it more into line with cost factors," and saw its order as a "first step" toward a more rational and consistent fare structure (F 2):

"The Board intends to consider further the entire matter of domestic passenger fare structure and level, including the prior and instant requests for a full-scale formal investigation of domestic passenger fares. The Board will decide what further action is necessary and appropriate in this regard in due course." (F 2).

Members Minetti and Murphy adhered to their previously expressed views and would have suspended and investigated the tariffs filed pursuant to the Board's order of September 12 "to the extent they are inconsistent with those views." (F 4).

Footnotes at end of article.

In October the new tariffs went into effect. On November 10, Petitioners filed a timely petition in this Court for review of the Board's decisions. Motions to intervene in the case have been filed by American Airlines, Inc., Eastern Air Lines, Inc., Continental Air Lines. Inc., Trans World Airlines, Inc., Braniff Airways, Inc., and jointly by North Central Airlines, Inc., and Mohawk Airlines, Inc.

IV. Jurisdiction and venue requirements

The statutory provisions governing jurisdiction and venue to review orders of the CAB are set out in section 1006 of the Federal Aviation Act of 1958, 49 U.S.C. § 1486. Petitioners' petition complies with these provisions. Venue in this Court is always proper and the petition was filed within sixty days of the Board's orders of September 12, 1969, and September 30, 1969. It is settled, moreover, that users of the airways have a "substantial interest" in Board decisions affecting the rates, regulations, practices, etc., of air carriers. See *e.g., Flying Tiger Line, Inc.* v. *CAB,* 121 App. D.C. 332, 350 F. 2d 462 (D.C. 1965), *cert. denied,* 385 U.S. 945 (1966), *Transcontinental Bus System, Inc.* v. *CAB,* 383 F. 2d 466 (CA 5 1967), *cert. denied,* 390 U.S. 920 (1968).

V. Argument

A. Summary

Interlocutory relief in the present case is governed by three statutory provisions, a Rule of Appellate Procedure, and a series of cases many of which were decided by this Court.

The statutory jurisdiction for interlocutory relief from an order of the Board is principally granted by a provision of the Federal Aviation Act itself, 49 U.S.C. § 1486. This section of the Act provides that an appellate court may award "interlocutory relief . . . by a stay of the order or by such mandatory or other relief as may be appropriate." As such, it applies to the present appeal. Statutory jurisdiction for equitable relief pending appeal of this case is also found in the All Writs Act, 28 U.S.C. § 1651, and in Section 10(d) of the Administrative Procedure Act, 5 U.S.C. § 705.

Rule 18 of the Federal Rules of Appellate Procedure governs applications for a stay of an administrative agency order pending review. Petitioners have complied with the requirements of this Rule.[18]

Finally, Petitioners meet the standards for interlocutory relief developed by this Court in a series of cases beginning with *Virginia Petroleum Jobbers Ass'n* v. *FPC,* 104 App. D.C. 106, 259 F.2d 921 (1958). Under that line of cases, interlocutory relief will be granted upon a four-part showing: first, that Petitioners have a strong likelihood of prevailing when their case is heard on the merits; second, that irreparable injury will be caused unless interlocutory relief is granted; third, that in the equitable judgment of the Court, the parties adversely affected by the grant of interlocutory relief will not be unduly harmed; and finally, that the public interest supports the grant of interlocutory relief. These tests are met in the present case.

B. Principles of Interlocutory Review

1. The Statutory Jurisdiction: The Federal Aviation Act of 1958 provides, in section 1006(d), 49 U.S.C. § 1486(d), that a Court of Appeals reviewing a Board order may award "interlocutory relief . . . by a stay of the order or by such mandatory or other relief as may be appropriate."

In the present case the principal interlocutory relief sought is, in effect, a stay. The order requested would set aside, *pendente lite,* the tariffs filed pursuant to the Board's order of September 12 and would reinstate the fares that had previously been in effect, pending resolution of this case on the merits.

Although the new tariffs have already gone into effect beginning in the month of October, and therefore cannot be stayed *ab initio,* the effect of the order which Petitioners are seeking is to prevent the further imposition of these tariffs pending appeal; in such circumstances the order sought is still a stay, albeit a partial stay. If there were any doubt about jurisdiction in the appellate courts to enter such an order, the existence of such jurisdiction would seem particularly clear in light of the wording of the authorizing provision of the Federal Aviation Act, which speaks not only of a stay but also of "such mandatory or other relief as may be appropriate." [19]

The chronology of the present case illustrates the necessity of reading the jurisdictional grant broadly enough to allow the order which Petitioners are here seeking. The Board denied the Petitioners' Petition for Reconsideration and Suspension on September 30, 1969; the tariffs filed pursuant to the Board's September 12 order began taking effect the following day. Petitioners had virtually no time to prepare and docket a motion for a stay before the tariffs went into effect. The jurisdictional grant in the appellate courts to issue interlocutory orders should not be read so restrictively that the Board could, by carefully timing the release of its orders, prevent that jurisdiction from being exercised. Moreover, Petitioners did not have appellate counsel at the time their petition for reconsideration was denied.[20]

In addition, as set out more fully in a succeeding section of this memorandum, unless interlocutory relief can be granted by this Court, appellate jurisdiction to decide the case on the merits will in all likelihood be frustrated and Petitioners and other air travelers will suffer injury for which no redress is available. For this reason, even should 49 U.S.C. § 1486 not apply, jurisdiction may be found in the All Writs Act, 28 U.S.C. § 1651.[21]

In the event that this Court decides, for whatever reason, not to issue an order setting aside the tariffs in question, the alternative interlocutory relief requested by Petitioners—a protective order assuring air passengers that excess charges will be refunded in the event the tariffs are ultimately declared illegal, or, as a further alternative, an order expediting the hearing of this appeal and maintaining the status quo pending such appeal—seems plainly to fall within 49 U.S.C. § 1486(d) as "such mandatory or other relief as may be appropriate."

2. Rule 18 of the Federal Rules of Appellate Procedure: Applications for a stay of an order of the Board pending review in the Court of Appeals are governed by Rule 18 of the Federal Rules of Appellate Procedure. Rule 18 describes the conditions under which such applications will be received; all of these are met in the present case.

Rule 18 provides initially that "application for a stay of a decision or order of an agency pending direct review in the court of appeals shall ordinarily be made in the first instance to the agency." In the present case, the equivalent of an application for a stay was presented to the Board and was denied by the Board in its order denying reconsideration and refusing to suspend the tariffs filed pursuant to its order of September 12, 1969. During the time that Petitioners' Petition for Reconsideration and Suspension was pending, Petitioners notified the Acting Chairman that they would request a formal stay, pending appeal, of any Board order allowing the tariffs to go into effect. As set out in the attached affidavit submitted with this motion, however, Petitioners' representative was informed by the Acting Chairman of the Board that no such further motion would be necessary since the Board considered the Petition for Reconsideration and Suspension itself to be, in effect, a petition for a stay.

The remaining requirements of Rule 18 have also been met. Specifically, the reasons the Board gave in denying the petition for a

stay are set out in this memorandum and are contained in Appendix F; the reasons for the relief requested and the facts relied upon are set out in this memorandum; the relevant parts of the record have been filed along with this motion and memorandum; and reasonable notice of the motion has been given to all parties to the proceeding in this Court.

3. The Case Law Governing Interlocutory Relief: A series of decisions emanating from this Court have established the standards for granting interlocutory relief in appeals from administrative agency orders. These standards were initially set out in *Virginia Petroleum Jobbers Ass'n* v. *FPC*, 104 App. D.C. 106, 259 F2d 921 (1958). That they apply to the Board is clear from such cases as *Eastern Air Lines, Inc.* v. *CAB*, 261 F. 2d 830 (CA 2 1958), and *Airport Comm'n of Forsyth County, N.C.* v. *CAB*, 296 F2d 95 (CA 4 1961).

These cases establish a four-part test for granting interlocutory relief. In the language of the Court in the *Virginia Petroleum Jobbers* case, *supra*, 104 App. D.C. at 110, 259 F. 2d at 925, the test is as follows:

"(1) Has the petitioner made a strong showing that it is likely to prevail on the merits of its appeal?"

"(2) Has the petitioner shown that without such relief, it will be irreparably injured?"

"(3) Would the issuance of a stay substantially harm other parties interested in the proceedings?"

"(4) Where lies the public interest?"

Each of these standards is discussed below. On the facts of this case, the test which they establish is met.

C. The Four-Part Showing

1. There Is a Strong Likelihood That Petitioners Will Prevail on the Merits of This Case: Petitioners content that the Board in *Passenger Fare Revisions*, made maximum rates for domestic passenger fares; that the Board acted to do so without the proper statutory predicate of a finding that the prevailing and proposed rates were unlawful; that the Board acted without proper notice and without a fair and adequate hearing, as the Federal Aviation Act requires; and that the Board failed to heed the statutory directive to take certain factors into account when it performs its duties with respect to rates. Petitioners also contend that the Board improperly permitted tariffs contemplated in its September 12 decision and computed on the basis of its maximum rate formula to go into effect; and that the tariffs which the Board permitted to go into effect and which are in effect now are unjust and unreasonable.

For purposes of the instant motion, it is only the tariffs that are in question. But in order to present the merits of their case, Petitioners deem it necessary to set forth as well the numerous reasons why the Board's ratemaking formula is unauthorized and illegal. For although the tariffs are unlawful on their face, Petitioners' attack on them rests in part upon the fact that they are merely implementations of the formula, which were expressly contemplated and whose validity was prejudged when the Board made rates on September 12.

Petitioners recognize that the question of a proper rate structure "calls in peculiar measure for the use of that enlightened judgment which the [Board] by training and experience is qualified to form." *Mississippi Valley Barge Line Co.* v. *United States*, 292 U.S. 282, 286 (1934). They acknowledge that "if the conclusions of the . . . [Board] are in accordance with law, not arbitrary, or an abuse of discretion, and supported with adequate findings revealing a rational basis, and [are] not against public policy, its decision may not be disturbed . . . on review." *Saginaw Transfer Co.* v. *United States*, 275 F Supp. 585, 587 (E. D. Mich. 1967). See 5 U.S.C. § 706.

Petitioners submit, however, that the Board has acted in this case "in excess of statutory jurisdiction" and "short of statutory right," without observance of procedure required by law" and by an "abuse of discretion." 5 U.S.C. § 706. They contend, in short, that this is not a case for deference to administrative expertise but one in which this Court must step in to command rationality and obedience by the agency to its statutory mandate. See, *e.g.*, *American Overseas Airlines Inc.* v. *CAB*, 103 App. D.C. 41 254 F. 2d 744 (1958); *Summerfield* v. *CAB*, 92 App. D.C. 256, 207 F. 2d 207 (1953) *aff'd*, 347 U.S. 74 (17954); *Transcontinental Bus System, Inc.* v. *CAB*, 383 F. 2d 466 (CA 5 1967) *cert. denied*, 390 U.S. 920 (1968); *Trailways of New England, Inc.* v. *CAB*, 412 F. 2d 926 (CA 1 1969).

a. The Board Has Illegally Established Maximum Rates Without Finding That the Prevailing and Proposal Rates are Unlawful, Without Proper Notice, Without a Fair and Adequate Hearing, and Without Regard to the Standards Which It Must Take into Consideration in Exercising and Performing Its Powers and Duties with Respect to the Determination of Rates.

The first point in Petitioners' argument is that the Board, in its decision of September 12, made maximum rates for the domestic passenger market. Although it is incredible that Petitioners should be constrained to demonstrate *what* the administrative agency has done, such a demonstration seems necessary here because of the unorthodox and circuitous manner by which the Board has sought to achieve its aims.

Petitioners recognize that, technically, none of the eight paragraphs of verbiage following the words "it is ordered that" in the September 12 opinion sets a maximum rate. However, the lengthy discussion that preceded those words and necessarily was a part of the action taken by the Board very definitely did set such a rate. In the course of that discussion, the Board:

(1) Set forth and discussed a detailed formula for the computation of airline fares, a formula derived from a tariff submitted by a carrier and which included several major elements that were never previously found in a passenger fare structure (for example, variable rates per mile and construction of first-class fares on the basis of coach fares); (D 6,7).

(2) Briefly discussed the possible revenue yield of tariffs filed in accordance with the formula; (D 9).

(3) Paid lip service at two points to the "ratemaking criteria contained in the Federal Aviation Act of 1958"; (D 5,8).

(4) Decided expressly "to permit tariff filings implementing the fare adjustments described . . . within the 48 contiguous states effective no earlier than October 1, 1969. . . ."; (D 9).

(5) Stated that it would "consider fares produced by the formula as a 'just and reasonable' ceiling, and any fare in excess of this ceiling would be viewed *prima facie* as outside the realm of justness and reasonableness and would ordinarily be suspended and ordered investigated"; (D 9–10).

(6) Declared that fare increases above the ceiling "would be considered where strong justification was shown, and upon a tariff filing providing at least 75 days' notice to permit the Board adequate time for review of the arguments in justification"; (D 10).

(7) Strongly suggested that the carriers meet and discuss joint fares, and threatened that tariffs filed pursuant to its formula might not be permitted to continue in effect after January 31, 1970, in the absence of "the industry's conformance with the Board's findings as to the need for publication of additional joint fares at a satisfactory level. . . ." (D 10–11).

(8) Required that tariffs implementing the proposed formula have an expiration date of January 31, 1970, and that the carriers simultaneously file tariffs with preformula fares for an effective date of February 1, 1970. (D 10).

The carriers proceeded to file tariffs which were computed on the basis of the formula proposed by the Board.

The Board has, however, no authority, under the Federal Aviation Act of 1958, to "suggest" or "propose" tariffs which the carriers are expected then to file. Under section 1002(d) of the Act, 49 U.S.C. § 1482(d), the Board, in analyzing tariffs, has two choices: it may permit prevailing or proposed tariffs to have effect, or it may find such tariffs unlawful and proceed to make rates itself. Section 1002(d) establishes a procedure for making rates, and section 102(e), 49 U.S.C. § 1485(e), sets forth certain factors which the Board "shall take into consideration" in exercising and performing its powers and duties with respect to the determination of rates. The Board cannot evade these statutory mandates by the simple expedient of camouflaging the nature of its decision. When it makes rates, as it did in this case, it must take care to conform its procedures and substantive inquiry to the statutory standards.

Ratemaking is a simple, definable concept, not dependent upon the technical form in which a ratemaking decision is cast. In contrast with passing upon rates proposed by the carriers, ratemaking involves the agency in taking initiative and responsibility to set the rates itself. This is what occurred here. The formula proposed by the Board was precise, and the carriers were obviously expected to file corresponding tariffs. And, in point of fact, the carriers did file tariffs in accordance with the Board's "proposal." Finally, the Board has already applied its formula in other proceedings and has thus indicated that it intends to rely upon that formula as a general guide for its ratemaking tasks.[2] The formula has continuing validity until successfully challenged—or abandoned by the Board.

In these circumstances, Petitioners contend that the Board's decision of September 12 can only be regarded as the making of maximum rates for the domestic passenger market. Once that conclusion is reached, it becomes clear that those maixmum rates cannot be permitted to stand. For the Board has completely disregarded the procedures of section 1002(d) and the standards of section 1002(e) of the Act. It is to these contentions that the Petitioners now turn.

(i) The decision of September 12 is in flagrant violation of the provisions of section 1002(d) of the Federal Aviation Act of 1958.

The procedures for ratemaking by the Board are prescribed in section 1002(d) of the Federal Aviation Act of 1958. The section provides:

"Whenever, after notice and hearing, upon complaint, or upon its own initiative, the Board shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected, or received by any air carrier for interstate . . . air transportation . . . is or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Board shall determine and prescribe the lawful rate, fare, or charge (or the maximum or minimum, or the maximum and minimum thereof) thereafter to be demanded, charged, collected, or received."

Petitioners submit that the Board has violated this statute in at least three ways.

First: The Board failed to find that the prevailing and proposed rates were unlawful. The Board began its September 12 opinion by finding that all of the proposals filed by the carriers (including the one filed by

Footnotes at end of article.

American) "*may be* unjust, unreasonable, unjustly discriminatory, unduly preferential or unduly prejudicial, or otherwise unlawful and should be investigated." (Emphasis supplied.) It ended that opinion with the following orders, *inter alia:*

"1. An investigation is instituted to determine whether the fares and provisions described in Appendix D attached hereto, and rules, regulations, or practices affecting such fares and provisions, are or will be, unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudical, or otherwise unlawful, and if found to be unlawful to determine and prescribe the lawful fares and provisions, and rules, regulations, and practices affecting such fares and provisions;

"2. Pending hearing and decision by the Board, the fares and provisions described in Appendix D hereto are suspended and their use deferred to and including December 25, 1969, unless otherwise ordered by the Board, and that no change be made therein during the period of suspension except by order or special permission of the Board." (D 11).

The Board never found that the pending tariff proposals actually were unlawful. Between the beginning and the end of the opinion, the Board adopted as its "model" the fare formula submitted by American, a decision certainly not calculated to indicate the Board's "opinion" that such formula even might be unlawful.

Moreover, the Board did not find that the tariffs in effect at the time of its decision were in any way potentially unlawful. Indeed, it never even mentioned those tariffs—except when it threatened the carriers that if they did not arrive at satisfactory joint fares before January 31, 1970, it might find those tariffs to be just and reasonable and might take steps to reinstitute them.

This is a matter of no slight importance. The Board cannot make rates, under section 1002(d), unless it "shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected, or received by any air carrier for interstate . . . air transportation . . . is or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial . . ." *Railway Express Agency* v. *CAB,* 100 App. D.C. 165, 243 F. 2d 422 (1957); see *Ayrshire Collieries Corp.* v. *United States,* 335 U.S. 573, 582 (1949); *Beaumont, S.L. & W. Ry. Co.* v. *United States,* 282 U.S. 74 (1930).[23] The requirement is designed to ensure that the agency will step in to make rates only after a full consideration of the carrier-made rates and a careful analysis of their lawfulness. The statutory "opinion" is "basic or quasi jurisdictional," and a condition precedent to exercise of the agency's ratemaking power. *United States* v. *Chicago M. St. P & P R. Co.,* 294 U.S. 499 (1935); see *New York* v. *United States,* 331 U.S. 284, 341 (1947); *State Corporation Comm'n* v. *United States,* 184 F. Supp. 691, 699 (D. Kan. 1959). Moreover, if the Board is of the "opinion" that the prevailing and proposed tariffs are unlawful, it must say, or at least indicate, so. See, *e.g., Burlington Truck Lines, Inc.* v. *United States,* 371 U.S. 156, 165–69 (1962); *Cantlay & Tanzola, Inc.* v. *United States,* 115 F. Supp. (S.D. Cal. 1953).

Here the Board said nothing with regard to the rates in effect at the time of its decision—except that they might be lawful on February 1, 1970. And its "opinion" with respect to the tariffs proposed by the carriers is indicated by the fact that it ordered those tariffs suspended and investigated as *potentially* unlawful while simultaneously adopting one of those tariffs as its own model. The Board never reached the "opinion" required by statute as a quasi jurisdictional predicate for the making of rates. Therefore, the maximum rates it made on September 12 must be regarded as illegal and should be rescinded.

Second: The Board failed to give adequate notice. The Board could not have found the pending and proposed tariffs to be unlawful, because it never gave the type of notice and held the type of hearing that are prerequisites to such a finding. In its order 69–8–108, of August 19, calling for "oral argument" on the tariff revisions filed by various carriers, the Board outlined the courses of action it might take with regard to the pending proposals:

"Pursuant to section 1002 of the Federal Aviation Act (49 U.S.C. 1482), the Board may, upon its own initiative or in the light of complaints from interested persons, (a) suspend the effectiveness of the proposed tariffs pending investigation of the reasonableness of the proposed rates, (b) permit such tariffs to take effect while it is conducting such investigation, or (c) permit the tariffs to become effective without investigations." (C 8602–03).

No mention was made of the possibility that the Board would pass on the merits of the proposed tariffs immediately following the presentation of views on September 4. Nor was any mention made of the tariffs then prevailing. Nor, finally, did the Board indicate that it might make rates immediately after it heard from the various parties.

By letter written after "oral argument" was held to Chairman Crooker of the CAB, Petitioner John Moss raised the following point:

"As both a complainant and a Member of Congress I must . . . conclude that even though the Board did not restrict the oral presentations to any specific issues, it nevertheless did, by its act in enumerating three possible courses of action in its order, preclude any other course of action such as its usual past practice of suspending the effectiveness of the proposed tariffs and then making its position known as to other kinds of tariff proposals it would approve." (C 8606).

Subsequently, after the Board's decision of September 12, Petitioners protested in their Petition for Reconsideration and Suspension that the Board had never given notice regarding certain subjects discussed in its opinion. Petitioners submitted that, as a result, some important matters resolved in that opinion, such as "the new test of reasonableness" and the "75 day filing notice," were never publicly considered at all by either the parties or the Board.

It is settled that the Board's order instituting proceedings will, in the absence of amendment, finally fix the issues. *W. R. Grace & Co.* v. *CAB,* 154 F. 2d 271 (CA 2 1946), *cert. dismissed as moot,* 332 U.S. 827 (1947); *cf. Pan American Airways, Inc.* v. *CAB,* 84 App. D.C. 96, 171 F. 2d 139 (1948) It is similarly recognized that an agency which unexpectedly alters the nature or scope of its proceedings denies basic fairness to the participants in the administrative process. *Morgan* v. *United States,* 304 U.S. 1 (1938). Moreover, the Board, like any other agency undertaking to make rates, is obligated by the Administrative Procedure Act, 5 U.S.C. § 551(4)(5) and § 553(b), to give notice of a proposed rule making, including "reference to the legal authority under which the rule is proposed" and "either the terms or substance of the proposed rule or a description of the subjects and issues involved."

But what is most important of all, the Federal Aviation Act of 1958 states plainly that prevailing and proposed rates cannot be found unlawful and agency rates cannot be made unless notice has been given. This requirement is designed to assure that the type of information necessary to pass upon and make rates will be forthcoming when the agency holds the hearing that is also required by section 1002(d).

The Board's order of August 19 was clearly inadequate and made no attempt to comply with this statute. How far it diverged from the notice which the Board itself recognizes as necessary for a ratemaking proceeding may be judged by comparing the August 19 order with the order of September 12 initiating investigation of the pending tariff proposals:

"An investigation is instituted to determine whether the fares and provisions described in Appendix D attached hereto, and rules, regulations, or practices affecting such fares and provisions, are or will be, unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful to determine and prescribe the lawful fares and provisions, and rules, regulations, and practices affecting such fares and provisions." (D 11).

This order gives fair notice of the Board's intentions to investigate the proposed tariffs and possibly make rates (even though, of course, everyone concerned knew by the time this order was issued that the Board had no such intention at all, since it had just made rates). In contrast, the order of August 19 failed to give notice of some of the most important subjects subsequently passed upon by the Board. The order was not adequate notice as required by section 1002(d), the Administrative Procedure Act, and the pertinent case law. Therefore, the maximum rates made by the Board on September 12 cannot be allowed to stand.

Third: The Board failed to hold a full and fair hearing. The "oral argument" ordered by the Board on August 19 was not an evidentiary hearing with opportunity for cross-examination and for a full presentation of all the facts that would be pertinent to a rational ratemaking decision. The argument consisted simply of a presentation by the carriers and other interested parties of a variety of views, most of them already known by the Board, on a range of subjects. Moreover, the value and significance of that "argument" was vitiated even before the argument was ordered by the Board's continuation of the practice of meeting *ex parte* with the carriers to discuss tariffs. Prior to such a meeting scheduled for August 14—five days before "argument" on the newly filed tariffs was ordered, and three weeks before that "argument" was held—Petitioner John Moss had requested permission, by telephone and by letter to Chairman Crooker, to attend the meeting. (C 8597–98). Permission was refused. (C 8598). The meeting was held, various matters including several of the pending tariffs were discussed, and the newspapers subsequently reported that the Board had indicated its disposition to permit the carriers to raise their fares. (C 8598–02, 8605). Petitioner Moss and the other Petitioners then refused to participate in the Board's "oral argument" on the ground that they were being denied "the right of impartial consideration of [their] views." (C 8605–06).

It appears that the question of the extent and nature of the "hearing" required by section 1002(d) of the Federal Aviation Act of 1958, prior to a finding that pending and proposed rates are unlawful and a ratemaking decision by the Board, is one that has never been resolved by the courts. It is unclear whether, pursuant to the terms of the Administrative Procedure Act, 5 U.S.C. § 556(d), the parties should have had the right to present their case "by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts." See *Morgan* v. *United States,* 298 U.S. 468 (1936); *North Carolina Natural Gas Corp.* v. *United States,* 200 F. Supp. 745 (D. Del. 1961); *Dixie Carriers* v. *United States,* 143 F. Supp. 844 (S.D. Texas 1956), *vacated as moot,* 355 U.S. 179 (1957). The "hearing" accorded by the Board prior to its decision of September 12 did not comply with this provision.[24]

Footnotes at end of article.

In any event, whether or not a full hearing was held, it is clear that the Board's "hearing" did not—and could not, after the *ex parte* meeting with the carriers of August 14—meet the standards established by the case law for a *fair* hearing. *Atchison, T. & S. F. Ry. Co.* v. *United States*, 284 U.S. 248 (1932); *ABC Air Freight Co.* v. *CAB*, 391 F. 2d 295 (CA 2 1968). Nothing is more settled in administrative law than the proposition that *ex parte* contacts between the agency and one of the parties are improper and deprive other parties of the right to basic fairness. *United Air Lines, Inc.* v. *CAB*, 114 App. D.C. 17, 309 F. 2d 238 (1962); *United Air Lines, Inc.* v. *CAB*. 408 App. D.C. 220, 281 F. 2d 53 (1960). The unfairness was particularly clear in this case because one of the Petitioners timely sought, unsuccessfully, to gain access to the *ex parte* meeting in question. And many of the topics discussed at that meeting made an appearance, in some form, in the Board's decision of September 12.

In these circumstances, Petitioners submit that they have been deprived of the type of hearing required by section 1002(d) of the Federal Aviation Act of 1958 before prevailing and proposed rates are found unlawful and new rates are made.[25] For this reason, the maximum rates set by the Board in its decision of September 12 should be deemed illegal and rescinded.

(ii) The decision of September 12 is in conflict with the provisions of section 1002(e) of the Act.

Section 1002(e) of the Federal Aviation Act of 1958, 49 U.S.C. § 1482(e), provides that the Board, "in exercising and performing its powers and duties with respect to the determination of rates for the carriage of persons or property, shall take into consideration, among other factors," the following five:

"(1) The effect of such rates upon the movement of traffic;

"(2) The need in the public interest of adequate and efficient transportation of persons and property by air carriers at the lowest cost consistent with the furnishing of such service;

"(3) Such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law;

"(4) The inherent advantage of transportation by aircraft; and

"(5) The need of each air carrier for revenue sufficient to enable such air carrier, under honest, economical, and efficient management to provide adequate and efficient air carrier service."

Congress has implicitly authorized the Board to consider other factors, such as profit element, rate base, depreciation, equipment deposits, and taxes. And the Board has explicitly considered and set standards for these items.[26]

But the Board *must* consider the factors specified in section 1002(e) whenever it undertakes to make rates.[27] It may, at its discretion, give one or more of these factors greater weight than the others, *New York* v. *United States*, 331 U.S. 284, 347 (1947), but it is powerless to eliminate completely consideration of any one of these factors. *American Overseas Airlines, Inc.* v. *CAB*, 103 App. D.C. 41, 254 F.2d 744 (1958); *Florida* v. *United States*, 292 US. 1, 7 fn. 3 (1934); *Malone Freight Lines* v. *United States*, 143 F. Supp. 913 (N.D. Ala. 1956); *Cantlay & Tanzola* v. United States, 115 F. Supp. 72 (S.D. Cal. 1953).

In its opinion of September 12, the Board ignored section 1002(e). Indeed, it made only two brief and generalized mentions of the requirements of the Federal Aviation Act of 1958, and both were for the same purpose—to justify the Board's decision to permit a fare increase because of the carriers' rising costs and declining earnings:

"To require the carriers to continue operating at present fare levels with operating costs spiraling upward would be contrary to the statutory policy and rate-making criteria contained in the Federal Aviation Act of 1958. (D 5).

"Taking into consideration these cost pressures on the carriers, and the marked decline in earnings and profit margin since the February increase, the Board finds that a further increase in fares at this time is necessary from the standpoint of the ratemaking standards of section 1002(e) of the Act and the need to maintain the financial vitality of the carriers as a group." (D 8).

The Board's decision to permit an increase in fares solely on the basis of rising costs and declining earnings is not contemplated by section 1002(e), which mentions among its factors "revenue" but not "earnings" or "profit margin," and whose only reference to "costs" is to the cost, or fare, to the passenger. Indeed, section 1002(e) is based on section 15a(2) of the Interstate Commerce Act and section 216(i) of the Motor Carrier Act which contain factors similar to those found in 1002(e). These factors were originally provided by the Congress in order to emphasize that changes in the level of earnings are not necessarily sufficient grounds for a change in rates. *Florida* v. *United States*, 292 U.S. 1 (1934). The Congress wanted to move the agencies away from a "cost-plus" theory of ratemaking and toward a requirement of adequacy and efficiency of service and economy and efficiency of management. Petitioners do not contend that the Board has necessarily considered impermissible factors in reaching its decision, but that it has so limited the factors it did consider that the most important of the mandatory factors of section 1002(e) have been completely ignored.

(1) The Board's opinion demonstrates on its face the Board's failure to consider the effect of its maximum rates on the movement of traffic, a factor which the Board must consider by reason of section 1002(e)(1). The effect of fares on the movement of traffic is basically a question of elasticity of demand.[28] It is, or should be, of crucial significance in the making of airline passenger rates, because the persistent trend toward ever higher fares threatens to price the airlines out of some travel markets. As the Supreme Court has recognized, "the raising of rates does not necessarily increase revenue. It may . . . reduce revenue instead of increasing it, by discouraging patronage." *Florida* v. *United States*, 282 U.S. 194, 214 (1931).

In its Order 69–8–108 of August 19, 1969, which called for oral presentation of views on September 4, 1969, the Board asked the parties to address themselves, among other things, to the following question:

"What effect, if any, will either the proposed tariff revisions or possible changes in promotional and discount fares have upon the movement of traffic?" (C 8603).

But the oral presentation was inconclusive. Only a few carriers spoke to the point, and they differed among themselves on the effects of the proposed tariffs.

The Board's only references in the September 12 opinion to movement of traffic indicated that it had not fully considered the question and had no idea what effect would be produced on traffic movement by tariffs computed in accordance with its formula. Thus, it opined that, as a result of the formula, "there may be a total revenue increase of approximately 6.35 percent (assuming no diversion or loss of traffic). To the extent of any such dilution, of course, the revenue increase would be less than 6.35 percent." (D 9).

The Board has no power, under the statute, to make rates while indulging in such an unverified "assumption" regarding a factor listed in section 1002(e). The effect of given rates upon the movement of traffic is determinable—or at least more nearly determinable than one would suppose from perusal of the Board's opinion—providing that a sufficient amount of relevant information is assembled and analyzed. The Board has never taken the trouble to assemble such information and has not even, in the opinion of September 12, analyzed the information it did have. No mention is made in that opinion of the arguments regarding movement of traffic that various carriers made to the Board. The Board did not, for example, say that the arguments of certain carriers had merit, while the views expressed by others were in error. If its statements are taken at their face value, it would appear that the Board reached the conclusion that a good deal of diversion would result from tariffs computed on the basis of its formula—but that it hoped it was wrong.

(2) The Board is required by section 1002(e)(2) to consider, in making rates, "the need in the public interest of adequate and efficient transportation by persons and property by air carriers at the lowest cost consistent with the furnishing of such service." This factor must have appeared too vague and elusive for the Board, for it never even acknowledged its existence in the September 12 opinion. Yet it is possible to impart a definite meaning to this provision. The factor refers to a certain desirable quality and quantity of service (adequate and efficient service) and the most economical means of providing that service. The requirement might be given a precise normative interpretation by the same means commonly used in the airline industry to judge adequacy, efficiency, and economy of service—namely, the use of percentage and numerical standards. See generally Friendly, *The Federal Administrative Agencies: the Need for Better Definition of Standards*, 75 Harv. L. Rev. 863, 1055, 1263 (1962).

One rational approach to interpreting section 1002(e)(2) would be to establish standards of adequacy and efficiency, and standards for the cost of furnishing the service, both cash cost standards (payroll, fuel, materials, other services) and noncash cost standards (depreciation and earnings or return on investment). Then, particular tariff proposals and the Board's own ratemaking efforts could be examined in the light of such standards and tariffs based on past performances departing significantly from the guidelines would not be permitted to go into effect without an extraordinary justification of their reasonableness.

In point of fact, the Board has been extremely precise in fixing noncash cost standards. In 1960, in the *General Passenger Fare Investigation*, the Board set forth detailed criteria for establishing the profit element, depreciation, the rate base, and taxes. 32 C.A.B. 291. If cash costs are maintained at reasonable levels, noncash costs (including income taxes) should comprise about twenty to twenty-five percent of the price of an average ticket.

It is very difficult to say how much they do in fact comprise, because the Board has not yet established cash cost standards, nor any standards for adequacy and efficiency of service. Load factor standards—standards indicating the percentage of available aircraft capacity which should ordinarily be sold—are generally recognized by the airline industry as one of the best measures of adequacy and efficiency.[29] They are regularly employed by the carriers in making their own economic forecasts and analyses. The Board itself has recognized that "if fair [cost and load factor] standards could be ascertained for representative periods which can be reasonably defined, it is clear the Board would be able to deal with the problem of determining appropriate fare levels much more effectively."[30] But the Board has not established such guidelines for measuring adequacy and efficiency of service—nor any others.

Footnotes at end of article.

If the Board had load factor and cost standards, it would be in a position to heed the mandate of section 1002(e)(2) in making rates. Relying upon these standards, the Board would know what a reasonable unit cost per seat sold would be. It could make rates on the basis of this figure plus a reasonable rate of return, and the airlines would be encouraged to furnish adequate and efficient service at the lowest cost. Because the Board lacks both these standards and any other rational interpretation of section 1002(e)(2), the situation is exactly the reverse of what it should be: the rate that is made by the Board plays a controlling role in setting the level of airline costs and load factors. The inevitable result is a notable lack of adequate and efficient transportation . . . at the lowest cost consistent with the furnishing of such service." [31]

It is not necessary to go through a long and complex study in order to understand why the foregoing statement is true. The airlines subject to CAB regulation are engaged in what has been referred to by economists as "monopolistic competition"—a type of economic structure in which price competition is rare.[32] Competition occurs, but under the regulated price umbrella, with the participants vying with each other in quality of service—in the air and on the ground—and quantity (frequency) of service. Since quality and quantity of service are not controlled by the Board, they are determined by the forces of competition, as soon as a price for airline fares has been determined. If the price is higher than it previously was, costs and frequency of scheduling will increase. Because the carriers are aware that they will not subsequently be held to standards of adequacy efficiency, and cost, they feel free to increase unit costs at will—with large advertising expenditures, for example, and overscheduling of their routes.[33] Their costs naturally rise, and their load factors drop.[34] Before very long, they are back before the Board with a renewed request for higher revenues. Because costs have risen and earnings have dropped, the Board—which again takes no account of the *standard* or *proper* level of costs or the *standard* or *proper* load factors, but only of the rising levels of costs in an inflationary economy and the failure of the carriers to obtain the return that is their due [35]—is disposed to raise rates again.[36] Of course, a raise in rates is not conducive to generating more traffic and may even reduce traffic.[37] And, even if the raise actually succeeds in providing additional gross revenues, these are soon largely eaten up by new costs and scheduling. With fares even higher, the carriers' breakeven point for any given service is even lower. Costs again rise and load factors again drop. The passenger is caught in this vicious circle.

The CAB does not lack cost and load factor standards for any good reason. Although the Board has recognized the need for such standards at least since 1960 [38], it has never taken the time and gone to the trouble to set them. The Board has deferred for years a general investigation of domestic passenger fares, which would presumably develop the type of information necessary to set such guidelines. It has never, in the 31 years of its history, held such a general investigation.[39]

Although Petitioners urged below that a general investigation be held in order to enable the Board to obey the mandate of the Federal Aviation Act, they take no position for purposes of the instant motion on the question whether such an investigation is necessary. Indeed, Petitioners do not even urge that the use of cost and load factor standards represents the only means of interpreting section 1002(e)(2), although it is the only means they know of. During the nine years since the Board recognized the need for cost and load factor standards, it has authorized its staff to conduct a number of cost and fare studies, some of which required a year or more to complete. The Board has never released the findings of these studies to the public, and has discussed most of them only in *ex parte* discussions with the carriers. It is conceivable that the Board has at this time a sufficient quantity of relatively reliable information to enable it to pass upon tariffs and set rates in accordance with the statute.

The important point is that the Board, in its opinion of September 12, did not comply with the statute because it did not use any of its information or any standards or anything else to determine whether the rates it was making constituted the lowest cost for furnishing transportation of persons by air in an adequate and efficient manner. Thus the Board, on September 12, emphasized the carriers' rising cost and never mentioned adequacy, efficiency, and economy of service. Petitioners had contended in their First and Second Complaints that the staff formulas upon which the carriers' tariff filings (including the filing by American) were based were not necessarily founded upon a just and reasonable input and had not been formulated by the Board's staff for the purpose of meeting the "just and reasonable," the "adequate, efficient, and economical," or any other statutory standard.

On September 12, Petitioners' Complaints were virtually ignored. The Board once again recognized that "the complainants have raised some questions for which no fully satisfactory answer presently exists, especially the question of load factor standards . . ." (D 5). The Board decided, therefore, not to dispose of the Petitioners' request for a general fare investigation and determined to undertake an exploration within the Board of a number of matters, including whether load factor standards should be set, and if so at what level:

"At the conclusion of our consideration of these matters, we should be in a better position to determine whether a fare investigation is appropriate and, if so, to channel such investigation along the most productive patterns so as to expedite completion of the proceeding within a reasonable time span." (D 5).

Once again the Board thus put off the setting of standards for another day. It made rates without such standards and without mention of or regard to adequacy and efficiency of service at the lowest cost consistent with the furnishing of such service.

Petitioners submit that, in these circumstances, the Board's maximum rates of September 12 must be considered as contrary to the provisions of the Federal Aviation Act and illegal.

(3) Section 1002(e)(5) requires the Board, in making rates, to consider "the need of each air carrier for revenue sufficient to enable such air carrier, under honest, economical, and efficient management, to provide adequate and efficient air carrier service." See *American Overseas Airlines, Inc.* v. *CAB*, 103 App. D.C. 41, 254 F. 2d 744 (1958). It is obvious, from the foregoing discussion of section 1002(e)(2), that the Board did not take this factor into consideration on September 12. It could not and did not give any consideration to "economical and efficient management" or "adequate and efficient air carrier service."

But the degree of divergence of the Board's September 12 opinion from the standard of section 1002(e)(5) bears emphasis. Throughout that opinion, the Board repeatedly stated that the carriers had demonstrated a need for "some" additional revenue. Never did the Board state *how much* additional revenue was needed by a carrier or group of carriers. Nor did the Board ever claim that the tariffs it would accept would provide the undetermined amount of additional needed revenue. It said only:

"We estimate that the fare adjustments we are prepared to accept would produce increased revenues for the trunkline industry of 7.4 percent in first-class service and 3.6 percent in coach service. Currently, about 82.6 percent of trunkline passenger miles involve travel at coach or economy fares and only about 17.4 percent at first-class fares, so that (considering the traffic "mix") such basic fares will be increased by about 4.25 percent. Further, we estimate that an annual increase in revenues equivalent to 2.1 percent may stem from adjustments in promotional fares. Thus, there may be a total revenue increase of approximately 6.35 percent (assuming no diversion or loss of traffic). To the extent of any such dilution, of course, the revenue increase would be less than 6.35 percent." (D 9).

The implication is that, after the fare increase, annual first-class revenues will be 7.4 percent more than they would otherwise be, coach revenues will be 3.6 percent greater, overall revenues 6.35 percent greater. The fact, however, is that the Board's estimates were based upon past traffic performance figures, for fiscal 1969, not upon projected future traffic levels, adjusted for changes in fares. The Board could not have considered such projections because, as noted above, it never considered the effect of the new fares it was making upon the movement of traffic. This is an important consideration, because the airline industry is a growth industry, and past revenue performances tend to provide understated predictions for the future. Significantly, the Board never stated that the revenue increase it anticipated—"approximately 6.35 percent (assuming no diversion or loss of traffic"—complies with the standards of section 1002(e)(5)).

Finally, the Board never bothered to determine the need of "each air carrier" as section 1002(e)(5) requires. It simply considered all the domestic trunklines and local service carriers as a group. With respect to the local service carriers, the Board never even made an estimate of the impact of its decision upon revenues. This fact cannot be ignored because the rates prescribed by the Board were intended to have a greater impact on short-haul fares than on long-haul fares, and therefore should effect a greater change in short-haul traffic and revenues.

As if in an attempt to excuse the higher fares it was calling upon the public to pay, the Board said:

"In light of the low level of earnings realized in the most recent periods and the inflationary cost increases being experienced by the carriers, there appears to be no prospect that the fare increases approved herein will enable the industry to reach the 10.5 percent return guideline for the immediate future." (D 9).

This issue was never in doubt. As a matter of fact, the position of the Petitioners was just the opposite, as the Board observed: "The complainants further assert that the fare proposals (D 2) will further depress load factors and earnings." Odd as it may be, the Board never even claimed that its prescribed rates would improve net earnings,[40] despite the fact that the fare increase was approved by the Board for the express purpose of reversing the carriers' earnings decline. As Petitioners have consistently maintained, earnings are not likely to increase, even if revenues do, because the Board's lack of cost and load factor standards leads the carriers to eat up additional revenue (if such additional revenue should be forthcoming) with additional costs and scheduling.

For the foregoing reasons, Petitioners submit that the Board's decision of September 12 was made without regard to at least three of the critical standards of section 1002(e) of the Federal Aviation Act of 1958.[41] Because the Board is powerless to make rates without taking such standards into consideration, the

Footnotes at end of article.

decision of September 12 must be reversed and the maximum rates made by the Board in that decision must be rescinded.

b. The Board Has Illegally Permitted Unlawful Tariffs Computed on the Basis of Its Formula of September 12 To Go into Effect.

Following the Board's decision of September 12, and as contemplated by that decision, the carriers filed tariffs with new fare increases based on the formula promulgated by the Board. Petitioners requested that the Board reconsider the September 12 decision and suspend and investigate all tariffs that had been filed pursuant thereto. Petitioners noted the Board's various violations of the procedural and substantive provisions of the Federal Aviation Act of 1958; the fact that the new tariffs were *prima facie* unjust and unreasonable; and, specifically, the discriminatory effect of the new tariffs upon passengers traveling in markets where one-carrier service is not available and no through fare for inter-carrier connecting service is published. Under the Board's formula and the new tariffs, such passengers are called upon to pay an increased terminal charge for each segment of their voyage, plus a higher line haul charge than they would have to pay for a voyage of the same distance made with a single carrier.[42] Petitioners submitted that "such inequities must be eradicated first," before the Board approves yet another increase in local fares. (C 8614).

The Board, in response to this attack and in a decision of September 30, opted to do nothing. It reiterated the rationale behind its decision of September 12: "the domestic air carrier industry requires an immediate revenue increase in light of its higher cost of doing business and its earnings decline." (F 1). It brushed aside Petitioners' contention that the maximum rates set and the tariffs being approved were seriously deficient under the statute:

"There has been general recognition of the need to overhaul the fare structure to remove its inequities and bring it more into line with cost factors, and by conditioning the grant of fare relief to the adoption of an improved structure, the Board believes it is acting in the public interest. This conclusion is not predicted on an assumption that the new fare structure is the optimum. Rather, we view it as a first step toward a more rational and consistent fare structure which should redound to the benefit of the traveling public and carriers alike. And, as stated in Order 69-9-68, the Board intends to consider further the entire matter of domestic passenger fare structure and level, including the prior and instant requests for a full-scale formal investigation of domestic passenger fares. The Board will decide what further action is necessary and appropriate in this regard in due course." (F 2).

In the month of October, the new tariffs went into effect. Petitioners contend that the Board erred in refusing to suspend and investigate those tariffs and in permitting them to go into effect.

At the outset, Petitioners note that this is *not* a case in which the reviewing court should defer to the Board's discretion under section 1002(a) of the Act, 49 U.S.C. § 1482 (a), to dismiss a complaint without a hearing. See, *e.g., Flying Tiger Line, Inc.* v. *CAB*, 121 App. D.C. 332, 350 F.2d 462 (1965) *cert. denied*, 385 U.S. 945 (1966); *Flight Engineers Int'l. Ass'n* v. *CAB*, 118 App. D.C. 112, 332 F.2d 312 (1964), *cert. denied*, 385 U.S. 945 (1966). This is *not* a case in which the Board has simply reached a decision, within the bounds of its discretion and unreviewable by the courts, to refuse to suspend tariffs proposed by the carriers. See, *e.g., Arrow Transportation Co.* v. *Southern Ry. Co.*, 372 U.S. 658 (1963). This, in sum, is *not* a case envisioned by the Federal Aviation Act at all.

The tariffs that went into effect in October and that remain in effect today are the direct responsibility of the Board. It set out the formula on which they are based with detail and precision in its decision of September 12—a decision which, for reasons already explained in this memorandum, was unorthodox, unauthorized, and illegal. The Board concluded in that decision that it "would be disposed to grant an increase" in fares computed in accordance with its formula. (D3). It referred again and again to "the fare formula which we would accept," (D4, 6, 9) and it called for "tariff filings implementing the fare adjustments" it had proposed. (D9, 10). Member Murphy, concurring and dissenting, referred to "the increase" which "the majority has approved." (D Murphy). Member Minetti, likewise concurring and dissenting, spoke of "accepting, without an investigation, a fare adjustment package equivalent to an increase in fare levels of over six percent." (D Minetti). The tariffs contemplated by the Board in the September 12 decision were in fact filed by the carriers, and it is those tariffs which Petitioners now claim should be rescinded.[43]

Those tariffs discriminate against a substantial segment of the traveling public and are unjust and unreasonable vis-a-vis the entirety of that public. To the Petitioners' claim of discrimination against some passengers, the Board responded on September 30 as follows: "The Congressmen site the lack of single factor fares in some markets as prejudicial to the interests of the traveling public. We agree and we have already taken action aimed at assuring the establishment of single sum fares in all markets whether served by a single carrier or not which meet a minimum traffic standard. In any event, suspension of the proposed tariffs is no solution to this problem since the pre-existing structure suffers from the same deficiency." (F2).[44] This statement, however, misses the point. The Board is forbidden by statute and case law to permit tariffs with such a deficiency to go into effect. See sections 404 and 102(c) of the Act, 49 U.S.C. § 1374 and § 1302(c) and, *e.g., Trailways of New England, Inc.* v. *CAB*, 412 F. 2d 926 (CA 1 1969). *Transcontinental Bus System, Inc.* v. *CAB*, 383 F. 2d 466 (CA 5 1967), *cert. denied*, 390 U.S. 920 (1968). It is under statutory injunction to take the necessary steps to cure the deficiency. Section 1002(d), 49 U.S.C. 1482(d). By no stretch of the imagination or the statute could the Board derive power from the Act to prescribe such discriminatory rates itself. The Board's "agreement" that the fare structure that went into effect in October is "prejudicial to the traveling public" amounts to a concession that its decision to permit such tariffs is contrary to law.

Moreover, as previously noted, those tariffs were computed on the basis of the Board's illegal formula of September 12. Petitioners have contended earlier in this memorandum, as before the Board, that tariffs thus computed are unjust and unreasonable to the traveling public; having an unpredicted effect on the movement of air traffic, having no relation to adequacy and efficiency of service, having no reference to the lowest cost consistent with the furnishing of such service, and not designed to produce, for each carrier, "revenue sufficient to enable such air carrier, under honest, economical, and efficient management, to provide adequate and efficient air carrier service." The tariffs will not resolve the earnings crisis among the carriers because they are calculated to do no such thing. They will only encourage even greater costs and scheduling, and tariff filings for still higher fares.

In these circumstances, Petitioners submit that the fare increase granted by the Board was illegal. Accordingly, Petitioners request that the Board's decision to permit those tariffs to go into effect be reversed, that the previously prevailing tariffs be reinstituted, and that the case be remanded to the Board for further proceedings. See *Transcontinental Bus System, Inc.* v. *CAB, supra.*

2. Petitioners Will Suffer Irreparable Injury Unless Interlocutory Relief Is Granted.

The second of the four criteria governing interlocutory relief from administrative orders is that such relief will only be granted when a showing is made that irreparable injury would otherwise result. If, in the present case, interlocutory relief is not granted, Petitioners and the public whom they represent in this action, *Wirtz* v. *Baldor Elec. Co.*, 119 App. D.C. 122, 138–39, 337 F.2d 518, 534–35 (1964), will suffer the clearest form of irreparable injury: (a) the jurisdiction of this Court to hear the appeal on the merits will be in serious jeopardy, because, after January 31, 1970, the Board and the carriers may have the power to render this case moot, and (b) Petitioners will be without legal recourse to recover the overcharges which are being collected under the present passenger fare tariffs.

The reason that the jurisdiction of this Court may be defeated by reason of mootness, in the absence of interlocutory relief, stems from the peculiar nature of the passenger fare tariffs which Petitioners seek to have reviewed. These tariffs were approved by the Board in September and became effective early in October. By their terms, however, the tariffs are to expire on January 31, 1970. At that time, unless the Board has approved new tariffs, the tariffs that were superseded by the tariffs presently on file (the pre-formula tariffs) will again come into effect. It is not contemplated by the Board or the carriers, however, that these former fare levels will actually be allowed to go back into effect after January 31, 1970, rather, the parties anticipate filing new tariffs[45] with, it is quite possible, still higher fares.

The short-term duration of the tariffs presently on file makes it virtually impossible, in the absence of interlocutory relief as is sought here, to obtain meaningful review of the Board's action. Under the Federal Rules of Appellate Procedure, the Board has forty days from the date on which the petition for review was filed in which to file the record with this Court. Rule 17, Federal Rules of Appellate Procedure. The Petitioners are then allowed forty days from the date on which the record is filed in which to file their brief: even if this time period were drastically compressed, however, the Board would still have thirty days after service of the Petitioners' brief in which to file its brief. Rule 31, Federal Rules of Appellate Procedure. Allowing for additional time for a reply brief and oral argument, and the period in which the Board would consider and decide the case, there would be no practical likelihood that a decision would be handed down prior to January 31, 1970. Indeed, under the time schedule as provided by the Rules, there would be little likelihood that the case would even come up for argument before that date.

Thus, by the time the case came up for decision on the merits, there would be every probability that new tariffs would then be in effect, with or without a new ratemaking effort by the Board. In this situation, a decision by this Court on the legality of the present tariffs could be rendered moot: because the present tariffs will have been superseded, the Court's decision as to their legality "would have no effect. . . ." *Southern Pilots Ass'n* v. *CAB*, 116 App. D.C. 283, 285, 323 F. 2d 288, 290 (1963), *cert. denied*, 376 U.S. 954 (1964). Moreover, if the Board undertakes by a decision prior to review on the merits of this case to alter its ratemaking formula, even Petitioners' attack upon that formula could be mooted.

If this case should become moot—and, as we set out below, even if it should not—Petitioners and the public would suffer clear

Footnotes at end of article.

irreparable injury. For unless this Court is able to review the Board's order in the present case, Petitioners are without effective judicial redress against the excess fares that are presently in force. Under an established line of cases, the federal courts do not have the power, save on direct judicial review, to pass on the lawfulness of a tariff. *Lichten* v. *Eastern Airlines, Inc.*, 189 F.2d 939 (CA 2 1951), *Vogelsang* v. *Delta Air Lines, Inc.*, 302 F.2d 709 (CA 2), *cert. denied*, 371 U.S. 826 (1962); see *T.I.M.E., Inc.* v. *United States*, 359 U.S. 464 (1959). Nor, apparently, does the Board itself have power retrospectively to find rates illegal and award reparations. *Tishman & Lipp, Inc.*, v. *Delta Air Lines*, 275 F. Supp. 471 (S.D.N.Y. 1967); see Markham & Blair, *The Effect of Tariff Provisions Filed Under the Civil Aeronautics Act*, 15 *J. Air Law & Com.* 251 (1948). And the only remaining possibility for recovering overcharges paid to the carriers under illegal tariffs, an action charging the airlines with unlawful collusion under the antitrust laws, would raise difficult and novel questions. *Compare, e.g., Pan American World Airways, Inc.* v. *United States*, 371 U.S. 296 (1963), *with Allied Air Freight, Inc.* v. *Pan American World Airways, Inc.*, 393 F.2d 441 (CA 2), *cert. denied* 393 U.S. 846 (1968), *compare Eastern Railroad Presidents Conf.* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), *with Georgia* v. *Pennsylvania RR.*, 324 U.S. 439 (1945).[46] Moreover, such an antitrust case, even if ultimately successful after protracted litigation, would in any event have little effect in remedying the Board's grossly unlawful actions.

In sum, interlocutory relief is essential for two reasons. The first is to protect the right of review in this Court: the Court "should be able to prevent irreparable injury to the parties or to the public resulting from the premature enforcement of a determination which may later be found to have been wrong. . . . [Otherwise,] judicial review would be an idle ceremony if the situation were irreparably changed before the correction could be made." *Scripps-Howard Radio, Inc.* v. *FCC*, 316 U.S. 4, 9–10 (1942); see *Delta Air Lines, Inc.* v. *CAB*, 97 App. D.C. 46, 228 F. 2d 17 (1955). Second, even if the Court's ultimate decision on the merits were not rendered moot, Petitioners and the public would have suffered irreparable injury in the interim through paying higher, illegal air fares with virtually no chance of obtaining reparations. Indeed, in the time that has gone by since the tariffs went into effect, the traveling public has already suffered such injury without the possibility of redress—and continues to suffer such injury on a day-to-day basis. See *Armour & Co.* v. *Freeman*, 113 App. D.C. 37, 304 F. 2d 404, *cert. denied*, 370 U.S. 920 (1962).

As this Court held in the *Virginia Petroleum Jobbers* case, *supra*, "the possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." 104 App. D.C. at 110, 259, F. 2d at 925. In the circumstances of the present case, there is no such adequate relief available at a later date. Petitioners submit that, in the equitable judgment of the Court, this situation requires the grant of interlocutory relief.

3. Interlocutory Relief Would Not Cause Countervailing, Substantial Harm to Other Parties.

Should interlocutory relief be granted in this case, the carriers and the Board would not suffer what could be considered, under the Federal Aviation Act, a substantial injury.

As the only justification for a continuation of the present tariffs, the carriers will doubtless argue, as they did before the Board, that rising costs have imposed upon them a desperate need for still more revenues, revenues obtainable through the second fare increase permitted this year. But the persuasiveness of this argument is diluted, to say the least, by the failure of the carriers to show, and the Board to find: (a) that the increased fares will not result in an offsetting decrease in the use of air service; and (b) that the increased costs, to which the carriers so regularly refer, have been incurred in anything resembling a reasonable manner.

As to the effect of these rates on air traffic, a matter which the carriers have not demonstated and on which the Board has not passed, despite the Board's rule that the burden of going forward with evidence to justify a rate increase is on the applicant, 14 C.F.R. § 302.506; see *Investigation of Eastern Air Lines Air-Coach Fare Between Miami and San Juan*, 12 C.A.B. 511 (1951), Petitioners would note that during the month of October, when the new fares first went into effect, air traffic load factors fell to their lowest level in five years. *Aviation Daily*, Nov. 24, 1969, p. 133. Thus, while those members of the public who did remain air passengers suffered the injury of paying higher fares, it is not at all clear that reinstating the prior tariffs pending this litigation would cause the airlines any injury, let along significant, countervailing injury—because the higher fares have already led to a decrease in traffic.

As to the increased costs which the airlines cite as justification for a fare increase, it is worth noting that the Board itself has pointed out that the carriers have systematically been incurring costs that may well be unreasonably high. In an order suspending and investigating tariff filings on May 8, 1969, the Board noted that the airlines had persisted in buying more aircraft than their traffic forecasts would require: "the carriers have bought equipment despite (not by reason of) traffic forecasts." The Board went on to state:

"As long as the industry's load factor continues its present downward trend, and inflationary pressures persist, the carriers may find themselves in a cost-revenue squeeze despite the introduction of more efficient aircraft and the adjustment of their fares. Another significant aspect of an unnecessary increase in unused capacity is the corresponding growth in the investment base and fixed charges. On the other hand, it cannot be expected that fare increases will stimulate additional traffic. The basic solution to the industry's present financial situation would appear to lie in exercising restraint in ordering new flight equipment and in the use of its available capacity, rather than in increasing its price to the public." (C 8587–88).

In other words, the Board itself has charged that the carriers' costs are being unreasonably inflated and aircraft are regularly and uneconomically being flown while filled to far less than their capacity; that this policy has served to raise questions about the financial structures of the airlines, as well as worsen air traffic congestion; and that unless a halt is called to this practice, the airlines' justification of higher fares on the basis of their incurred costs would be open to attack. All this seems to have been forgotten by the Board in the present case.

In these circumstances, Petitioners submit that an interlocutory order of this Court withdrawing the effectiveness of the new tariffs would not occasion the substantial, countervailing injury which the *Virginia Petroleum Jobbers* case, *supra*, envisioned. Because the fare increases have not been shown by the carriers or the Board either to be just and reasonable or to represent a substantial benefit to the carriers, it may not be argued that withdrawing such increases necessarily does the carriers a substantial harm which should preclude interlocutory relief.

Finally, there would be little administrative burden involved in going back to the fares that were charged before the present tariffs went into effect. The carries would not be required to calculate, *de novo*, a complex schedule of fares—for each carrier has already used the fares which Petitioners are seeking to have reinstated, and indeed, each carrier presently has on file with the Board a tariff embodying those fares, which tariffs are scheduled to go into effect on February 1, 1970, unless superseded. Therefore, the only administrative action required of the carriers would be to notify their offices and agents of the fare structure which should go into effect—an action which they regularly take, and are equipped to take, in any event.

The above discussion relates to the principal relief sought by Petitioners: withdrawing the effectiveness of the present tariffs and substituting the tariffs which they superseded. Should the Court instead grant one of the two alternative forms of interlocutory relief which Petitioners have requested, the question of equitably assessing the possibility of undue injury to other parties would not really arise—as there would be no injury at all. The first form of alternative relief requested by Petitioners is an order that would permit the carriers to collect the new, higher fares pending litigation, but would require them promptly to pay refunds of the overcharges to passengers should the present tariffs be found to be illegal. Such an equitable order providing that the affected parties will be reimbursed for damage caused, if the Board's decision is ultimately found invalid, is well within the Court's discretion and is sanctioned by precedent. *Airport Comm'n of Forsyth County, N.C.* v. *CAB*, 296 F. 2d 95, 96–97 (CA 4 1961).

Although from Petitioners' standpoint such an order would not grant so effective relief as would an order striking the fare increases *pendente lite*, nonetheless an order assuring reimbursement to the public of overcharges, should Petitioners prevail on the merits, would have some effect in mitigating the injury which the tariffs are presently occasioning. From the carriers' viewpoint, an order requiring reimbursement of overcharges unlawfully collected, upon a finding that the tariffs are illegal, can hardly be said to impose an undue or unfair burden. Moreover, as an administrative matter, such an order would require that the airlines keep only slightly more information about passengers than they presently maintain. To comply with such an order, all that the carriers would need to do would be to keep on file the names and address of their passengers. This is little, if any, more of a burden than the present practice, for every air ticket now bears the passenger's name, and virtually every air passenger—*i.e.*, everyone who purchases tickets by check or with a credit card—already makes available to the air carrier his address.

Finally, Petitioners' third alternative form of interlocutory relief—that the Court set an expedited schedule for hearing the present appeal on the merits—could cause other parties no measurable injury at all.[47]

4. The Public Interest Counsels the Grant of Interlocutory Relief.

The present case presents the most compelling circumstances for finding that the public interest supports the grant of interlocutory relief: the present motion has been filed not on behalf of any economic interest or group of interests, but is, in effect, an action brought on behalf of the entire traveling public.

Most appeals from administrative agency orders are taken by one affected party—often itself the subject of regulation—who appeals from the agency's denial of a benefit to it, or from the agency's grant of a benefit to a competitor. Under the law of judicial review of administrative actions, the appellant in such a case is often given standing to represent the "public interest." In fact, however,

Footnotes at end of speech.

the interests of the appellant are ordinarily much narrower than that and the judgment of the administrative agency—as, for example, when the Board awards one carrier a new route rather than another—is entitled to some weight as having taken into account public interest considerations.

In the present case, no such thing has been done by the Board. Rather, the Board and the carriers have followed their consistent pattern of setting rates through *ex parte* meetings and other procedures totally lacking in statutory foundation—in which no consideration has been given to the statutory standards embodying the public interest. Petitioners seek to protect the public—the traveling public—from having to pay the unlawful fares that are now being charged. They request interlocutory relief because the illegal fares continue in effect from day to day and there is no practical means for a court or the Board to rectify past illegal tariffs. They also request interlocutory relief because there is a good possibility that, if such relief is not accorded, the tariffs in question here will expire without having ever been reviewed. Petitioners are flexible in their requests and prepared, as necessary, to accept a tailoring of the relief accorded so that the burden placed upon the carriers is kept to a minimum. That being said, it is inconceivable that the interests of the carriers in maintaining the present tariffs in effect and possibly denying Petitioners the opportunity ever to have those tariffs reviewed outweighs Petitioners' interest in obtaining some form of interlocutory relief.

In litigation involving the administration of regulatory statutes designed to promote the public interest, "the interests of private litigants must give way to the realization of public purposes." *Virginia Petroleum Jobbers Ass'n* v. *FPC, supra,* 104 App. D.C. at 110, 259 F.2d at 925. The Federal Aviation Act of 1958 is, Petitioners submit, such a statute designed to promote the public interest. See section 102 of the Act, 49 U.S.C. § 1302. Accordingly, Petitioners believe they satisfy the final requirement of the four-part showing, that the public interest lies on the side of granting interlocutory relief.

VI. Conclusion: Relief requested

For the reasons set out in this memorandum, Petitioners respectfully request that the Court enter an interlocutory order directing the Board to set aside the present passenger air-fare tariffs and reinstate the tariffs which they superseded, *pendente lite.*

In the alternative, Petitioners respectfully request that the Court preserve the right of passengers by air to recover overcharges, should the present tariffs be held illegal, by entering an order that would allow the air carriers to continue collecting fares under the present tariffs, but would require them promptly to repay overcharges to passengers upon an ultimate decision by this Court that such tariffs are illegal. Finally, should the Court deny the alternative relief requested above, Petitioners respectfully request that the Court establish an expedited hearing in this case, so that a decision could be rendered prior to the date on which the tariffs are scheduled to expire, January 31, 1970.

Respectfully submitted.

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FOOTNOTES

[1] Hereafter cited as *Passenger Fare Revisions.*

[2] The Board's customary response to questions of air fares, as set out in Appendix B, has been to schedule closed, *ex parte* meetings with the carriers, in which the carriers and the agency thrash out the various proposals under consideration and reach general agreement as to an appropriate course of action. Such a meeting had been scheduled for August 14, 1969, in order to discuss what the Board termed "air fare structures." This was to be the continuation of an *ex parte* meeting which the Board and carriers had commenced on July 22, 1969.

[3] The relevant portions of the record in this case have been reprinted in the Congressional Record of September 29, 1969, at H8562–16. That reprint is referred to as Appendix C, and cites to the record in that appendix will be given with the letter "C" plus a page number in the reprint.

[4] The transcript that was subseqeuntly made available reflects a lively and highly interesting discussion. (C 8598–02). With the Board members listening intently and occasionally expressing their "personal" views, the carrier representatives brought up and discussed a number of issues that were directly relevant to the pending filings and that were later to be resolved in the Board decision of September 12: adjustment of youth and other promotional fares, establishment of a more uniform fare system with a taper according to mileage, the necessity of an immediate fare increase, the tension between cost-orientation and value-of-service in making rates, the inflation problem, the desirability of a mathematical formula for calculating fares, and antitrust immunity to discuss joint fares. In addition, Chairman Crooker advised the carriers regarding the specific questions that would be of major interest to the Board when it held oral argument on the proposed tariff revisions, including several questions that were never to be announced publicly. Two of the recent filings were discussed, with the participants going off the record at one point to discuss Continental's proposal.

The fact that a transcript of this meeting was made at all is itself interesting. No such practice had earlier been followed by the Board, because of what the Chairman termed, in a letter to Congressman Moss of March 5, 1969, the "desire to encourage a freer flow of discussion." (C 8570–71). In an apparent change of heart, and following inquiries by Petitioner Moss, the Board had transcripts prepared for meetings it held with the carriers on June 16, 1969, and July 22, 1969, as well as for the August 14, 1969, meeting. (See C 8588–91, 8592–97).

[5] The Petitioners' complaint of April 21 (hereafter cited as First Complaint), which was filed in docket 20928, *Passenger Fare Revisions Proposed by American Airlines, Inc., Braniff Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.,* is summarized in Appendix B and found at C8571–87. This complaint was incorporated by reference in the complaint of August 20 (hereafter referred to as Second Complaint). In the interest of brevity and clarity, specific references to these documents will, insofar as possible, be deferred to the Argument section of this memorandum. The second Complaint is found at C8603–05.

[6] These standards—cost and load factor standards—are discussed in the Argument section of this memorandum. "Cost standards" are simply guidelines for determining the proper level of a carrier's cash costs. "Load factor standards" are guidelines for determining what percentage utilization of capacity—how many seats filled on a given flight—should be expected in establishing fares.

[7] Petitioner Moss was concerned about the following statement in Member John G. Adams' response to Moss's inquiries to Board members about the veracity of the newspaper article: "Following the argument, the Board, in keeping with past practice, will no doubt seek to make its position known to the carriers well enough in advance of the September 15 effective date to permit those whose filings may not be approved to notify their ticket agents of any changed situation. I would expect the Board position to be made known early in the week of September 8. (C 8605).

[8] See pp. 7–8 *supra.*

[9] The opinion of September 12 is found at C8607–13 and is attached, separately, as Appendix D to this memorandum. Citations to the opinion will be given with the letter "D" plus a page number or other reference in Appendix D.

[10] In accordance with one of the points urged by Petitioners in the First Complaint, the Board determined that its formula would be based on airport-to-airport mileage, rather than the city center-to-city center mileage employed by American.

[11] This is a charge for "getting on and geeting off"—a flat fee per voyage.

[12] All certificated, scheduled, domestic carriers subject to CAB regulation—those carries that Petitioners have served in this case—submitted tariffs. Those tariffs were identical to those proposed by the Board, with a few insignificant exceptions, such as Delta's filing for a slightly lower youth promotional fare than the Board had contemplated.

[13] The means of disposition of the tariffs that the Board suspended on September 12 is something of a mystery. Apparently, however, they are no longer pending and will not spring into effectiveness at some future date.

[14] Again, summary of this document (hereinafter referred to as the Petition for Reconsideration and Suspension) will be kept as brief as possible here, and the argument contained therein will be referred to as necessary in the Argument section of this memorandum. The Petition for Reconsideration is found at C 8613–15.

[15] An Affidavit of Richard W. Klabzuba, Petitioners' representative before the Board, which states the relevant facts with regard to this oral communication, is attached as Appendix E to this memorandum.

[16] The Board's opinion of September 30 has been attached, separately, as Appendix F to this memorandum. Cites to this opinion be given with the letter "F" plus a page number from Appendix F.

[17] The Board's comments with respect to the allegations of discrimination in the new formula were as follows:

"The Congressman cite the lack of single factor fares in some markets as prejudicial to the interests of the traveling public. We agree and we have already taken action aimed at assuring the establishment of single sum fares in all markets whether served by a single carrier or not which meet a minimum traffic standard. In any event, suspension of the proposed tariffs is no solution to this problem since the pre-existing structure suffers from the same deficiency." (F 2).

[18] As noted below, the Board regarded the Petition for Reconsideration and Suspension as an application for a stay. See p. 27 *supra;* Appendix E.

[19] See the comments of H.R. Rep. 2254, 75th Cong., 3d Sess. (April 28, 1938) at 11, discussing this provision when first enacted:

"The judicial review provision also enables the court either to stay an order or to require some affirmative act by the Authority, where necessary to give interlocutory protection to a petitioner."

Such jurisdiction is also plainly established by Section 10(d) of the Administrative Procedure Act, 5 U.S.C. § 705, which provides that an appellate court "may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings."

[20] Counsel were secured to conduct this appeal, on a *pro bono publico* basis, only well after the tariffs had gone into effect.

[21] The Court of Appeals is the only forum available to Petitioners, since it has been held that the Federal District Courts are without jurisdiction to issue equitable decrees affecting actions of the Board. *Holman*

v. *Southern Airways, Inc.*, 210 F. Supp. 407 (N.D. Ga. 1962); see *Virginia Petroleum Jobbers Ass'n* v. *FPC*, 104 App. D.C. 106, 108, 259 F. 2d 921, 923 (1958).

[22] See *States-Alaska and Intra-Alaska Fare Increases Proposed by Alaska Airlines, Inc., Pan American World Airways, Inc., Western Air Lines, Inc.*, Docket 21599, Order of Investigation and Suspension of November 14, 1969.

[23] The Civil Aeronautics Act of 1938, the predecessor of the Federal Aviation Act of 1958, was modeled on the Interstate Commerce Act, 49 U.S.C. §§ 1 *et seq.*, and the Motor Carrier Act, 49 U.S.C. §§ 15 *et seq.* Therefore, interpretations of these prior acts are pertinent to an interpretation of the statute under consideration here.

[24] Again, that hearing should be compared with the hearing ordered by the Board on September 12—a formal proceeding before a hearing examiner. (D 11).

[25] Petitioners do not seek, as Chairman Crooker implied in a letter to Petitioner Moss (C8591-92), to bar all informal contacts between the Board and the industry. Petitioners maintain, however, that when *ratemaking* is concerned, the Board's statutory mandate plainly, and wisely, requires proceedings to be held on the record. See the discussion of this point in the "Hector Memorandum," *Problems of the CAB and the Independent Regulatory Commissions*, 69 Yale L.J. 931, 954 (1960).

[26] *General Passenger Fare Investigation*, 32 C.A.B. 291 (1960). See *Eastern Air Lines, Inc.* v. *CAB*, 111 App. D.C. 39, 294 F.2d 235, *cert. denied*, 368 U.S. 927 (1961).

[27] The Board is also required to act in compliance with the standards which apply, generally, to all of its powers and duties under the act. These standards are set forth in section 102, 49 U.S.C. § 1302.

[28] If demand is not affected by a change in rates, it is said to be "price inelastic," or insensitive to price changes. If, on the other hand, demand is significantly affected by a change in the rates, it is considered to be price sensitive or "price elastic." To the extent that the traffic market is price inelastic, an increase in fares will produce a revenue gain. But if demand is sensitive to price, higher fares will produce a smaller movement of traffic and may even have an adverse effect on revenue.

[29] Where load factors are low, where flights are going out with, for example, a 40% load, it is a reasonable inference that excess capacity is being provided and that unit costs per seat sold will be excessively high.

[30] *General Passenger Fare Investigation*, 32 C.A.B. 290, 320-21 (1960).

[31] Compare *City of Lawrence, Mass.* v. *CAB*, 343 F. 2d 583, 587 (CA 1 1965): "Standards are necessary, as Judge Friendly suggests, for reasons of fairness, to encourage the security of transactions, and to maintain the independence of the agencies; and from the failure to develop and abide by standards flow errors as are evident in this proceeding." See Friendly, *The Federal Administrative Agencies: the Need for Better Definition of Standards*, *supra*.

[32] Chamberlin, *The Theory of Monopolistic Competition*, 88 (1933). The statement made in 1948 in *Civil Aeronautics Board Policy: An Evaluation*, 57 Yale L.J. 1053, 1082, holds true today: "Board policy . . . has rendered the industry blandly unconcerned with cost." See generally Silberman, *Price Discrimination and the Regulation of Air Transportation*, 31 J. Air Law & Com. 198 (1965); Gellman, *The Regulation of Competition in United States Domestic Air Transportation: A Judicial Survey and Analysis*—II, 25 J. Air Law & Com. 148 (1958).

[34] The second major economic attribute of the airline industry is that it is a capacity-cost industry. In other words, saleable units are produced in cost increments of many units at a time—aircraft flights. In such an industry, the unit cost performance of the airlines may be altered very rapidly and substantially by changes in load factors.

[35] The Board has set this figure at 10.5 percent for the domestic trunklines as a group.

[36] It should be noted that the Board necessarily takes some costs and load factors into account in this process, whether it is aware of this fact or not. It *must* operate on the basis of some cash costs and some figure for percentage of capacity utilized. But it simply takes the historical figures representing the carriers' past performance, without judging that performance according to any guideline. And its principal inquiry in considering tariffs is into the carriers' profit levels. See *Ashlock, Government Pushing Harder for Fare Cuts*, Aviation Week and Space Technology, Vol. 83, No. 17, p. 49 (Oct. 25, 1965).

[37] See the Board's own discussion of the problem in its order of May 8. (C 8587-88).

[38] *General Passenger Fare Investigation*, 32 C.A.B. 291. See p. 64 *supra*.

[39] The fact that various reported cases of the Board bear the title of "General Passenger Fare Investigation" is misleading in the extreme. A full summary of the sundry ways in which a general investigation of passenger fares has been thwarted throughout the years is set out in Petitioners' First Complaint. As also set out in the First Complaint, the Board's consistent refusal to act has not gone without the scathing dissents of numerous individual Members. See, in particular, the dissents of Members Lee and Joseph P. Adams in *General Passenger Fare Investigation*, 17 C.A.B. 230, 239 (1953); the dissent of Member Minetti in *Trans World Airlines, Inc., Interim Fare Increases*, 26 C.A.B. 387, 401 (1958); and Member Minetti's concurrence in *Domestic Trunkline Passenger Fare Increases*, 31 C.A.B. 984, 985 (1960). Member Minetti's dissent to the Board's decision of September 12, in which he cited the need for load factor standards, referred to the Board's own references to "an unnecessary increase in unused capacity," and again called for a general investigation, also bears emphasis. (D Minetti)

[40] The Board at one point referred to "the additional earnings which this order will provide." (D 5). Whether the Board was referring to "gross earnings," which is the equivalent of revenue, or "net earnings," which is another term for income or return, is not completely clear. This is the only time the Board used the word "earnings" with reference to the future.

[41] The other two standards in sections 1002 (e) (3) and (4) are of less significance. Section 1002(e) (3) appears to refer to requirements, such as safety standards, imposed on the carriers by other legislation. Section 1002 (e) (4) refers to certain value-of-service considerations. Petitioners believe that the Board has not adhered to these standards either, which were not mentioned on September 12. However, presentation of Petitioners' position in this regard will be reserved for their brief on the merits.

[42] Such travelers are regarded, under the tariffs in question, as making two separate voyages. Therefore, in addition to paying the terminal charge more than once, they fall twice within the first, highest-priced, mileage block established by the Board.

[43] That these tariffs can only be viewed as having been filed pursuant to the Board's decision is plain not only from the fact that the tariffs were computed on the basis of the Board's formula, but from their identical expiration date—January 31, 1970—and the accompanying tariffs filed by each carrier, as the Board had directed, which would reinstate the pre-formula fares as of February 1, 1970.

[44] This statement may be contrasted with the Board's decision of May 8 in which it found "no reason for continuing such inequity." (C 8588)

[45] The Board's September 12 order makes this clear. (D 10-11).

[46] These cases raise the possibility that, because of the regulatory context, technically a violation of the Sherman Act may not have occurred. There can be little doubt, however, that the method by which pending tariffs were discussed—in *ex parte* meetings between the Board and the assembled carriers—helped to destroy any vestiges of price competition in this industry, and therefore that the competitive policies embodied in the antitrust laws were frustrated. To this extent, the Board—which itself is charged with giving consideration to competitive principles—acted in violation of its own mandate. See section 102(d) of the Act, 49 U.S.C. § 1302(d).

[47] At the same time, Petitioners are constrained to note that merely granting an expedited hearing would provide substantially less than effective relief to the traveling public, which would, as set out in the preceding section, still be required to pay higher fares during the pendency of this litigation and, presumably, any appeals from it—with no possibility of recovering overcharges when Petitioners prevailed on the merits.

APPENDIX A

STATUTES AND RULE INVOLVED

5 U.S.C. § 551(4) (5): For the purpose of this subchapter—

(4) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

(5) "rule making" means agency process for formulating, amending, or repealing a rule.

§ 553(b) (c): (b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

§ 556 (a) (d): (a) This section applied, according to the provisions thereof, to hearings required by section 553 or 554 of this

title to be conducted in accordance with this section.

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

§ 706: To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudical error.

49 U.S.C. § 1302: In the exercise and performance of its powers and duties under this chapter, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(e) The promotion of safety in air commerce; and

(f) The promotion, encouragement, and development of civil aeronautics.

§ 1373(a)(c): (a) Every air carrier and every foreign air carrier shall file with the Board, and print, and keep open to public inspection, tariffs showing all rates, fares, and charges for air transportation between points served by it, and between points served by it and points served by any other air carrier or foreign air carrier when through service and through rates shall have been established, and showing to the extent required by regulations of the Board, all classifications, rules, regulations, practices, and services in connection with such air transportation. Tariffs shall be filed, posted, and published in such form and manner, and shall contain such information, as the Board shall by regulation prescribe; and the Board is empowered to reject any tariff so filed which is not consistent with this section and such regulations. Any tariff so rejected shall be void. The rates, fares, and charges shown in any tariff shall be stated in terms of lawful money of the United States, but such tariffs may also state rates, fares, and charges in terms of currencies other than lawful money of the United States, and may, in the case of foreign air transportation, contain such information as may be required under the laws of any country in or to which an air carrier or foreign air carrier is authorized to operate.

(c) No change shall be made in any rate, fare, or charge, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, specified in any effective tariff of any air carrier or foreign air carrier, except after thirty days' notice of the proposed change filed, posted, and published in accordance with subsection (a) of this section. Such notice shall plainly state the change proposed to be made and the time such change will take effect. The Board may in the public interest, by regulation or otherwise, allow such change upon notice less than that herein specified, or modify the requirements of this section with respect to filing and posting of tariffs, either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

§ 1374(a)(b): (a) It shall be the duty of every air carrier to provide and furnish interstate and overseas air transportation, as authorized by its certificate, upon reasonable request therefor and to provide reasonable through service in such air transportation in connection with other air carriers; to provide safe and adequate service, equipment, and facilities in connection with such transportation; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable classifications, rules, regulations, and practices relating to such air transportation; and, in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers.

(b) No air carrier or foreign air carrier shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

§ 1482(a)(d)(e): (a) Any person may file with the Administrator or the Board, as to matters within their respective jurisdictions, a complaint in writing with respect to anything done or omitted to be done by any person in contravention of any provisions of this chapter, or of any requirements established pursuant thereto. If the person complained against shall not satisfy the complaint and there shall appear to be any reasonable ground for investigating the complaint, it shall be the duty of the Administrator or the Board to investigate the matters complained of. Whenever the Administrator or the Board is of the opinion that any complaint does not state facts which warrant an investigation or action, such complaint may be dismissed without hearing. In the case of complaints against a member of the Armed Forces of the United States acting in the performance of his official duties, the Administrator or the Board, as the case may be, shall refer the complaint to the Secretary of the department concerned for action. The Secretary shall, within ninety days after receiving such a complaint, inform the Administrator or the Board of his disposition of the complaint, including a report as to any corrective or disciplinary actions taken.

(d) Whenever, after notice and hearing, upon complaint, or upon its own initiative, the Board shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected, or received by any air carrier for interstate or overseas air transportation, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the Service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Board shall determine and prescribe the lawful rate, fare, or charge (or the maximum or minimum, or the maximum and minimum thereof) thereafter to be demanded, charged, collected, or received, or the lawful classification, rule regulation, or practice thereafter to be made effective: *Provided*, That as to rates, fares, and charges for overseas air transportation, the Board shall determine and prescribe only a just and reasonable maximum or minimum, or maximum and minimum rate, fare, or charge.

(e) In exercising and performing its powers and duties with respect to the determination of rates for the carriage of persons or property, the Board shall take into consideration, among other factors—

(1) The effect of such rates upon the movement of traffic;

(2) The need in the public interest of adequate and efficient transportation of persons and property by air carriers at the lowest cost consistent with the furnishing of such service;

(3) Such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law;

(4) The inherent advantages of transportation by aircraft; and

(5) The need of each air carrier for revenue sufficient to enable such air carrier, under honest, economical, and efficient management, to provide adequate and efficient air carrier service.

§ 1486 (a)(b)(d): (a) Any order, affirmative or negative, issued by the Board or Administrator under this chapter, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 1461 of this title, shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

(b) A petition under this section shall be filed in the court for the circuit wherein the petitioner resides or has his principal place of business or in the United States Court of Appeals for the District of Columbia.

(d) Upon transmittal of the petition to the

Board or Administrator, the court shall have exclusive jurisdiction to affirm, modify, or set aside the order complained of, in whole or in part, and if need be, to order further proceedings by the Board or Administrator. Upon good cause shown and after reasonable notice to the Board or Administrator, interlocutory relief may be granted by stay of the order or by such mandatory or other reliefs as may be appropriate.

28 U.S.C. § 1651(a): (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

5 U.S.C. § 705: When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

Rule 18, Federal Rules of Appellate Procedure: Application for a stay of a decision or order of an agency pending direct review in the court of appeals shall ordinarily be made in the first instance to the agency. A motion for such relief may be made to the court of appeals or to a judge thereof, but the motion shall show that application to the agency for the relief sought is not practicable, or that application has been made to the agency and denied, with the reasons given by it for denial, or that the action of the agency did not afford the relief which the applicant had requested. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant to the relief sought. Reasonable notice of the motion shall be given to all parties to the proceeding in the court of appeals. The court may condition relief under this rule upon the filing of a bond or other appropriate security. The motion shall be filed with the clerk and normally will be considered by a panel or division of the court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single judge of the court.

APPENDIX B

BACKGROUND

On March 18, 1969,[1] Trans World Airlines filed a "fare adjustment plan aimed at correcting inequities in fare structure"—in other words, a proposal for another passenger fare increase. Several other airlines soon filed similar tariff revisions. On April 21, 1969, twenty Members of Congress intervened before the Board with a lengthy, detailed complaint contending "that the proposed fares do not take into consideration any of the statutory standards of the Act and that the total effect of the rate proposal viewed in its entirety is unjust and unreasonable." (C § 572). The complainants suggested: (1) that the Board suspend and investigate the Trans World and other pending tariffs and, if it be of the opinion that such tariffs are unjust or unreasonable, that the Board determine and prescribe the lawful rate or rates; (2) that the Board institute:

A general rate proceeding to investigate the structure and construction of air passenger fares to achieve a sound foundation for determining whether such fares, should, or should not, be related to revenue-miles or revenue-hours traveled, or revenue-miles or revenue-hours traveled plus an arbitrary charge or charges, or some other factor, in order that such rates will at all times be reasonably related to the statutory standards of the Act of 1958, and rules of ratemaking established by the Board. (C)

(3) That the Board, as a part of that investigation: Determine and prescribe the national policy regarding the duty of air carriers to establish, observe, and enforce just and reasonable individual and joint through single factor rates, fares, and charges, and just and reasonable rules, regulations, and practices relating to such rates, fares, and charges, in all markets in which service by a single carrier is authorized, or in which connecting service is needed to avoid competition in excess of that necessary to assure the sound development of an air transportation system. (C)

(4) That the Board: Undertake a rulemaking procedure to amend Part 241 of Title 14 of the Code of Federal Regulations and applicable Schedules and Definitions for Purpose of this System of Accounts and Reports to require submission of revenue-hour information (e.g., available seat-hours, available ton-hours, passenger-hours flown, ton-hours flown, etc.) in order that such data will be readily available for a comprehensive and objective investigation of the fare structure. (C)

The development of the complainants' position was generally as follows:

(1) The industry fare proposals were based entirely upon "undue deviation" from the "Industry Jet Coach Regression Line"—a graph line developed by the Board on the basis of work by its staff and the rates of March 1, 1968, but updated to reflect the fare increase of February, 1969. Therefore the proposals must stand or fall, in the first instance, upon the lawfulness of that line—and then upon the lawfulness of eliminating "undue deviations" from that line.

(2) The numerical input used to construct the Industry Jet Coach Regression Line is not the product of a coherent, rational study of fare structure and appropriate fare levels. On the contrary, that input is the product of a series of ad hoc decisions of the Board in response to the vacillating tariff needs and claims of the carriers. Not only is the history of the Board's regulation of air passenger fares marked by sudden and often inexplicable reversals in position, it is similarly marked by a series of strong dissents by various Board members to the Board's ad hoc and uninformed approach to ratemaking.

(3) The Board has persistently refused to make rates through formal proceedings and according to law. Rather, it has followed the course of negotiating with the carriers, often in private *ex parte* hearings, and rendering opinions indicating the sort of tariffs it would be disposed to accept. Complex and frequent changes in horizonal and vertical fare structure have occurred with no evidentiary hearings, minimal or no Board investigation, and with policy justifications that are obscure to say the least. Further, the Board has generally established rates by reacting to the position of the carriers rather than by itself taking the initiative. The Board has grasped at straws to justify results thus reached, freely adapting studies and documents for purposes other than those for which they were prepared.

(4) The Board lacks certain crucial facts and standards which are necessary for rational ratemaking, in accordance with the statutory requirements. The Board has consistently, over the thirty-one years of its history, refused to hold the type of investigation and assemble the type of information necessary to make rates intelligently. It has deferred, again and again, a general fare investigtion, with the excuse that such a proceeding would be "time-consuming" and that an immediate need for a change of rate level had been demonstrated by the carriers.

(5) The Board has never considered the ratemaking picture as a whole and has never investigated some highly attractive approaches to making rates. Its failure, for example, to investigate the revenue-hour approach (as opposed to the revenue-mileage approach) is difficult to understand in light of its statements to the effect that fares should be closely related to costs.

(6) The Board has persisted over the years in setting rates on a cost-plus-appropriate-rate-of-return basis, despite the fact that this approach to ratemaking was superseded by the insertion of certain precise factors in the Interstate Commerce Act—factors that were incorporated in the Federal Aviation Act of 1958.

(7) The Industry Jet Coach Regression Line should not, in any event, be the controlling factor in ratemaking. That line represents merely an average of fares that are in fact charged, not an approval or endorsement of the line as the critical standard for making rates. It is settled law that the result reached in ratemaking, not the method employed, must pass statutory muster. Tariffs proposed to conform to a given formula or method are not necessarily just and reasonable even if the formula itself is acceptable. Therefore, quite apart from the fact that the components of the Industry Jet Coach Regression Line were derived by procedures which do not meet the requirements of law, and that the line is not really a formula for ratemaking, it is not necessarily true that all fares must conform to that line. Moreover, the tariffs proposed by the carriers do not conform to that line.

On May 8, 1969, the CAB issued order 69–5–28, in which it found that the proposals filed by the carriers "may be unjust, unreasonable, unjustly discriminatory, unduly preferential or unduly prejudicial, or otherwise unlawful, and should be investigated." (C 8587). The Board suspended the tariffs in question pending investigation. Announcing that it was not at this time prepared to conclude that the fare normally utilized by the carriers in developing their proposals is the most appropriate measure against which to make adjustments in the structure, the Board pointed to the "advanced stage" of its "informal investigation into cost-oriented norms" and "the expectation that an adequately tested formula may be arrived at during the time in which these proposed fares are being investigated. (C 8587). Moreover, the Board noted that the proposed tariffs had been filed less than three months after the Board had granted a fare increase estimated to approach four percent for the indusrty. It registered its concern about the presently depressed level of load factors" and agreed with the carriers' pessimistic traffic forecast, but it noted that the carriers have bought equipment despite (not by reason of) traffic forecasts." (C 8587). The Board concluded that "it cannot be expected that fare increases will stimulate additional traf-

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[1] This date marks the opening of the case designated by the Board as docket 20928, in which Petitioners formally intervened before the Board for the first time. It is a convenient point to begin a summation of "background," although matters of relevance and considerable importance had transpired previously. For example: On February 19, 1969, in docket 20696, the Board had dismissed several complaints and thus permitted a domestic passenger fare increase of 4% to go into effect. (C 8569–70). And since January of 1969, Petitioner John E. Moss had regularly taken objection, in a series of letters to CAB Chairman John H. Crooker, Jr., to the Board's practice of holding *ex parte* discussions with the carriers to discuss fares (C 8562, 8569, 8592).

fic. The basic solution to the industry's present financial situation would appear to lie in exercising restraint in ordering new flight equipment and in the use of its available capacity, rather than in increasing its price to the public."[2] (C 8588).

With respect to the relief specifically requested by the Petitioners, the Board:

(a) deferred action on the request that the Board institute a general rate proceeding, pending further informal (staff) investigation into a cost-oriented formula; (C 8588).

(b) denied the request that the Board require submission of revenue-hour information, because such information would be required under an amendment to the Board's Economic Regulations, which was then being considered. (C 8588).

(c) instituted an investigation of the fares as filed, while suspending those fares pending hearing and decision. (C 8588).

Two Members of the Board (Mr. Gillilland and Mr. Adams), who would not have suspended or investigated the fares as filed, dissented from the Board's order. (C 8588).

Prior to the prehearing conference before a trial examiner, the carriers that had filed the proposed tariffs all simultaneously took steps to withdraw them. Although the Board was not required to permit such withdrawal, it did so and the investigation of pending fares came to an end. (C 8588).

During the months of June and July, the Board met with the carriers in a series of *ex parte*, informal discussions of airline fares. These meetings constituted a continuation of the Board's past practice of conferring with the carriers frequently, on an informal basis, on a variety of subjects. Members of the Board were free to express their opinions in such meetings, and subjects such as cost levels and revenue needs, promotional fares and the merits of pending tariff applications, were amply discussed. From such meetings there had frequently evolved compromises and agreements which were then put into effect by a formal filing of new tariffs.

Petitioner John E. Moss had taken exception to this practice in correspondence with the Chairman of the CAB earlier in the year. Petitioner Moss had raised the question of the ground rules to be followed by the Board in these conferences to protect the public interest, including the opportunity provided to outside parties to participate and the maintenance of the integrity of such informal meetings. He had suggested that it might be appropriate to have outside parties attend the meetings. And he had asked whether a transcript was made of such proceedings or whether the record was limited to the post hoc "report" published by the Board, and whether the Board had issued an order granting the carriers antitrust immunity to discuss fares and file tariffs in accordance with the agreements struck at such meetings. (C 8562, 8569, 8592).

The answer of the CAB Chairman, John H. Crooker, Jr., was less than satisfactory to Petitioner Moss. Basically, Chairman Crooker defended the *ex parte* meetings on the ground that they saved the time and effort of all concerned and were authorized by the Board's general grant of power to perform such acts and to make such procedures pursuant to and consistent with the provisions of the Act as it should deem necessary to perform its powers and duties thereunder. In addition, Chairman Crooker indicated that it had not been the Board's practice to make a transcript of meetings with all the carriers and that the Board did not believe that antitrust immunity was required in order for the carriers to hold conferences with the Board. (C 8562–63, 8570–71, 8591–92).

Nonetheless, as a result of Petitioner Moss's inquiry, transcripts were made and published for the meetings held during the summer of 1969. These transcripts reveal that various subjects relating to fare structure and fare level were discussed, with each of the carriers offering its comments and the Members of the Board making known their opinions. The last of these meetings before the carriers' August filings was held on July 22 (C 8563–68, 8588–91, 8592–97).

APPENDIX C

The material in Appendix C has been printed in the CONGRESSIONAL RECORD of September 29, 1969, at pp. 27403–27457.

APPENDIX D

CIVIL AERONAUTICS BOARD ORDER 69–9–68

(Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 12th day of September, 1969)

Passenger fare revisions proposed by the domestic trunkline carriers—Docket 21322.

ORDER OF INVESTIGATION AND SUSPENSION

By tariff revision[1] filed August 1, 1969, and marked to become effective September 15, 1969, United Air Lines, Inc. proposed to revise its domestic passenger fares within the 48 contiguous states. Subsequently, on August 7 and 11, 1969, Eastern Air Lines, Inc. and Continental Air Lines, Inc., respectively, also filed proposed fare revisions[1] marked to become effective October 1, 1969. On August 13, 1969, American Airlines, Inc. proposed to revise its domestic passenger fares[1] effective September 27, 1969. Northwest Airlines, Inc. filed proposed revisions[1] to its domestic passenger fares on August 20, 1969, with an effective date of October 4, 1969, and Braniff Airways, Inc., on August 22, 1969, filed revisions[1] to its domestic passenger fares with an effective date on October 1, 1969.

All of the tariff revisions propose increased fares, although each of the six carriers takes a different approach to the appropriate level and structure of domestic passenger fares. With the exception of Continental and United, all of the carriers propose to adjust fares in accordance with a formula based on a fixed charge per passenger plus a variable charge based on mileage. United likewise proposes a dual element formula but with a fixed mileage charge, whereas Continental proposes instead to adjust fares by a stated percentage and/or dollar increases which may vary according to distance. All of the carriers except United propose to establish first-class fares at 125 percent of coach. United proposes a ratio of 120 percent. With regard to night coach fares, American would raise all present night coach fares by $3.00, while the other carriers would set night coach fares at a level of 75 to 85 percent of the revised jet coach fares.

Several of the carriers have proposed revisions of their domestic discount fare structure concurrently with the proposed changes in coach and first-class fares. Six carriers have proposed to reduce the Discover America discount from 25 percent to 20 percent. A number of carriers would also reduce the youth standby and children's discount from 50 to 40 percent, the youth reservation discount from 33⅓ to 20 percent, and the family fare discounts for spouses to 20 percent and for children to 33⅓ percent. The proposed fare changes heretofore described are detailed in tabular form in Appendix A of this order.

A complaint has been filed by the Honorable John E. Moss, M.C. (California), and 19 other Members of Congress requesting suspension and investigation of the proposed tariff revisions. The complainants also seek a general fare investigation to determine whether the present fare structure produces a just and reasonable fare. The complainants filed a substantially similar complaint in response to tariff revisions proposed by several of the domestic carriers in March of 1969. The Board, in ordering those tariff revisions suspended and investigated (Order 69–5–28), either disposed of or rendered moot this earlier complaint except as to the request for a general fare investigation, which was deferred pending further informal investigation by the Board's staff into a cost oriented formula for structuring fares. The complainants have incorporated, by reference, the factual justification for the earlier complaint into the instant complaint. Inasmuch as the deferred issue in the earlier complaint is included in the instant complaint, we intend our action herein to be dispositive of the open issue in the earlier complaint.

The principal contentions made by the complainants are that the Board has never established cost and load factor standards against which fares could be judged for fairness and reasonableness, and that the proposed increases should not be permitted until such standards are established and the increases weighed against those standards. The complainants further assert that the fare proposals will further depress load factors and earnings; bring about even greater increases in costs, air traffic congestion, and air pollution; lead to more uneconomical and inefficient use of the nation's airports and airways; and thereby further increase the financial burden to the taxpayers and passengers.

An answer to the complaint has been filed by American. The carrier asserts that the complaint does not set forth facts or arguments warranting a continued postponement of fare adjustments that are urgently required in light of the industry's deteriorating financial position. American alleges that the complaint fails to recognize that over the years the airlines have been able to offset the effects of inflation only by means of improved operating efficiencies, and that such an offset is no longer possible under current economic conditions; that the complainants' sole reason for opposing the fare increases is that the Board has never established standards for cash costs and load factors; and that the alleged lack of fair cash cost and load factor standards is not a valid reason for denying the proposed fare adjustments.

In response to the Board's Order, 69–8–108, setting oral argument on the general question of a fare increase, the domestic trunklines and local service carriers have filed statements of position and presented their views at the oral argument. The carriers urge that there is a pressing need for an increase in regular and promotional fares in order to meet increasing costs which are being incurred in every expense category.

Most of the domestic carriers favor the adoption of a cost-oriented formula for establishing and defining domestic normal passenger fares, provided that it produces substantial additional revenue; that it more accurately reflects the varying costs of service; and that it be administered with enough flexibility to permit deviation in market situations where justification for a departure from the formula is shown.

Several carriers while not objecting to a formula *per se*, express reservations about the formulas so far considered. They feel

[2] In addition, the Board expressed its opinion "that inconsistencies arising from the lack of published joint fares are inseparable from the inconsistencies which may exist in presently published local fares." Nothing in the tariffs as filed would have established fares for inter-carrier connecting service. Passengers traveling in markets where there is no inter-carrier published joint fare must pay a combination of local fares, which had been increased in February and which the carriers now proposed to increase once again. The Board suggested that these two aspects of the fare structure—local and joint fares—were inseparable and should be considered together. (C 8588).

Footnotes at end of article.

that further analyses should be made to refine the determination of carrier costs in different types of markets, while some are concerned that value of service may not have been adequately considered particularly in connection with short-haul fares. The criticisms of the formula approach are of varying degrees and range from advocacy of greater flexibility of application to requests for fare increases that do not change the present fare structure. The major criticisms of the formula approach are: (1) that such approach is premature at the present time; (2) that it may produce serious anomalies and inequities; (3) that its actual impact is unknown and will vary depending on the carrier and the carriers' operations; (4) that in short-haul markets, it may result in unreasonable fare increases and tend to divert traffic to other modes of transportation; and (5) that it gives no consideration to other rate-making factors such as type of traffic, competition, characteristics of the market, type of travel, and so forth.

A proposal has been made by Mohawk Airlines, Inc. for revising the present method of dividing interline fares. The division of fares proposed by Mohawk is based on the formula approach for establishing coach fares and would apportion an amount to each party to the through fare equal to the fixed, or terminal, charge in the formula, whether the through fare is a joint fare or a combination of locals, with the remainder of the fare being apportioned between the parties in accordance with the normal rate prorate.

Upon consideration of the tariff proposals, the complaint and answer thereto, the statements filed prior to the oral argument and comments made thereat, and other relevant matters, the Board finds that the proposals may be unjust, unreasonable, unjustly discriminatory, unduly preferential or unduly prejudicial, or otherwise unlawful and should be investigated. The Board further concludes that the tariffs in question should be suspended pending investigation.[2]

The Board is, however, of the opinion that the carriers have adequately demonstrated a need for some additional revenue and would be disposed to grant an increase computed in accordance with the criteria set out below. Because of the many anomalies in the existing fare structure and the somewhat tenuous relationship that existing fares on occasion bear to costs of service, we have concluded that adoption of a cost-oriented fare formula would produce a substantial improvement in the domestic fare structure. We are aware that significant objections to such a formula structure have been voiced by certain carriers, particularly with regard to the inhibiting effect it would have on managerial discretion in special situations where factors other than cost should be considered. With this in mind, we propose to allow a degree of flexibility in the application of the formula. We are also especially cognizant that the value of service considerations are highly pertinent in many markets. The fare formula which we propose, while geared to costs, does in fact give substantial recognition to value of service in both long haul and short haul markets, through retention of the concept of internal subsidy, whereby long haul fares are priced above cost plus a fair return, so as to compensate for short haul fares which must be priced somewhat below fully allocated costs in order for traffic to move.

In determining the fare formula which we would accept as providing a reasonable increase in revenue for the carriers while at the same time substantially improving the domestic passenger fare structure, we have reviewed both the formulas developed by the Board's staff, and circulated to the industry for comments earlier this year, and those formulas proposed by the carriers in the recent tariff filings. We find that the formula proposed by American produces a reasonable increase in revenues and recognizes the economies inherent in long haul carriage, actually achieving a reduction from present rates on some long haul routes, as well as the value of service limitations in short haul markets. We therefore propose to accept the basic American formula subject to certain modifications as detailed in the discussion below.

Before considering the formula in detail, however, we deem it appropriate to consider the complaint heretofore described. The complaint is based in large part on the alleged failure of the Board to establish fair cash cost standards. The Board's staff has over the past three years conducted extensive studies of carrier costs as related to the fares being charged. In addition, many carriers have conducted similar studies of their own which have been available to the Board and the staff. One of the results of the staff's study was the submission of several possible fare formulas earlier this year to the industry for comments, one of the formulas being based solely on costs of service. The American formula bears a strong correlation to this latter cost formula, although it reflects what we consider a reasonable deviation for long haul and short haul routes as previously discussed and produces a higher overall level of revenues to compensate for inflationary cost increases occurring since the staff's study of costs was made.

As set forth in a subsequent portion of this order, the carriers have adequately demonstrated a significant increase in costs, which the complainants recognize. To require the carriers to continue operating at present fare levels with operating costs spiraling upward would be contrary to the statutory policy and rate-making criteria contained in the Federal Aviation Act of 1958.[3] We are of the opinion that the formula which we are proposing, while perhaps falling short of the ideal, does offer a substantial improvement over the existing structure and its adoption would be consistent with our statutory duty.

A general fare investigation as requested by complainants is by its very nature a long and complex proceeding. To leave the carriers in *status quo* while such an investigation was conducted could result in serious and permanent financial damage to some carriers, and there is no rational method available to make a fare increase, which might be granted at the conclusion of the investigation, retroactive as can be done, for example, in a mail rate investigation.[4] Nevertheless, we have decided not to dispose of the request for a general fare investigation at this time. The complainants have raised some questions for which no fully satisfactory answer presently exists, especially the question of load factor standards, and we believe there are other important questions underlying evaluation of fare structure and level, not raised by complainants, which should be given thorough review. However, notwithstanding the existence of these questions, the condition of the industry detailed herein is sufficiently serious as to require immediate fare relief. Moreover, pending our further study of these matters, the Board is unable to conclude at this time that the additional earnings which this order will provide could be achieved by the industry through other courses of action within the carriers' control.

For these reasons, we have determined to undertake an exploration, within the Board, of a number of matters relating to questions such as: what the appropriate rate of return on a carrier's investment should be; how a carrier's rate of return should be computed; should load factor standards be set and if so at what level; should there be a taper in the line haul rate and if so to what degree; what method is most appropriate for determining terminal charges; and what is the proper differential between first-class and coach fares. At the conclusion of our consideration of these matters, we should be in a better position to determine whether a fare investigation is appropriate and, if so, to channel such investigation along the most productive patterns so as to expedite completion of the proceeding within a reasonable time span. We expect to complete our consideration of the foregoing matters and thus be in a position to rule upon complainants' request for a fare investigation in December 1969. Accordingly, we will defer action on the complaint until that time.

Complainants have also challenged the appropriateness of using a line haul rate based on aircraft mileage rather than aircraft hours. In essence, the complainants take the position that aircraft transit time between city pairs where the airport at one or both is relatively congested is greater than between similarly distant city pairs where a congestion problem does not exist. Thus, it is alleged, costs are higher between the former city pair than the latter. From this they reason that the passengers flying between the congested city pair are given an undue or unreasonable preference over passengers flying between a city pair where this problem does not exist, since the former are paying a lesser percentage of the carrier's cost for their transportation than are the latter.

We are of the view that an important goal of any fare structure is a relatively great degree of uniformity throughout the system, and we recognize that some anomalies will always result from any method of determining fares in a system as complex as the domestic air transport system. Carrying complainants' reasoning to its logical end would not only result in many different fares between different city pairs similarly distant relative to one another, but could also result in many different fares between the same city pair, depending upon the period of the day, day of the week, and so on. Moreover, the formula we propose would avoid difficulties such as long haul-short haul inconsistencies which might arise under a revenue hour approach. A much simpler approach, and one which would accomplish substantially the same result, would be a variable terminal charge based primarily on congestion but including other terminal variables, such as landing fees. This concept was proposed in several of the formulas developed by the staff and included in the previously referenced study which was distributed to the industry earlier this year. We have, however, decided not to support this relatively simple concept at this time because, even here, there are many unknown or unmeasurable variables which have not so far been reflected in determining the appropriate variation between terminals. Thus, we believe that the advantage to be gained from a variable terminal charge is presently too tenuous to outweigh the advantage in moving now to greater system-wide uniformity. We note, however, that this is one of the questions to be pursued in the explorations previously described.

Turning now to the actual formula which we propose to accept, coach fares will form the core of the fare structure from which all other fares will be based. We believe that the revenue increase produced by the American formula is appropriate as discussed hereinafter, and therefore adopt that formula for our model, to wit:

Fixed charge for all markets: $9.00 plus a variable charge based on mileage and in accordance with the following rates per mile for the applicable portions of the total mileage:

Footnotes at end of article.

Rate per mile

Mileage blocks:	Cents
0 to 500	6.0
501 to 1,000	5.6
1,001 to 1,500	5.2
1,501 to 2,000	5.0
Over 2,000	4.8

Use of this formula will have the desirable result of reducing slightly some long haul fares (e.g., Los Angeles-New York from $145 to $141) which have for some time been considerably in excess of costs, while at the same time producing only moderate increases in short haul fares, thus minimizing the impact on the movement of traffic in these markets.

American has proposed that city center to city center mileage be used in computing fares. However, we are of the opinion that direct airport-to-airport mileage offers a more reasonable and rational basis for computing fares and will adopt that mileage basis for our model. We recognize that there will be instances where application of a mileage basis will be inequitable or impractical, as for example, where a carrier is required by its certificate to operate via a circuitous routing. We will permit exceptions to the rule over a particular routing where good cause is shown. Further, it is not our intent to discourage common faring of cities or of airports situated about a single city; we would expect to permit common faring under the proposed formula in much the same manner as we have heretofore, provided the mileage used bears a rational relationship to the points so common rated.[5]

The Board has concluded that it would be appropriate at this time for the industry to revert to the conventional technique of rounding computed fares up or down to the nearest dollar. The technique used in recent years was designed to add slightly more taper to the fare structure, a need which is obviated by adoption of the proposed formula.

The Board proposes that first class jet fares be set at 125 percent of the coach fare derived by the above formula, except where the first class fare is today greater than 125 percent of the proposed coach fare, in which case the present fare would be retained.[6] We have selected this level since our cost studies indicate that even with this increase, the first class fares will fall well short of fully meeting the costs of providing the service. On the other hand the Board finds merit in the contention of the carriers generally that we should move gradually toward closer cost orientation in light of value of service limitations and the impact of varying ratios on the over-all economics of dual configuration aircraft. It is the Board's intention that this fare level apply only to services which are truly first class in character and quality and not in name only. We would accept night coach fares computed at 75 percent of the new coach fares.[7] For classes of service not specifically enumerated herein, we believe that maintenance of the present dollar differential from jet coach fares provides an acceptable relationship.

With respect to the various promotional fares, the Board would permit the following reduced discounts based on the coach fares derived from the above described formula:[8]

Type of fare and discount

	Percent
Discover America	20
Youth Standby	40
Youth Reservation	20
Family Plan:	
Children 2 to 11	50
Children 12 to 21	33⅓

As we have previously indicated, the Board concludes that an increase in the industry's revenues is warranted. The carriers point to inflationary cost increases which have exceeded the additional revenue which they received as a result of the fare increase permitted in February. Despite that fare increase, the carrier earnings in the second quarter of 1969 were down substantially from those realized in the corresponding 1968 period. It is clear from data before the Board that payroll expenses have increased significantly since the Board permitted a fare increase to become effective last February. Labor contracts signed by a number of trunkline carriers will involve as much dollar increase in expenses as the February fare increase would yield in dollar revenue. Landing fees have risen sharply; and in the oral argument on September 4, stress was placed by Airport Operators Council, International and others on the probability of further increases. Fuel costs have escalated. Despite some progress in 1969 in alleviating airport congestion, the problem is not solved; and delays at airports impose additional payroll and fuel costs on the carriers. Increased commission rates to travel agents for various categories of domestic ticket sales were made effective as of September 1, 1969. Every trunk carrier is firmly committed to a major capital expansion program involving both new and expensive flight equipment, and major expenditures for ground property and equipment, in order to keep pace with the requirements of the public convenience and necessity and the anticipated growth in traffic. Even if projected capital expenditures of the next several years were adjusted to reflect only the bare minimum capital improvement programs to keep pace with traffic growth, assuming restoration of improved passenger load factors, the industry is confronted with a multi-billion dollar requirement for additional capital funds over and above the internally generated cash flow from depreciation and reinvested earnings prsuant to conservative dividend policies. Such additional funding requirements come at the very time when interest rates are at peak levels. Taking into consideration these cost pressures on the carriers, and the marked decline in earnings and profit margin since the February increase, the Board finds that a further increase in fares at this time is necessary from the standpoint of the rate-making standards of Section 1002(e) of the Act and the need to maintain the financial vitality of the carriers as a group.

We estimate that the fare adjustments we are prepared to accept would produce increased revenues for the trunkline industry of 7.4 percent in first-class service and 3.6 percent in coach service. Currently about 82.6 percent of trunkline passenger miles involve travel at coach or economy fares and only about 17.4 percent at first class fares, so that (considering the traffic "mix") such basic fares will be increased by about 4.25 percent.[9] Further, we estimate that an annual increase in revenues equivalent to 2.1 percent may stem from adjustments in promotional fares. Thus, there may be a total revenue increase of approximately 6.35 percent (assuming no diversion or loss of traffic). To the extent of any such dilution, of course, the revenue increase would be less than 6.35 percent. In light of the low level of earnings realized in the most recent periods and the inflationary cost increases being experienced by the carriers, there appears to be no prospect that the fare increases approved herein will enable the industry to reach the 10.5 percent return guideline for the immediate future.[10]

The Board has concluded to permit tariff filings implementing the fare adjustments described above within the 48 contiguous states effective no earlier than October 1, 1969, provided that tariffs shall be filed on not less than 14 days' notice.

In proposing that the industry now adopt a cost-oriented formula, it is not the Board's intent that its application be so rigid as to stifle fare innovation on the part of individual carrier managements. We continue to regard healthy price competition as essential both to development of the industry and the needs of the public. Accordingly, the Board intends to consider fares produced by the formula as a "just and reasonable" ceiling, and any fare in excess of this ceiling would be viewed *prima facie* as outside the realm of justness and reasonableness and would ordinarily be suspended and ordered investigated. However, increases above the ceiling would be considered where strong justification was shown, and upon a tariff filing providing at least 75 days' notice to permit the Board adequate time for review of the arguments in justification. This approach will also pertain in the case of filings proposing increases in any other fares which have not been specifically dealt with herein. On the other hand, fares proposed below the ceiling would continue to receive normal scrutiny by the Board, and the Board will not expect the above notice period for such filings.

On May 8, 1969, in an order suspending proposed passenger fare revisions the Board expressed the following view with respect to the situation stemming from the absence of published joint fares between numerous domestic points where passengers are now traveling in significant numbers:

"The Board is of the opinion that inconsistencies aarising from the lack of published joint fares are inseparable from the inconsistencies which may exist in presently published local fares. We believe that correction of both should proceed simultaneously. A significant number of passengers are today traveling in markets where one-carrier service is not available, and where no joint fare is published for inter-carrier connecting service. Passengers traveling in such markets must pay a combination of local fares, each of which reflects the February increases. Fares for these passengers, therefore, reflect a compounding of increases which the formula permitted by the Board in February 1969 was not intended to reflect. The Board finds no reason for continuing such inequity." (Order 69–5–28)

Subsequently by Order 69–8–85, dated August 15, 1969, the Board granted all domestic carriers authority to discuss single-sum joint fares and open routings for such fares for a period of 90 days from the date of the order. We consider the fare structure improvements to be derived from the formula proposed herein and increased publication of joint fares are interrelated parts of an integrated whole, and the Board is not prepared to accept one without the other.

For this reason, we will require that any tariff filed implementing the proposed formula, shall contain an expiration date of January 31, 1970. In order to insure an effective tariff after that date we will also require that such tariff filing shall be accompanied by a refiling of existing fares for a proposed effective date of February 1, 1970, so as to require the filing of a new tariff subject to review by the Board before the carriers can extend the effectiveness of the new fare filings beyond January 31, 1970. We will also extend the discussion authority granted in Order 69–8–85, which presently expires November 13, 1969, to January 15, 1970.

The Board is concerned that the present division of through fares as between long haul and short haul carriers may be resulting in an inequitable distribution of revenue to the short haul carrier. Accordingly, we will amend Order 69–8–85 to include in the discussions authorized the question of division of fares between long and short haul carriers. We favor a division which is more closely oriented toward actual costs of the respective carriers involved, and believe that there may be considerable merit in the approach proposed by Mohawk, particularly in

Footnotes at end of article.

view of the fact that the formula we are proposing will not produce fares in short haul markets which will cover the fully allocated costs of such services. We expect that a more equitable method of division will provide the short haul carriers with a significantly greater percentage benefit than will be the case with the long haul carriers, and have considered this eventuality in reaching a decision as to the level of increased revenues which we will permit. We therefore wish to make clear that in reviewing the tariffs to be filed for effectiveness on and after February 1, 1970, the Board will give great weight to the industry's conformance with the Board's findings as to the need for publication of additional joint fares at a satisfactory level, as well as to the implementation of a more satisfactory division of interline revenues that would reflect the cost and value of service considerations inherent in long haul vs. short haul pricing.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof,

It is ordered that:

1. An investigation is instituted to determine whether the fares and provisions described in Appendix D attached hereto, and rules, regulations, or practices affecting such fares and provsions, are or will be, unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful to determine and describe the lawful fares and provisions, and rules, regulations, and practices affecting such fares and provisions;

2. Pending hearing and decision by the Board, the fares and provisions described in Appendix D hereto are suspended and their use deferred to and including December 25, 1969, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board.

3. The request for the institution of a general rate proceeding to invstigate the structure and construction of domestic passenger fares, contained in the complaint in Docket 21326, is hereby deferred. Except to the extent deferred or granted herein the complaint in Docket 21326 is denied.

4. Order 69–8–85 be amended to the extent that the period during which discussions are authorized is extended to January 15, 1970.

5. Order 69–8–85 be further amended to add to the subject matter authorized for discussion the question of the divisions of through fares between participating carriers including specifically the actual formula for allocating such divisions;

6. The investigation be assigned for hearing before an examiner of the Board at a time and place hereafter to be designated;

7. A copy of this order will be filed with the aforesaid tariffs and served upon American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Eastern Air Lines, Inc., Northwest Airlines, Inc., and United Air Lines, Inc., which are made parties to this proceeding; and

8. A copy of this order will also be served upon Air West, Inc., Allegheny Airlines, Inc., Delta Air Lines, Inc., Frontier Airlines, Inc., Mohawk Airlines, Inc., National Airlines, Inc., North Central Airlines, Inc., Northeast Airlines, Inc., Ozark Air Lines, Inc., Piedmont Aviation, Inc., Southern Airways, Inc., Texas International Airlines Inc., Trans World Airlines, Inc., and Western Air Lines, Inc., and upon the complainants herein, which are made parties hereto.

This order will be published in the Federal Register.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON,
Secretary.

Vice Chairman Murphy concurred and dissented as set forth in the attached statement.

Member Minetti concurred and dissented as set forth in his attached statement.

Member Adams also concurred and dissented per his attached statement.

FOOTNOTES

[1] Revisions to Airline Tariff Publishers, Inc., Agent, Tariffs C.A.B. Nos. 90, 98, and 101.

[2] For procedural reasons the proposed tariff revisions of United Air Lines, Inc. have been ordered suspended and investigated by separate order, 69–9–30, dated September 5, 1969.

[3] See sections 102, 404, and 1002(e) thereof.

[4] In any event section 1002(g) permits the Board to suspend tariffs for a maximum period of 180 days, and a proceeding of the scope proposed by the complainants would be impossible to complete in so short a time. In this connection, we would point out that five interim fare increases were permitted during the pendency of the *General Passenger Fare Investigation* which took some 4½ years to complete.

[5] The City of Seattle, in a statement of position at the oral argument, has requested more equitable treatment vis-a-vis Portland with respect to fares between the two cities and the midwest and southwest, contending that the present disparity in fares is not justified by the mileage differential between the two cities. We believe that application of the proposed formula will alleviate this alleged inequity.

[6] Consistent with recent Board policy, and since the carriers are well along in phasing out propeller services, we will continue to permit establishment of propeller first class fares at the jet level in those markets where the carrier offers jet first class fares. Almost all trunklines have completed phasing out propeller aircraft and the other trunklines have extremely minor propeller services in relation to over-all operations.

[7] In applying this relationship, the Board will not require reductions in existing night coach fares.

[8] With respect to the contention of Northwest Airlines that discounts on discounts should be eliminated, the Board would look with favor on tariff amendments that would eliminate these practices (such as children's 50 percent discount on Discover America excursion fares).

[9] As indicated in the footnote of Appendix B, the estimated fare increase is overstated to the extent that intrastate fares currently at depressed levels are not susceptible of immediate increase to the level of the basic formula.

[10] The diminished level of net income and rate of return experienced by the industry for the 12-month period ending March 31, 1969, as compared with the prior period, is set forth in Appendix C attached.

MURPHY, VICE CHAIRMAN, CONCURRING AND DISSENTING

While I agree that there is a need for increased revenues by some carriers to offset inflationary pressures I do not believe that the increase need be as large as the majority has approved or that the increases in the regular fares should be achieved by the application of a so-called formula.

As an interim measure I believe that an increase in regular fares of 3 percent across-the-board, limited to markets over 400 miles, when combined with the reductions in the fare discounts and the 4.0 percent increase granted a few short months ago, is as much as this Board can request the traveling public to assume under the present circumstances. In my view, such an increase would provide sufficient revenue to sustain the financial health of the carriers.

I am particularly opposed to the adoption of an essentially cost-oriented fare formula. The formula produces anomalies and inequities. It ignores value of service and market elasticity. It produces drastic increases in the short haul and medium haul markets where the majority of the public travel. It decreases long haul fares where the value of service is greatest and ignores the factor of cross-subsidization inherent in a system concept of transportation. In my judgment a great deal of further study and analysis is necessary before such a sweeping and permanent regulatory standard is adopted.

I believe that an across-the-board increase limited to markets over 400 miles would meet the immediate needs of the industry for additional revenues, would be far simpler to administer than the proposed formula and would be far more equitable to the public and the carriers than the widely varying increases contained in such a formula.

ROBERT T. MURPHY.

MINETTI, MEMBER, CONCURRING AND DISSENTING

I concur in the majority action in suspending and investigating the tariffs before the Board. In addition, I concur in the desire of the majority to modify the basis of interline rate—prorates in recognition of the fact that the long-standing basis for division of revenue between the locals and the trunks for interline long-haul passenger trips may not reflect the conditions of today or the foreseeable future.

On the other hand, I am unable to concur in accepting, without an investigation, a fare adjustment package equivalent to an increase in fare levels of over six percent, especially bearing in mind that just a little over six months ago the Board permitted a fare increase approximating four percent of the then existing level. I agree that, on the basis of reported results, the industry's earnings are deficient if measured against a rate of return guideline of 10.5 percent on investment, and therefore I would permit reasonable increases in promotional fares if the carriers believe such adjustments to be beneficial. This would be consistent with the Board's historical policy of giving carriers considerable latitude to experiment with discount fares with a view toward maximizing their revenues while offering some reductions from normal fares. Again, I would also permit increases in first class fares to 125 percent of coach fares, since the present level of first class fares does not appear to compensate the carriers for first class service on a fully allocated cost basis. However, I would go no further at this time, in the absence of an investigation.

Only last May the Board refused to sanction another fare increase. At that time, it expressed its concern about the depressed level of load factors and pointed out that "the carriers have bought equipment despite (not by reason of) traffic forecasts."[1] As stated by the Board in its May order:[2]

"As long as the industry's load factor continues its present downward trend, and inflationary pressures persist, the carriers may find themselves in a cost-revenue squeeze despite the introduction of more efficient aircraft and the adjustment of their fares. Another significant aspect of an unnecessary increase in unused capacity is the corresponding growth in the investment base and fixed charges. On the other hand, it cannot be expected that fare increases will stimulate additional traffic. *The basic solution to the industry's present financial situation would appear to lie in exercising restraint in ordering new flight equipment and in the use of its available capacity, rather than in increas-*

[1] Order 69–5–28, May 8, 1969, page 4.

[2] *Ibid.*

ing its price to the public." (Emphasis added)

Although I am persuaded that the load factor problem is complex, I have not been convinced that the foregoing statement is incorrect. We have very little more information today with respect to appropriate load factor standards than at the time of our earlier pronouncement, and unlike the majority, I am reluctant to entertain a general increase in coach fares until after the question of load factor standards has been squarely faced and resolved in an intensive investigation.

On the contrary, I fear that the increases sanctioned today may prove to be self-defeating by causing a further drag on traffic growth and by delaying the day when the Board and the industry will come to grips with the basic causes of the industry's present difficulties. Until those causes are squarely met, we face the prospect of still further load factor declines and requests for additional fare increases.

G. JOSEPH MINETTI.

ADAMS, MEMBER, CONCURRING AND DISSENTING

I do not associate myself with the concept that local service carriers may not increase first class fares to the full extent of the formula, i.e., to 125% of the computed coach fare in the market. Thus I dissociate myself from the statement: "It is the Board's intention that this fare level apply only to services which are truly first class in character and quality and not in name only."

Traditionally, local service carriers have been permitted to charge a first class fare, particularly in sparse, short haul, noncompetitive markets even if their piston equipment and limited cabin amenities do not equal service in the first class compartment of more modern transcontinental trunkline jets.

Section 399.32 of the Board's Policy Statement specifically provides:

"It is the policy of the Board to permit subsidized carriers maximum freedom to experiment, in interstate and overseas air transportation, with commercial rate changes for the purpose of maximizing revenues and thereby minimizing subsidy requirements, provided the resulting rates are not otherwise unreasonable."

It seems to me that the local service carriers must be permitted to increase their first class fares, subject to the exercise of their managerial discretion as to whether the full increase on certain short haul routes might price air transportation out of the market.

JOHN G. ADAMS.

APPENDIX A.—SUMMARY OF PERTINENT ASPECTS OF DOMESTIC AIRLINE PASSENGER TARIFF FILINGS AS OF SEPT. 2, 1969

	Jet coach								Family fares				
		Linehaul								Children			
	Terminal charge	Mileage	Rate (cents)	Jet 1st class	Discover America (R.T.)	Youth standby	Military standby	Youth and military reservation	Spouse	12 to 21	2 to 11	Children 2 to 11 years	Night coach
Present discounts (percent)			25	50	50	33⅓	25	50	66⅔	50			
American	$9.00	0 to 500	[1] 6.0	125 percent of jet coach [2]	[3]	40 percent discount	[3]	[3]	[3]	[3]	[3]	[3]	+$3.00
		501 to 1000	5.6										
		1001 to 1500	5.2										
		1501 to 2000	5.0										
		Over 2000	4.8										
Braniff	$8.60	0 to 400	[1] 6.7	125 percent of jet coach	20 percent discount	[3]	[3]	20 percent discount (youth only)	20 percent discount	33⅓ percent discount	33⅓ percent discount	33⅓ percent discount	
		401 to 1,100	5.8										
		1,101 to 1,800	5.2										
		Over 1,800	5.0										
Continental	Adjust existing fare to stated percent of industry norm,[5] then add $2 to $9 depending on distance in markets above 400 miles.			125 percent of jet coach	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	85 percent of jet coach.
Eastern	$8.60	0 to 400	[1] 6.7	152 percent of jet coach	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	75 percent of jet coach.
		401 to 1,100	5.8										
		1,101 to 1,800	5.2										
		Over 1,800											
Northwest	Under 300 miles, $9.00	All	6.0	125 percent of jet coach	20 percent discount [4]	40 percent discount	[3]	[3]	20 percent discount	33⅓ percent discount	33⅓ percent discount	33⅓ percent discount	75 percent of jet coach.
	301 miles and above $10.50	301 to 599	[1] 5.6										
		600 to 1,199	5.5										
		1,200 to 1,799	5.4										
		1,800 to 2,399	5.3										
		Over 2,400	5.2										
United	$11.00	All	5.7	120 percent of jet coach [2]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	

[1] Mileage rates applied on a cumulative basis.
[2] Existing ratio is used if it is higher.
[3] No change.
[4] Northwest proposes to provide that children's fares will be based on 66⅔ percent of the regular Jet coach fare instead of the Discover America fare.
[5] Between 85 and 100 percent in markets where Continental currently provides economy service, and between 92.5 and 107.5 percent in other markets.

APPENDIX C.—DOMESTIC OPERATIONS OF TRUNKLINE AND LOCAL SERVICE CARRIERS NET INCOME AFTER TAXES AND RETURN ON INVESTMENT 12-MONTH PERIODS ENDED MAR. 31 1969 AND 1968

	Net income [1] (thousands)		Return on investment [2] (excluding investment tax credits) (percent)	
	Mar. 31, 1969	Mar. 31, 1968	Mar. 31, 1969	Mar. 31, 1968
Domestic Trunk Carriers:				
American	$15,227	$46,149	5.33	6.21
Braniff	3,019	−3,362	5.65	2.14
Continental	2,884	15,292	4.68	11.53
Delta	39,189	35,647	13.89	17.05
Eastern	−20,046	9,057	.70	4.95
National	18,149	21,937	11.03	15.03
Northeast	−3,226	−4,251	−.72	−5.81
Northwest	20,386	27,155	8.58	13.39
TWA	−7,037	7,846	.08	2.93
United	28,328	54,095	4.92	6.13
Western	1,720	10,053	3.97	10.19
Total trunks	98,593	219,618	4.78	6.93

	Net income [1] (thousands)		Return on investment [2] (excluding investment tax credits) (percent)	
	Mar. 31, 1969	Mar. 31, 1968	Mar. 31, 1969	Mar. 31, 1968
Local service carriers:				
Air West	−$15,252	−$4,341	−$29.21	−$31.50
Allegheny	−6,782	−420	−.84	4.79
Fontier	−8,061	−1,966	−4.75	1.62
Mohawk	−4,351	−306	−1.22	3.70
North Central	−1,196	1,619	3.62	7.50
Ozark	−2,065	1,383	2.54	7.34
Piedmont	−540	1,343	4.49	8.23
Southern	−279	−594	3.84	−.77
Texas International	−1,336	−669	2.25	4.14
Total locals	−41,052	−8,934	−2.00	2.14

[1] Net income after special items (including interest expense) and income taxes.
[2] Net income (excluding interest expense) as a percent of investment which has been adjusted to exclude equipment purchase deposits and unamortized discount and expense on debt.

APPENDIX B.—DOMESTIC TRUNKLINE CARRIERS, PERCENT IMPACT ON PASSENGER REVENUES

	Normal fares			Discount fares	Total
	1st class	Coach	Total		
Domestic trunk carriers:					
American	9.16	4.43	5.40	2.12	7.52
Braniff	7.51	3.89	4.59	1.51	6.10
Continental	5.93	2.33	2.87	2.25	5.12
Delta	5.10	1.89	2.44	2.13	4.57
Eastern	4.52	3.46	3.64	1.85	5.49
National	2.38	0.36	0.65	2.37	3.02
Northeast	2.60	1.91	1.98	2.02	4.00
Northwest	9.28	5.09	5.68	2.10	7.78
Trans World	7.10	3.71	4.30	2.31	6.61
United	9.37	4.03	5.07	2.13	7.20
Western	4.28	[1] 4.99	4.93	2.05	6.98
Total trunks	7.43	3.58	4.25	2.10	6.35

[1] The various estimated increased percentages are overstated to the extent that intrastate fares at depressed levels may not be subject to immediate increase (in whole or in part) because of the requirements of intrastate regulatory approval. The 4.99 percent coach increase for Western is calculated on the basis of all fares being modified in accordance with the basic formula. Because of the depressed level of certain California intrastate fares in markets of heavy traffic volume and the requirement of State Commission approval of any increase, the 4.99 percent estimated coach increase for Western is clearly overstated.

APPENDIX D

TARIFF CAB NO. 90 ISSUED BY AIRLINE TARIFF PUBLISHERS, INC., AGENT

On 66th Revised Page 10–C, in Rule 4, the provisions reading "Rule 43—Children's Fares (applicable to NW only)".

All fares, provisions, and fare cancellations on the following pages (except fares, provisions, and fare cancellations applicable to or from Hilo, Honolulu, or Canadian points, and except matter specifically excluded below):

31st and 32nd Revised Pages 13.
31st and 32nd Revised Pages 14.
30th and 31st Revised Pages 15.
30th and 31st Revised Pages 16.
18th Revised Page 19.
18th Revised Page 20.
14th Revised Page 21.
12th Revised Page 24–C.
12th Revised Page 24–D.

12th and 13th Revised Pages 42 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Bowling Green).

14th and 15th Revised Pages 43 (excluding the cancellation of the fares from and to Reading).

14th and 15th Revised Pages 44 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Bowling Green).

19th and 20th Revised Pages 45 (excluding the cancellation of the fares from and to Bowling Green and Reading).

19th and 20th Revised Pages 46 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

12th and 13th Revised Pages 47 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

12th and 13th Revised Pages 48 (excluding matter marked to become effective September 23, 1969).

14th and 15th Revised Pages 49 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

14th and 15th Revised Pages 50 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

15th and 16th Revised Pages 51 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

15th and 16th Revised Pages 51 (excluding the cancellation of the fares from and to Reading).

17th Revised Page 53.
17th Revised Page 54.

TARIFF CAB NO. 98 ISSUED BY AIRLINE TARIFF PUBLISHERS, INC., AGENT

All fares, provisions, and fare cancellations on the following pages (except fares, provisions, and fare cancellations applicable to or from Hilo, Honolulu, or Canadian Points, and except matter specifically excluded below):

14th and 15th Revised Pages 25.
14th and 15th Revised Pages 26.
16th and 17th Revised Pages 27.
16th and 17th Revised Pages 28.
5th and 6th Revised Pages 28–A.
5th and 6th Revised Pages 28–B.
Original Page 28–C.
1st Revised Page 28–C.
Original Page 28–D.
1st Revised Page 28–D.
14th and 15th Revised Pages 29.
14th and 15th Revised Pages 30.
14th Revised Page 30–A.
14th Revised Page 30–B.
19th Revised Page 33.
19th Revised Page 34.
19th Revised Page 35.
18th and 19th Revised Pages 36.
14th Revised Page 36–A.
14th Revised Page 36–B.
1st Revised Page 36–C.
1st Revised Page 36–D.
17th and 18th Revised Pages 41.
17th and 18th Revised Pages 42.
15th Revised Page 42–A.
15th Revised Page 42–B.

10th, 11th and 12th Revised Pages 51 excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Bowling Green).

10th, 11th and 12th Revised Pages 52 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Bowling Green and Reading).

13th and 14th Revised Pages 53 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Bowling Green and Reading).

13th and 14th Revised Pages 54 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

7th and 8th Revised Pages 55 (excluding matter marked to become effective tive September 23, 1969).

7th and 8th Revised Pages 56 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

9th and 10th Revised Pages 57 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

8th, 9th and 10th Revised Pages 58 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

8th and 9th Revised Pages 59 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

All fares, provisions, and fare cancellations on the following pages (except fares, provisions, and fare cancellations applicable to or from Hilo, Honolulu, or Canadian Points, and except matter specifically excluded below):

8th and 9th Revised Pages 60 (excluding the cancellation of the fares from and to Reading).

13th and 14th Revised Pages 61 (excluding the cancellation of the fares from and to Reading).

13th and 14th Revised Pages 62 (excluding the cancellation of the fares from and to Reading).

15th and 16th Revised Pages 63.

15th and 16th Revised Pages 64 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Bowling Green).

12th and 13th Revised Pages 64–A (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Bowling Green and Reading).

12th and 13th Revised Pages 64–B (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Bowling Green and Reading).

14th and 15th Revised Pages 64–C (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

14th and 15th Revised Pages 64–D (excluding matter marked to become effective September 23, 1969).

12th and 13th Revised Pages 64–E (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

12th and 13th Revised Pages 64–F (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

10th and 11th Revised Pages 64–G (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

10th and 11th Revised Pages 64–H (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

11th and 12th Revised Pages 64–I (excluding the cancellation of the fares from and to Reading).

10th, 11th and 12th Revised Pages 64–J (excluding the cancellation of fares from and to Reading).

14th and 15th Revised Pages 64–K (excluding the cancellation of fares from and to Reading).

14th and 15th Revised Pages 64–L.
24th Revised Page 97.
24th Revised Page 98.
11th Revised Page 98–A.
11th Revised Page 98–B.
Original Page 98–D.

TARIFF CAB NO. 101 ISSUED BY AIRLINE TARIFF PUBLISHERS, INC., AGENT

All fares, provisions, and fare cancellations on the following pages (except fares, provisions, and fare cancellations applicable to or from Hilo, Honolulu, or Canadian points, and except matter specifically excluded below):

17th and 18th Revised Pages 59.
17th and 18th Revised Pages 60.
21st and 22nd Revised Pages 61.
21st and 22nd Revised Pages 62.
24th and 25th Revised Pages 63.
24th and 25th Revised Pages 64.
18th and 19th Revised Pages 65.
27th Revised Page 67.
27th Revised Page 68.
22nd and 23rd Revised Pages 69.
22nd and 23rd Revised Pages 70.
31st Revised Page 79.
31st Revised Page 80.
31st Revised Page 81.
31st Revised Page 82.
20th and 21st Revised Pages 102.
24th, 25th and 26th Revised Pages 103.
24th, 25th and 26th Revised Pages 104.
23rd, 24th and 25th Revised Pages 105.
23rd, 24th and 25th Revised Pages 106.
17th Revised Page 107.
17th Revised Page 108.
16th and 17th Revised Pages 136.

10th and 11th Revised Pages 137 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Bowling Green and Reading).

10th and 11th Revised Pages 138 (excluding

the cancellation of the fares from and to Bowling Green and Reading).

17th and 18th Revised pages 139 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Bowling Green and Reading).

17th and 18th Revised Pages 140.

16th, 17th and 18th Revised Pages 141 (excluding the cancellation of the fares from and to Bowling Green and Reading).

16th, 17th and 18th Revised Pages 142 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

16th and 17th Revised Pages 143 (excluding the cancellation of the fares from and to Bowling Green and Reading).

16th and 17th Revised Pages 144 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Bowling Green and Reading).

13th and 14th Revised Pages 145 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Bowling Green).

13th and 14th Revised Pages 146 (excluding the cancellation of the fares from and to Bowling Green).

11th Revised Page 147.

11th Revised Page 148.

17th and 18th Revised Pages 149 (excluding the cancellation of the fares from and to Reading).

All fares, provisions, and fare cancellations on the following pages (except fares, provisions, and fare cancellations applicable to or from Hilo, Honolulu, or Canadian Points, and except matter specifically excluded below):

17th and 18th Revised Pages 150 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

19th and 20th Revised Pages 151 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation to the fares from and to Reading).

19th and 20th Revised Pages 152.

12th Revised Page 153.

12th Revised Page 154.

14th and 15th Revised Pages 155 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

14th and 15th Revised Pages 156 (excluding the cancellation of the fares from and to Reading).

12th and 13th Revised Pages 157 (excluding the cancellation of the fares from and to Reading).

12th and 13th Revised Pages 158 (excluding matter marked to become effective September 23, 1969).

13th Revised Page 159.

13th Revised Page 160.

13th and 14th Revised Pages 161 (excluding matter marked to become effective September 23, 1969).

13th and 14th Revised Pages 162 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

12th and 13th Revised Pages 163 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

12th and 13th Revised Pages 164 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

14th and 15th Revised Pages 165 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

14th and 15th Revised Pages 166 (excluding the cancellation of the fares from and to Reading).

12th Revised Page 167.

12th Revised Page 168.

17th and 18th Revised Pages 169 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading).

All fares, provisions, and fare cancellations on the following pages (except fares, provisions, and fare cancellations applicable to or from Hilo, Honolulu, or Canadian Points, and except matter specifically excluded below):

17th and 18th Revised Pages 170 (excluding matter marked to become effective September 23, 1969, and excluding the cancellation of the fares from and to Reading)

18th and 19th Revised Pages 171.

19th Revised Page 172.

15th Revised Page 173.

15th Revised Page 174.

20th Revised Page 175.

20th Revised Page 176.

14th Revised Page 177.

14th Revised Page 178.

17th Revised Page 179.

17th Revised Page 180.

14th Revised Page 181.

14th Revised Page 182.

11th Revised Page 183.

11th Revised Page 184.

10th Revised Page 185.

21st Revised Page 246.

20th Revised Page 247.

20th Revised Page 248.

25th and 26th Revised Pages 251.

TARIFF CAB No. 117 ISSUED BY AIRLINE TARIFF PUBLISHERS, INC., AGENT

The fares and provisions on the following pages:

10th and 11th Revised Pages 25.

10th and 11th Revised Pages 26.

7th Revised Page 29.

12th, 13th and 14th Revised Pages 31 (excluding the increase in family fare for WA).

TARIFF CAB No. 83 ISSUED BY EASTERN AIR LINES, INC.

All fares and provisions on 15th Revised Page 7 and 14th Revised Page 8.

TARIFF CAB No. 284 ISSUED BY EASTERN AIR LINES, INC.

All fares and provisions in the tariff.

APPENDIX E

CIVIL AERONAUTICS BOARD ORDER 69-9-150

(Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 30th day of September, 1969)

Passenger fare revisions proposed by the Domestic Trunkline Carriers—Docket 21322.

ORDER DENYING RECONSIDERATION

By Order 69-9-68 the Board suspended and ordered investigated tariff filings proposing fare increases by several of the domestic trunkline carriers. At the same time the Board indicated its disposition to accept a moderate fare increase based on a fare formula which the Board outlined in the subject order. Petitions for reconsideration of the Board's decision have been filed by the Honorable John E. Moss, M.C. (California) and 34 other Members of Congress, and by National Airlines, Inc. requesting suspension and investigation of the tariffs which have been filed pursuant to that order. A joint petition for reconsideration has been filed by Airlift International, Inc., and The Flying Tiger Line Inc., requesting expansion of the order to include restructuring of the cargo rate structure.

Upon consideration of the petitions, the Board finds that they do not establish error in the Board's decision or present any matters that otherwise would warrant grant of the relief sought. However, certain contentions of the petitioners do appear to warrant comment.

The principal thrust of the petition filed by the Congressmen is that the Board, in proposing to permit a revenue increase based on a fare formula, failed to establish cost and load factor standards, failed to establish the effect of the proposed fares on the movement of traffic and carrier earnings, and that the fare structure and the cost basis therefor have never been subjected to the scrutiny of an evidentiary hearing. The Board has given careful consideration to these contentions, but remains convinced that the domestic air carrier industry requires an immediate revenue increase in light of its higher cost of doing business and its earnings decline. The Board is also persuaded that there is no risk that the increases will produce excessive earnings in the foreseeable future.

Nor do we believe that attempts to improve the passenger fare structure should be further delayed for the substantial period required for evidentiary hearing. There has been general recognition of the need to overhaul the fare structure to remove its inequities and bring it more into line with cost factors, and by conditioning the grant of fare relief to the adoption of an improved structure, the Board believes it is acting in the public interest. This conclusion is not predicated on an assumption that the new fare structure is the optimum. Rather, we view it as a first step toward a more rational and consistent fare structure which should redound to the benefit of the traveling public and carriers alike. And, as stated in Order 69-9-68, the Board intends to consider further the entire matter of domestic passenger fare structure and level, including the prior and instant requests for a full-scale formal investigation of domestic passenger fares. The Board will decide what further action is necessary and appropriate in this regard in due course.[1]

National's primary contention is that the proposed fare changes are no answer to the industry's financial problems and that the formula the Board had determined to accept is based solely upon cost of service and ignores value of service and price elasticity factors. National asserts that the only equitable action at this time is to permit an across-the-board increase in all fares.

National predicates its criticism of the proposed fares and fare structure on the fact that the carrier-by-carrier revenue increases do not correlate closely enough with individual carrier needs in terms of deficiency in current returns on investment. Individual carrier earnings reflect, of course, many factors other than the level of fares charged and the Board is not aware that any fare formula could be devised for this competitive industry which would have the effect of substantially equalizing the several carriers' returns on investment. In this regard, National's proposal suffers from the same deficiency that carrier attributes to the Board's formula. Moreover, the individual carriers' current earnings reflect the current structure with all its anomalies and the National proposal would merely perpetuate this situation. National's assertion that the fare structure formula adopted by the Board reflects only cost considerations and ignores value of service we believe is incorrect. The costs studies made by the Board show much higher costs in short haul markets and much lower costs in long haul markets than are reflected in the

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[1] The Congressmen cite the lack of single factor fares in some markets as prejudicial to the interests of the traveling public. We agree and we have already taken action aimed at assuring the establishment of single sum fares in all markets whether served by a single carrier or not which meet minimum traffic standards. In any event, suspension of the proposed tariffs is no solution to this problem since the pre-existing structure suffers from the same deficiency.

formula. The Board believes that the formula we have adopted strikes a reasonable balance between cost and value of service considerations.[2]

Airlift and Flying Tiger substantially reiterate the position expressed in their statement of position and oral argument that the Board should take some steps toward restructuring the domestic cargo rate structure simultaneously with the proposed passenger fare restructuring. The cargo carriers further request that the Board broaden the fare restructuring contemplated by Order 69–9–68 to include establishment of cargo rate structure guidelines, to be implemented by making the continuation of the passenger fare increases beyond January 31, 1970, contingent upon the carriers reaching agreement on such a revised cargo rate structure. We do not believe it wise to link the passenger fare structure matter to possible modification of the domestic cargo rate structure. While we would encourage the carriers to review and improve the economics of their cargo rate structure, we find no basis to make improvements in passenger fare structure contingent upon cargo rate changes.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof,

It is ordered that:

1. The petitions for reconsideration of Order 69–9–68 be and they hereby are denied.

2. This order will be served upon all petitioners and interested parties in Docket 21322.

This order will be published in the Federal Register.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON,
Secretary.

MEMBERS MURPHY AND MINETTI CONCURRING AND DISSENTING

We adhere to the views expressed in our respective concurrences and dissents to Order 69–9–68 and would suspend and investigate the tariffs filed pursuant to that order to the extent they are inconsistent with those views.

ROBERT T. MURPHY.
G. JOSEPH MINETTI.

APPENDIX F

AFFIDAVIT

Washington, District of Columbia:

Richard W. Klabzuba, being first duly sworn, deposes and says:

1. In the proceedings before the Civil Aeronautics Board entitled *Passenger Fare Revisions Proposed by Domestic Trunklines*, number 21322 on the Board's docket, I was one of the representatives of Petitioner John E. Moss and those Petitioners associated with him.

2. On September 29, 1969, I notified Acting Chairman Gillilland of the Board that, in the event that the Board should deny the Petition for reconsideration of the Board's Order of September 12, 1969, No. 69–9–68, and for suspension and investigation of the tariffs filed pursuant thereto, Petitioners would request a stay, pending appellate review, of the passenger fare tariffs scheduled to begin taking effect October 1, 1969. Pursuant to the Acting Chairman's direction, I began drafting a formal request for a stay in the event the Petition for Reconsideration and Suspension should be denied, with the purpose of filing the request for a stay with the Board that afternoon.

3. While I was drafting the request for a stay, I received a telephone call from Acting Chairman Gillilland. He informed me that he had discussed the question of a request for a stay pending appeal with the Board's General Counsel, and that the latter had advised him that the Petition for Reconsideration and Suspension would itself be regarded as requesting such a stay. The acting Chairman therefore advised me that no further papers would be necessary. Accordingly, no further papers were filed.

RICHARD W. KLABZUBA.

Subscribed and sworn to before me this 9th day of December, A.D. 1969.

NANCY E. CODICK,
Notary Public.

(My Commission Expires December 15, 1973.)

[2] National also objects to what it calls "regulatory coercion" with respect to the consideration of modified bases for division of interline revenues among participating carriers. The Board is not committed to any particular result but does expect the domestic industry to examine this matter in good faith. As stated in Order 69–9–68, a change in the present rate prorate method appears to be warranted by current relationships of long haul to short haul costs, and we took into account in reaching our decision the possibility that some revenue shift from long haul to short haul carriers might occur.

UNREALISTIC MIDDLE EAST POLICY BY ROGERS

(Mr. PODELL asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. PODELL. Mr. Speaker, the very recent speech by Secretary of State Rogers on the Middle East has sent a tremor of acute apprehension through every friend of Israel in the United States. Its tenor was pro-Arab and utterly unrealistic. In effect, Israel is requested to give up all her tangible and dearly won gains in return for an Arab promise, which will probably not be forthcoming and worthless if given. The Kremlin seems to be doing rather well in terms of what the State Department is thinking.

Mr. Rogers has made a clumsy bid for Arab favor at Israel's expense. No meaningful, physical act is asked of the permanently intransigent Arab States, who are solidly backed by Moscow. Arab propaganda has shrilled again and again that the United States is anti-Arab, and Mr. Rogers has shown that this administration has been frightened by their rhetoric. So much so that it is willing to seek to bargain away Israel's right to live in its eagerness to curry Arab favor, which in turn is as worthless a commodity as can be found in the world today.

It is an outrage upon intelligence for the Secretary of State to call this new anti-Israel policy a balanced one. Since when has Nasser ever considered any agreement binding and lived up to it? Would Mr. Rogers encourage any member of his family to live in an Israel stripped of easily defensible borders and dependent upon Arab willingness to live up to such an agreement? Who will guarantee Israel's territorial integrity? President Nixon? Secretary of State Rogers?

Who will control the Arab terrorists, who have flouted all governments they come in contact with? Has the example of Lebanon and the terrorist attempt to overthrow its government been forgotten so fast? Does President Nixon ever read or listen to the bloodcurdling threats of Israel's extinction which daily emanate from the Arab world?

Israel has asked for peace constantly since she first emerged as a state in spite of Arab attempts to strangle her at birth. She has asked for face to face negotiations, in spite of the constant attempts to murder her citizens and destroy her economic well-being. Even in victory she has been magnanimous, seeking again and again only the right to live in peace. Yet, it is the very right which her circle of enemies constantly seeks to deny her.

The Soviet Union is controlling the entire Arab diplomatic position. Such familiar unwillingness to negotiate fairly seems to be having a great effect upon President Nixon and Secretary of State Rogers. Through the rhetoric comes one plain message. This administration is assuming the old familiar Eisenhower line of giving in to Russian and Arab demands as far as Israel's well-being is concerned.

Mr. Speaker, I am utterly appalled at this emerging administration policy. Israel is the only light of democracy and resistance to oppression in that area of the world. Russia delights in such American weakness. What she cannot obtain through Arab military prowess she now seeks to lay claim to through betrayal.

No one in their right mind would believe for an instant any Russian guarantee or Arab promise to be good. All they want is an Israel surrender, which will strip her of a military position she has won in unwilling combat.

Every friend of Israel in the United States and abroad has been taken aback by this outrageously pro-Arab speech by an American Secretary of State acting apparently with the approval of the President. No one can mistake it. We have in the making another Czechoslovakia. In 1938 the Czechs were ready to fight Hitler rather than go down under his heel. Britain and France betrayed the nation they had created, selling it down the river to the Nazis. The Czech Army was strong and well motivated. Its natural defensive positions were excellent. Yet, this was all given away by Chamberlain and a frightened French Government.

Mr. Speaker, Israel's leaders and friends also read history. They will not only refuse to go Czechoslovakia's way, but will stand firm. President Nixon and Mr. Rogers have taken a first step down a devious and dishonorable road. I fervently pray they retrace their steps swiftly.

Never did I think to see the day when the United States would cravenly crawl on its belly to the likes of Nasser, our worst Arab enemy, and beg for his favor at the expense of our bravest and tiniest ally. Such shame beggars description.

OLE SINGSTAD

(Mr. MONAGAN asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. MONAGAN. Mr. Speaker, in New York on December 8 died one of the most notable figures in American engineering, construction, and transportation circles of the last half century. He was Ole Singstad, a great engineer, and known primarily as an innovator in the construction of automobile tunnels. The success of the Holland Tunnel under the Hudson

River was entirely due to his conception which provided for the ventilation of automobile exhaust and thereby guaranteed the successful operation of that facility.

A native of Norway, Mr. Singstad came to this country in 1905 and then began his noteworthy career. I had the privilege of meeting him and one could not help being impressed with his vivacity and enthusiasm even though his age was 87 when I first made his acquaintance.

His life reads like a fabulous creation of fiction and so unique was his contribution to the progress of his adopted country that I wish to include herewith the obituary article which appeared in the New York Times of December 9, 1969:

OLE SINGSTAD, 87, MASTER BUILDER OF UNDERWATER TUNNELS, IS DEAD

(By Albin Krebs)

Ole Singstad, the engineer who was regarded as "the master tunnel builder," died yesterday at Doctors Hospital. He was 87 years old and lived at 1120 Fifth Avenue.

Mr. Singstad was a designer, builder or consultant on dozens of vehicular tunnels, including the Holland, Lincoln, Queens Midtown and Brooklyn-Battery tunnels in New York, the tunnel under Baltimore Harbor and the underwater tube that connects Oakland and Alameda, Calif.

He considered his greatest achievement, in a career that spanned some 60 years, the design of the Holland Tunnel, the world's oldest underwater automobile highway, which was opened in 1927. The tunnel would not have been possible without Mr. Singstad's ingenious plan for a ventilation system to eliminate exhaust fumes. The ventilation system became the standard for vehicular tunnels the world over.

When the Holland Tunnel was put into operation, The New York Times said in an editorial: "To Ole Singstad, Holland's design engineer, fell the task of finishing an undertaking that will rank with such engineering monuments as the Panama Canal. . . . Technical history was written when the ventilation apparatus was designed."

Mr. Singstad was born in Lensvik, Norway, on June 29, 1882. His father was Knut Singstad, his mother the former Anne Auseth. After attending Aalesund Latin School, he went to the Polytechnic Institute of Trondhein, from which he received a degree in civil engineering in 1905. The same year he emigrated to the United States.

Mr. Singstad became an American citizen in 1911 and the following year married Else Johansen in Brooklyn, where he lived for more than a quarter-century.

Starting out in Norfolk, Va., as a designer of railroad structures, Mr. Singstad came to New York in 1909 to collaborate on the design of the Hudson tubes, which gave New Jersey its first underwater link with Manhattan. From 1910 to 1917 he was in charge of design for rapid transit subways and tunnels in New York and Brooklyn, including the twin rapid-transit tube from William Street and Wall Street, under the East River and Clark Street and Fulton Street, to connect with subway stations under the St. George Hotel and Borough Hall.

In 1919, when New York and New Jersey commissioned Clifford H. Holland to build the first automobile tunnel, Mr. Hammond quickly concluded that unless the problem of ventilation could be solved, a tunnel that would be safe for motor traffic was an impossibility. He went to Mr. Singstad with the problem.

After more than 2,000 tests including studies on just how much carbon monoxide fumes human beings could tolerate in a given period of time, Mr. Singstad developed plans for a circular tunnel that would enclose three tiers.

ROADWAY IN MIDDLE TIER

The middle tier was the roadway. Beneath it was a hollow space into which air could be constantly pumped and released into the roadway at intervals through ducts. The top tier was another hollow space, with ducts, through which rising gases could be sucked. The system was deemed workable, and construction on what was to be called the Holland Tunnel was begun in 1920.

Mr. Holland died before the two-tube tunnel was half-finished, and his successor, Milton H. Freeman, died soon after. Mr. Singstad took over full responsibility for finishing construction of the tunnel he had designed.

President Calvin Coolidge formally opened the tunnel on Nov. 12, 1927, by pressing a button on his yacht in the Potomac that rang a big brass bell at the tunnel entrance. Mr. Singstad kept the bell in his office for the rest of his life.

The engineer recalled some time ago that although the tunnel was opened at 4 P.M., officials, made nervous by predictions of disaster, refused to allow cars through until midnight, when traffic would be at its lowest ebb.

"I couldn't wait to enjoy my tunnel," Mr. Singstad said, "and so when the speeches were over, I set out to walk through it alone. Soon I heard a rumbling, shuffling sound in the distance. 'Good God!' I thought, 'it sounds like an ocean, like the tunnel's caved in!' I jumped up to the elevated sidewalk.

"My fears were happily unfounded. The noise came from hundreds of people who, prevented from driving through the tunnel, had parked their cars and were walking—some pushing baby carriages—through what I don't mind calling a new wonder of the world."

As chief engineer of the New York City Tunnel Authority, a position in which he served from 1935 to 1945, Mr. Singstad was a major consultant in the design of two of the three tubes of the Lincoln Tunnel. The two tubes were completed in 1937 and 1945.

His most formidable challenge was the design and construction of the Queens Midtown Tunnel under the treacherous, porous bed of the East River. It was driven through mud, glacial deposit and solid rock, at a cost of $54-million, some $4-million under the original estimate. The tunnel, 7,630 feet long, was completed in 1940.

Mr. Singstad planned and supervised construction of the $68-million Brooklyn-Battery Tunnel, which runs about two miles under New York Harbor. Construction was begun in 1940, suspended in 1943 because of the war, and completed in 1950.

CONSULTED ON MANY TUBES

Over the years, in his private practice as a civil engineer, Mr. Singstad was a designer or consultant on dozens of tunnel projects. Most of them were constructed in soft ground and under water, but some burrowed through mountains.

He was consultant engineer for the George A. Posey Tube, the first automobile tunnel built by the trench method, completed in 1928. The tube, under the Oakland, Calif., estuary, was prefabricated in sections, which were placed in a deep trench, joined together and covered with rock and sand fill.

Mr. Singstad used the same basic method to design and build the Baltimore Harbor twin tunnel, an underwater highway that eliminated one of the nation's worst north-south traffic bottlenecks.

"What we did," Mr. Singstad said, "was to build a sort of huge double-barreled shotgun, 70 feet wide and 35 feet high and a mile and a half long. We put the parts into a trench 100 feet below the water and covered the whole thing with fill."

WON BELGIAN DECORATION

Mr. Singstad, who was licensed as a civil, electrical or mechanical engineer in 17 states, was awarded the Order of the Crown by the late King Albert of the Belgians, for his design of the tunnels under the Scheldt River at Antwerp.

Through his company, now Singstad, Kehart, November & Hurka, at 17 Battery, Mr. Singstad was a consultant for vehicular tunnels for the Argentine, Chilean, Venezuelan and Norwegian Governments. He also had a hand in the design of the Callahan Tunnel under Boston Harbor and the modernization of the Sumner Tunnel in Boston. He was chief engineer and designer of the Fort Lauderdale New River Tunnel and the West Virginia Memorial Tunnel at Wheeling.

For 20 years Mr. Singstad was a visiting lecturer at Harvard University, and he also taught at New York University. He was president of the American Institute of Consulting Engineers from 1941 to 1943 and, as a committee of one, wrote what is known in his profession as "the Singstad draft" of the Canon of Ethics for Engineers, still in use.

FISHED FOR RECREATION

Mr. Singstad, although rather diminutive in size, had large, strong hands. Until last July he went to his office daily, and it was only a year ago that he had to give up his favorite pastime, dry fly-fishing for trout in mountain streams.

He recently completed a textbook, "Tunnels," to be published by John Wiley & Sons, and was the author of dozens of technical papers. He was a Knight, First Class, of the Royal Norwegian Order of St. Olav, and a Commander, Order of Merit of Chile.

For the last 20 years he had dreamed he would one day see a cross-Manhattan vehicular tunnel, linking the Queens Midtown Tunnel with the Lincoln tubes. Looking back on his construction projects, he said two years ago:

"I think we've overdone it. The city is choking itself to death with cars. The city should build more subways. We should build more rail tunnels under both the Hudson and East Rivers."

Mr. Singstad, who lived at 1120 Fifth Avenue, was widowed in 1964. He is survived by a daughter, Mrs. Henry E. Gardiner of Washington; a son, Paul of 166 E. 61st Street, and two grandchildren.

A funeral service will be held at 11 A.M. Thursday at St. Thomas Episcopal Church, Fifth Avenue and 53d Street.

EFFECT OF IMPORTS ON EMPLOYMENT IN THE UNITED STATES

(Mr. BOLAND asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous material.)

Mr. BOLAND. Mr. Speaker, imports into the United States are reaching alarming proportions. Many industries—and millions of working men and women—are threatened by this veritable tide of imported products ranging all the way from mink skins to steel. Yesterday, the Senate adopted an amendment to the tax reform bill—an amendment granting the President authority to establish limitations on imported goods. This legislation, I feel, must be enacted by the Congress.

Let me cite just a few of the New England industries menaced by foreign competition. The shoe industry—once one of New England's most healthy businesses—is virtually languishing. Forced to com-

pete with foreign shoes made cheaply—indeed, made under what most Americans would consider "sweat shop" conditions—New England's shoe factories must accept a rapidly dwindling share of the market. The textile industry, another industry that once thrived, faces similarly bleak prospects. And electronics firms, especially those that have not taken advantage of the wholesale liberalization in our tariffs by establishing plants in foreign nations, are under a kind of economic and financial seige by imports. Local 1500 of the International Brotherhood of Electrical Workers—the union at Sickles Co., in my congressional district—points out that electronic imports threaten the jobs of thousands of workers throughout the United States.

Idle debate and dithering will not help untangle this knotty problem. Legislation—legislation like that adopted yesterday in the Senate—is needed. It has been argued—convincingly, as far as some legislators are concerned—that the Senate amendment's language is far too vague and far too sweeping. The amendment would, it is suggested, give the President authority to restrict any kind of imports under any kind of circumstances. Granted, the authority granted by the amendment cannot be described as narrow and explicitly detailed. Yet, I am sure—indeed, I am convinced—that no American President would exercise such authority in a frivolous or capricious way. The President, as you all know, now has sole authority to use nuclear weapons in time of war. I am sure that no Member of Congress suspects any American President would heedlessly misuse such awesome responsibility. Nor is there any reason to suspect any American President would jeopardize this Nation's international trade position by heedless misuse of yesterday's Senate amendment.

Plainly, Mr. Speaker, imports pose a major threat to more than a few American industries. Workers are losing their jobs. Plants are shutting down. Our balance-of-payments situation, already grim, grows worse almost weekly.

It is time to act now.

The cruelest irony in New England's plight is that petroleum products—home heating oil, for example, and gasoline—are soaring in cost because of a quota system that tightly restricts the importation of cheap foreign crude oil. Trade and tariff laws do virtually nothing to protect the jobs of New England consumers or the stability of its industries. Yet, such laws—specifically, the import quota system on oil—cost these consumers quite literally billions of dollars by sheltering oil industries half a continent away in the Southwest.

Hundreds of bills have now been introduced in this Congress for the purpose of imposing quotas on imports of a large variety of merchandise—the most important being meat, textiles, steel products, shoes, oil, lead and zinc, and mink skins. In some cases our constituents have advised us of drastic reductions of production; in others, of serious retrenchments due to the fall off of orders. In all such cases we in Congress have been asked for assistance to obviate the serious consequences of excessive import. The main complaint has been that American producers and American workmen are being injured by the ever increasing flow of imports which are comprising an ever-growing percentage of our domestic consumption market.

Because we in New England, with an intensely industrialized economy, are peculiarly sensitive to fluctuations in consumer demand, I am forced to draw attention to this matter of excessive imports. In several instances—textiles, shoes, electronic products—my congressional district has been hit hard by the deleterious effects of such rising imports.

Let me draw your attention to a bill I have introduced to promote orderly trade in textile products. An excessive percentage of our domestic market is being supplanted by imported textiles. These textiles comprise not only cotton cloth, but also wool and the vast total of manmade staple fibers, filament, and filament yarns used in our textile industry.

The American Textile Manufacturers Institute has estimated that we may well have to face an import level of around 2.5 billion square yards of textiles. Actually this total will constitute around 10 percent of our domestic consumption and displace the production of about 190,000 potential American textile workers with an annual income of around $1 billion. This kind of statistic is enough to make us take notice, not only because of the displacement of workers and the loss of pay, but also the cutback such a loss entails in the general consumer market, and the shrinking of tax revenue.

Another factor that needs to be considered is the fact that this prodigious importation of foreign textiles costs us around $750 million per year and, thereby, adds seriously to our balance-of-payments deficit.

It seems to me that our textile industry has been well in the forefront of American industries in spending over $7 billion during the last 10 years for modernization of plants and production procedures. Are we going to threaten this modern, efficient capacity with underutilization by having a sizable percentage of such productive ability undercut and displaced by imports? In all fairness to the industry as a whole and its workers, I submit that we in Congress should step in and place a specific percentage on our domestic consumption which we would allow to overseas exporters.

I am particularly concerned about the welfare of our textile workers. On an average such workers receive $1.99 per hour compared to 25 cents per hour in Hong Kong whence a substantial percentage of our imports derives. In Japan the wage is 36 cents an hour—while in India it is around 14 cents. In some instances the fringe benefits paid by our textile companies to textile workers exceed the total wages paid by foreign textile mills. How can our companies and workers compete against such margins?

We must also consider that our textile industry does export. Yet, it is a fact that about 50 nations prohibit the importation of American cotton textiles and another 30 have tariffs so high as effectively to shut us out of their markets. This type of prohibition seriously cuts down the total of our textile exports. Yet in all candor we must ask why foreign nations prohibiting the importation of textiles from us, should feel that they are at liberty to dump untold millions of yards on our markets at a price we cannot meet.

Mr. Speaker, we have just over 3,000 textile plants scattered throughout this Nation. These plants buy the output of other industries. A vicious cycle is created every time we allow one of these plants to be injured. The repercussions are felt far and wide. It seems to me that the most equitable method of meeting the excessive imports and injurious competition is to assign a fixed percentage of our domestic market to imports. This will amount to a flexible quota, depending on the market, gradually increasing as our population increases.

Another industry of vital concern is the shoe industry. We have seen how shoe imports have increased very substantially during the last decade and at a distinct price advantage. Today, factory prices of our domestically produced rubber and canvas shoes average around $1.50 per pair, whereas foreign shoes of like manufacture enter this country at a price of 70 cents per pair. Even leather or part-leather shoes from overseas cost only about 50 percent of the factory price of shoes of domestic manufacture. Here a new tendency is to be seen, however. Even as the prices of our leather footwear are rising, so the prices of imported leather footwear seem to be declining.

Naturally there are various reasons for the rise in prices here at home. First is the increasing demand for footwear for our armed services—currently around 20 million pairs per year. Second, there has been an extraordinary demand for our hides and skins overseas, thereby increasing the price of leather here at home. The sad part is that much of this leather is returning here in the form of footwear. Third, is the rise in the cost of labor as compared to the rise in productivity here at home. Hourly wage rates have increased 73 percent since 1948, while productivity has risen by less than 40 percent.

Basically, shoe manufacturing entails a high percentage of handicraft work—here our workers, due to the use of sophisticated machinery, are able to produce about 50 percent higher per man-hour than in the best comparable foreign plant.

Because shoe manufacturing concerns are rather small, both here and abroad, comparable costs of production are hard to estimate. Our workers receive close to $2 per hour plus fringe benefits, whereas in Japan wages average 40 cents per hour, and 56 cents per hour in Italy. What is significant to me is the fact that Japanese exports of footwear to us increased from 2.8 million pairs in 1955 to 66 million pairs in 1965; and Italian exports rose from 1.2 million pairs in 1955 to 22.3 million pairs in 1965.

I noted before how in shoes and textiles an ever-increasing percentage of our market has been superseded by foreign imports during the last few years. Now, under the concessions granted during the latest GATT negotiations, prospects are that imports of these commodities will be greatly increased. But a worse position obtains for the electronic products.

On TV sets import duties have been reduced from 35 to 10 percent; to 11½ percent on phonographs and to 12½ percent on radios. Components have been subjected to similar cuts. TV parts from 35 to 10 percent; phonograph parts to 11½ percent and to 12½ percent on capacitors, resistors, tubes, and other components.

I am seriously alarmed at the trend of imports and the extent by which imported radios and TV receivers are undercutting our domestic manufacturers. In 1956 we imported just under 1 million radios or 6 percent of our total sales. Yet, by 1966, we imported 25.8 million units or 68 percent of our sales. The figures are even higher percentagewise for 1967 and 1968.

Although TV is a newer industry, statistics are likewise alarming. In 1961 we imported scarcely 60,000 receivers or about 1 percent of a sales total of 6.3 million sets. By 1966 we imported over 1.5 million receivers or 20 percent of a sales total of 7.7 million sets.

The picture is even worse in the electronic component industry. Here we imported during 1966 many items whose ratio of imports to U.S. production is as follows:

	Percent
Receiving tubes	27.5
Record changers	51.4
Controls	66.4
Transformers	66.6
Loudspeakers	81.2
Capacitors, electrolytic	138.3
Transistors	195.8

Mr. Speaker, total imports rose from $135 million to over $250 million in the period 1964–66. Such imports add nearly $150 million to our international payments deficit.

We pioneered the electronic industry. We pay the highest wages. Yet we allow our trade negotiators to dissipate our advantage by giving excessive concessions to other industrialized nations whereby they proceed to swamp our markets. Only by giving foreign producers a variable quota, based on our domestic consumption market, can we assure to ourselves an industry which will not be inundated by low-cost foreign production and one which will remain economically viable.

Mr. Speaker, I submit for the RECORD at this point copies of letters I and Congressman SILVIO O. CONTE have sent to the Tariff Commission and the President's chief trade negotiator protesting excessive electronic imports:

NOVEMBER 18, 1969.

Mr. CARL GILBERT,
Special Representative for Trade Negotiation, Washington, D.C.

DEAR SIR: Today we have asked the Chairman of the U.S. Tariff Commission to institute a full-scale investigation into the injurious effects of excessive imports of like or competitive products on the electronic products and components industry.

With the exception of a few minor items, all duties on electronic equipment and components were reduced by 50 percent during the last Kennedy Round negotiations at Geneva. The first two yearly reductions are now in effect and the result has been a highly disturbing increase in imports. This so-called reciprocal trade program seems to be a unilateral reduction by the United States only, since most other countries have tariffs twice as high against our electronic exports.

As you know, the electronics industry has a ratio of total payroll cost to value of shipments of over 40 percent. Yet this important labor-intensive industry suffers from vastly increased competitive imports due to greatly reduced duties.

In the case of textiles and steel, long-term import arrangements were made on a voluntary basis. Import quotas were arranged by our Government with foreign producers. I believe that you should institute discussions with foreign exporters for a specific percentage of our domestic market for negotiation similar to that arranged for steel and textiles. In New England many electronic firms are being injured by excessive imports; labor unions also indicate that the only relief that could be afforded their industry would be in the form of a long-term agreement with specific item and dollar quotas.

Your consideration of this matter and efforts to rectify an increasingly serious condition in the total electronic industry will be much appreciated.

Sincerely yours,

EDWARD P. BOLAND,
Member of Congress.
SILVIO O. CONTE,
Member of Congress.

NOVEMBER 18, 1969.

Hon. GLENN W. SUTTON,
Chairman, U.S. Tariff Commission, Washington, D.C.

DEAR MR. CHAIRMAN: Alarming new increases in the importation of electronic equipment pose a threat to the domestic electronic industry and the jobs of its employees. In our Congressional Districts alone—the First and Second Districts of Massachusetts—electronic imports jeopardize the jobs of thousands of workers.

Over the past few years we have received increasingly severe complaints about the expanding import competition in electronic products and components originating in Europe and Japan. Just recently, Local 1500 of the International Brotherhood of Electrical Workers in Springfield, Massachusetts, again voiced concern about rising imports—imports that are causing increasing retrenchment of workers in both segments of the electronic industry. Not only are such imports taking an ever-increasing share of the American consumer market in electronic products, but foreign tariff rates in most industrialized countries are more than twice our own, inhibiting our own exports. In fact, our deficit in electronic merchandise trade is currently running in excess of $400 million annually.

In 1968 the electronic industry testified before the House Ways and Means Committee that nearly 100,000 jobs were lost because of expanding imports of like or competitive electronic products and components. In 1967 imports rose to more than double the total of 1964. And, at the end of the first quarter of 1968, imports of consumer electronic products expressed as a share of the U.S. market were even more alarming:

[In percent]

TV	11
Radios	78
Phonographs	30
Tape recorders	85

The officers of the labor union at Springfield have pointed out that these percentages continue to rise steeply and that the competition is becoming increasingly injurious.

In view of the fact that the electronics industry is being undercut by excessive imports—stemming largely from the 50 percent reduction of tariffs under the latest Kennedy Round negotiations weakening an industry indispensable to our national security—we hereby request a full tariff investigation of the whole import position of the electronic products and components industry.

Your early notification of hearings leading to a justifiable remedy recommendation will be greatly appreciated.

Sincerely yours,

EDWARD P. BOLAND,
Member of Congress.
SILVIO O. CONTE,
Member of Congress.

REMOVAL OF INCOME LIMITATIONS ON PERSONS RECEIVING SOCIAL SECURITY BENEFITS

(Mr. BLACKBURN asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. BLACKBURN. Mr. Speaker, recently I had the pleasure of submitting testimony to the House Ways and Means Committee regarding the removal of the income limitations placed upon those persons receiving social security benefits. As I have stated many time before I feel very strongly that if a person pays into the social security for 30 years he has a right to receive benefits to which he is entitled. If this same person had been paying into a private trust fund, he would as a matter of equity automatically receive these benefits. However, we find that this is not the situation with regard to social security. Under the law, a man can be paying into the system and upon his 61st birthday if he is earning income in the form of wages or salary over $1,680 he will have a $1 loss in benefits for every $2 he earns. President Nixon has proposed that the ceiling be raised to $1,800 which is a mere increase of $10 per month. I would like to point out to the members of this committee that because of the skyrocketing inflation racking this Nation each month a social security beneficiary loses at last 50 cents in paying power from his benefits. For the information of my colleagues, I am hereby inserting a copy of my testimony before the Ways and Means Committee in the RECORD:

TESTIMONY OF HON. BENJAMIN B. BLACKBURN

Mr. Chairman, I would like to address my remarks this morning to a provision of the Old Age Survivors and Disability Insurance program, namely the income limitation on those persons who receive Social Security benefits upon retirement at age 65. Under this provision a man cannot even consider working part-time without endangering his Social Security benefits. It seems as though dependence on society is being encouraged.

When reviewing the history of this Act, we find that the income limit was first placed in the Act when passed by Congress in 1935. The desperate economic situation at that time made it impossible for many of our young people to obtain needed employment; and in order to create more jobs, the elderly were encouraged to leave the job market by placing an earnings limitation upon the amount a person could earn from working and still receive Social Security benefits.

However, I would like to point out why this argument should not be used today. First, many highly skilled people are past age 65 yet are vitally needed to provide necessary goods and services. Secondly, eminent geriologists have pointed out that it is inadvisable for our elderly to stop work since they lose all incentive if they are left home with nothing to do. Thirdly, it is easily seen that through the use of our Social Security laws we have forced our senior citizens to live at the poverty level. For example, the average Social Security payment to an elderly person over 65 years of age is $98 per month. Given the present Social Security earnings

limitation, the maximum income a person can receive from Social Security plus outside earned income is $3456. This figure is below the poverty level; I believe that it is degrading the dignity of our senior citizens to force them to live at this meager existence under our present social insurance payments.

Recently, I received a letter from one of my constituents concerning the income limitation. I would like to read a portion of this letter into the testimony.

"I have always worked for my living and I appreciate the opportunity of doing so. But the stipulation which has been in effect of being able to earn only $140 per month without benefits being withheld puts you in an almost impossible situation. You can't get along on what you are getting from Social Security plus the $140 you are allowed to earn, but you find it is hardly worthwhile to try to earn more."

As a whole, this is how the elderly of our nation are affected by this earnings limitation. 6.6 million Social Security beneficiaries between the ages of 65 and 75 earned no income during 1968. 1.5 million Social Security beneficiaries earned an income of less than $1680 during 1968. 600,000 Social Security beneficiaries earned an income exceeding $1680 but received some Social Security benefits. 800,000 possible Social Security beneficiaries earned an income over $1680 and received no benefits.

Furthermore, Mr. Chairman, this has encouraged some of our senior citizens to evade the law. A gentleman from California sent me a letter telling me how he accomplishes this:

"Should this be necessary to outsmart an unfair law? This is how it is done. We have a verbal agreement when hired as follows: Total salary $600 per month payable $140.00 salary (allowable) and $150.00 a car and expense allowance (not counted as S.S.). This leaves a balance of $310.00 per month payable as a bonus in December in a lump sum. *To comply with the Social Security law, the December social security check is returned.*

"Next month (Jan.) being a new year, the procedure is repeated, and I can receive 11 Social Security checks and a possible yearly income of over $800 per month (less $200.00 Social Security December check returned). Income tax is declared only on salary and bonus—Social Security payments and expenses can be justified as non-taxable.

"I am sick of this subterfuge and believe, as you do, that my 20 years of top deductions entitles me to an old age of useful work without feeling like a cheat.

"Please don't give me away, but if that's the way they want it, I will use my still active mind to find every loophole possible and educate my friends to do the same."

Also, I would like to bring to the attention of the Committee a letter which I received from Mr. Wes Fleming of Dresser, Wisconsin. In his letter which is attached, Mr. Fleming explains how our senior citizens are being cheated by the income limitation.

The law states that a person cannot receive $1680 in "earned income." Earned income is defined to mean wages or income for self-employment. However, if the income is from interest or rental of real estate, it is not considered earned income. Thus, through our Social Security laws, we are discriminating against those families which would be considered middle income who have put two children through college, probably paid a mortgage on a home, and incurred one or two major illnesses. We find that these people usually do not have the money to invest in securities and other forms of income producing assets during their working years since they are usually trying to provide an adequate standard of living for their children.

There are those who will counter the arguments I have just presented by stating that the purpose of the Social Security system is to provide social insurance against the loss of income during the retirement years or disabilities. However, I feel compelled to disagree strenuously with this view. I believe that if a person pays into the system for thirty years, he has the right to receive certain benefits in return. If this person had paid into a private pension plan there would not be an income limit applied. Furthermore, if the Social Security system had been established with proper funding, it would be very difficult to justify any income limitation.

DRESSER, WIS.,
November 17, 1969.

Representative BENJAMIN BLACKBURN,
Representative from Georgia.

HONORABLE SIR: Have just read an article in the St. Paul Pioneer Press concerning what you are trying to do for old people on Social Security. Thank you very much.

I wrote a piece to this St. Paul paper a few days ago. (So far it has not been printed). A copy of this might interest you and help you in your work.

It reads as follows:

"SOCIAL SECURITY—A HOAX AND A SWINDLE—A GOOD DEAL FOR THE WEALTHY AND THE VERY POOR, AN EXPENSIVE HEADACHE FOR THOSE IN BETWEEN WHO HAVE TO WORK TO MAKE ENDS MEET

"I am not against Social Security. The Medicare part of it is wonderful.

"What I am against is the the rotten, unfair, discriminatory laws governing the administration of Social Security.

"Social Security is 'Great Stuff' until you try to collect on it. Then you find out what it really is.

"We are a group of people past 65. We have no company pension. We have been self-employed.

"We have paid in a lot of money toward Social Security, but, because we have to work to make ends meet our Social Security is taken away from us.

"We understood, when this thing was first set up, that it was to help those past 65—whose earning capacity had diminished, that we need not expect to be able to live on it—that it would be a supplement to other income.

"That would be fine. That is the way it should be. But that isn't the way it is.

"When we have income from labor, over a lousy $1680, then they start taking our Social Security away from us. And we don't get the $1680. Only about $1344. The rest the Government takes for income and Social Security taxes.

"Even though past 65 we have to pay Social Security taxes to help people who never have worked and never intend to—while we keep on paying in but can collect nothing if we work enough to earn a modest income.

"This $1680 figure applies to those whose income is from labor. A person with a $50,000 income, if it is from interest or rent can collect the full amount of Social Security—even though his money and property has been inherited.

"No doubt this is as it should be. He has paid for it. He should have it.

"But we have paid in just as much as he has, and if we work enough to earn a modest living—then we can not collect anything.

"We want equal rights.

"They tell us that after 72 we can earn any amount and also collect Social Security.

"Big Deal! But who is going to hire us after we are 72. Most of us will be dead by that time.

"For seven years, from age 65 to 72, we are being deprived of benefits received by others which we have helped to pay for.

"We are not asking for any special privileges or special treatment. We want to earn what we are able to earn after 65 and also collect like others do. We want what we have paid for and have a right to expect.

"We have worked hard all our lives. We have paid taxes, educated our children and have helped to make this country what it is today. We have never asked for or received help from anyone.

"Now when we are old we are being kicked in the teeth.

"Most legislators ignore our problem, as do labor unions, farm organizations and chambers of commerce. Our voting strength is not great.

"People in this age group would like to keep their homes and live in the neighborhood where their friends live—in the home they have built and paid for—where the children can come home and spend a weekend once in a while.

"But with taxes, upkeep and insurance costs where they are, together with the cost of fuel, telephone, light, food and clothing—we must work to make ends meet.

"We like to keep a car for a small amount of driving. We have Doctor and medicine expenses. Medicare does not pay it all, not by quite a long ways.

"When we work enough to meet these expenses—then our Social Security payments are completely cut off.

"We have one alternative

"We can forget about meat and butter, drop our insurance, sell our home and our car, move into a small apartment and prepare to rot there. Then we could collect Social Security if we cut our earnings down to a near poverty level.

"We do not want to do this. If we had fair and equal treatment we would not have to do this.

"Why should we lose our Social Security just because our income is from Labor? Why can't we have the same treatment given people with other income. Many of us pay $100 a month or more to the government in income and Social Security taxes and lose our own Social Security payments besides.

"People who have paid in practically nothing collect $55 per month. There is talk of raising this to $80, a great vote getter. But that would not help us one bit. We cannot even collect the minimum. We cannot collect anything if we earn enough for a modest living.

"Seems like the modern way to get attention is to march, smash windows, tip over cars and burn buildings. We are rather old for that. Besides we don't believe in such tactics.

"If enough people would write their legislators it might help.

"Keep in mind that a raise in Social Security benefits will not help us. It is the amount we can earn without penalty that is killing us.

"This $1680 figure should be raised to at least $3680. Or better still let us make what we can plus Social Security. We have paid for it. If we had put that money into insurance to take care of us in our old age we would be collecting on it. They would not ask how much we were making. We would get what we had paid for and our premium payments would stop. Why should we pay in after we are 65?

"I claim the Government owes us back pay with interest for every dollar they have cheated us out of since we reached 65.

"We won't be around a lot longer. Can someone help us get a square deal?"

Rep. Blackburn: We appreciate what you are doing. I believe Hartke of Ind. and Alvin O'Konski of Wis. might give you a great lift on this.

If you consider the amount we pay in Social Security and income taxes it would almost equal the S.S. payments we should be collecting.

In other words, if we quit working and collected Social Security it would make practically no difference to the Government balance.

Very sincerely yours,

WESLEY FLEMING.

GRAVE FAILURES IN LEADERSHIP AND INSTITUTIONS NATIONALLY HAMPER OUR HOPE FOR THE FUTURE OF OUR NATION AND THE WORLD

(Mr. VANIK asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. VANIK. Mr. Speaker, few men in this Nation speak with such clarity and depth of perception as does John W. Gardner, chairman of the Urban Coalition and former Secretary of the Department of Health, Education, and Welfare.

Recently, Dr. Gardner delivered an address which might be considered to be the keynote for the decade we are about to begin. In this magnificent speech which he delivered at the National Press Club, Dr. Gardner points out clearly and precisely the grave failures in leadership and in institutions nationally which hamper our hope for the future of our Nation and the world.

Dr. Gardner not only appraises critically the failures and weakenesses in leadership and our governmental, industrial, and trade union institutions but goes on to point out the many and creative opportunities which exist for each, in turn, to change and thus allow the rectification of the ills which currently are paralyzing our Nation. He also calls upon the people of our country to set aside once and for all the prejudice and appeals to bigotry which plague us and get on with our business of building a creative and progressive society. He calls upon the citizens of our Nation to marshal public opinion against those in public and private life in whom rests the power to help solve our most pressing national problems and who, at present, refuse to act affirmatively.

I agree completely with Dr. Gardner that our national "passivity" which prevents positive action today can be solved. But it can only be confronted, eliminated and replaced with forward movement if the average voter-citizen begins to realize that his government should not be "managed" for him as is his pension fund or his mutual fund. When this important ingredient of vigilance and wide-scale democratic participation is absent, those who are governed can have little to say about the results stemming from the legislative and administrative actions which are negligent of the public interest.

One can have little sympathy in our democratic system for the lazy citizen-voter who simply will not take the time to participate in his government. In the absence of this creative association of citizen and government the vacuum which results produces government which is lethargic, unresponsive, and sometimes lacking a morality which prevents it from responding to a crisis of the dimension which now confronts our Nation. I commend to every Member's attention this very important address by John W. Gardner. The address is as follows:

REMARKS BY JOHN W. GARDNER, CHAIRMAN

As we enter the 1970s there are many curious aspects of our situation, but none more strange than our state of mind. We are anxious but immobilized. We know what our problems are, but seem incapable of summoning our will and resources to act.

We see the brooding threat of nuclear warfare. We know our lakes are dying, our rivers growing filthier daily, our atmosphere increasingly polluted. We are aware of racial tensions that could tear the nation apart. We understand that oppressive poverty in the midst of affluence is intolerable. We see that our cities are sliding toward disaster.

And these are not problems that stop at our borders. The problems of nuclear warfare, of population, of the environment are impending planetary disasters. We are in trouble as a species.

But we are seized by a kind of paralysis of the will. It is like a waking nightmare.

I propose that as we enter the new decade we make a heroic effort to alter both our mood and our state of inactivity. Let 1970 be a year of renewal, and during that year let us give our institutions and ourselves a jolting reappraisal and overhaul.

The place to begin is with our national leadership in both the Executive branch and the Congress. With a few notable exceptions, there has been a failure of leadership. More than any other factor, it is the missing ingredient in our situation today.

We have had failures of leadership before. But rarely before have we had the widespread distrust of our own institutions that we see today. And that distrust is not limited to radicals. Ask shopkeepers, housewives, young executives or insurance salesmen what concerns them. If you travel around the country as I do more or less continuously, you will find that there is a deep and pervasive feeling among all segments of the populace that "things aren't working"—and Washington is given a major share of the blame. When the great majority of Americans share that uneasiness, when a growing number are losing all confidence in our society, when the problems themselves are terrifyingly real, then it is immoral for our national leaders—in the Congress and the Executive branch—to temporize. It is indecent for them to let us imagine that we can solve our problems without money or that we cannot afford to tackle them. It is criminal for either Republicans or Democrats to put politics before the nation's future.

Now let me speak specifically of the President. Any judgment on the President's leadership must take into account that he came into office at a difficult time, must deal with a Congress of the opposing party, and finds his options limited by inflation and the war.

But given all that, he must do more to set a tone of urgency to which we can all respond, and more to exemplify in his own actions a determination to solve our pressing problems.

We are not—and should not become—blind followers of the leader. But only the President's clearly expressed concern and clearly stated priorities can mobilize the federal apparatus, encourage Congress to shake off its lethargy, and enable leaders in other sectors of American life to move decisively.

His greatest test is on the international front. His first task—and one cannot exaggerate its urgency—is to end the war. Even more important in the long run will be steps that must be taken to cope with the threat of nuclear warfare. His recent action with respect to biological warfare was encouraging.

On the domestic front the President must say more explicitly—and with greater urgency—what he conceives to be an appropriate strategy for dealing with the dilemmas of the cities, with equality of opportunity, with the environment and with other problems that are wracking the nation.

Not only must he propose social programs adequate to our need, but when the legislation goes to Congress he must fight as hard for it as he fought for the ABM and Judge Haynsworth.

Now let's talk about the Congress. This Congress, which has acquired a reputation for lethargy, could dispel that reputation not only by passing needed legislation but by enacting genuinely meaningful Congressional reform. Few institutions in our national life are as gravely in need of renewal as is the Congress of the United States. Renewal requires first of all measures to abolish the seniority system and to curb the abuse of power by entrenched committee chairmen.

In 1958, Congress enacted a law requiring the chief judges of federal circuit and district courts to give up their administrative duties when they reach age 70. I propose that Congress impose the same rule on its own members. The Speaker of the House is 78. Thirteen Senate and House committee chairmen are over 70, six of them over 75, two over 80. They are full of years and honors. They can serve their country best by stepping aside. That would be patriotism at its highest.

Congress must also put an end to the hypocrisy of tolerating grave conflicts of interest among its own members while attacking the same fault in others. It should pass a conflict of interest statute with teeth in it.

These flaws in Congress have been debated for years. What is new is not the weakness in the institution but the mood of questioning in the nation. If there were ever a time when it is essential that our institutions merit our respect, this is it.

And what about industry? I would propose that as we enter the 1970s industry address itself to three central issues.

First, it should make an unqualifed commitment to equality of opportunity for minority groups. Some firms have performed nobly in this respect. But the majority are still dabbling with the problem and many are engaged in outright fakery—giving lip service, preserving a public image and doing as little as possible.

Second, industry should commit itself to end pollution. Again, some farsighted business leaders have already done so, but the record of industry as a whole has been deplorable. It has lied to the public and to itself about the seriousness of the problem. We are just beginning to grasp the immense complexity—and danger—of environmental pollution. It is not wholly an industrial problem, but industry has a crucial role in it and could contribute enormously to its solution—if only by foreswearing its practice of emasculating pollution control legislation as it moves through Congress. Public anger over pollution is rising, and the time for effective action has come.

Third, industry should meet the rising tide of consumerism with constructive measures. Leaders in each industry should set standards of regard for the consumer and should be tough in demanding that the rest of their industry follow suit. If they don't they will be brought under increasingly savage criticism by a bilked and frustrated public.

Labor unions too have their tasks to accomplish—and the one that overshadows all others at the moment is to root out racial discrimination, to eliminate restrictive membership practices that deny the opportunity to work or to advance beyond menial work. I know all the arguments pro and con. I know the difficulties. But it must be done. For more than thirty years the unions have benefited enormously from the fact that America's conscience has been basically on their side. In many of the battles that had to be settled in the public forum, that fact was decisive. Today that advantage is leaking away very rapidly.

The possibilities of constructive change by the professions are enormous. Shaw said that every profession is a conspiracy against the public. Certainly every profession is deeply implicated in the institutional rigidities of the society.

The health professions must act at once to redesign the system of health services in this country. It is outworn, expensive and out-

rageously inefficient. Health professionals could modernize it. If they don't, pressures from outside, particularly from governmental initiatives, will increase enormously. Our best hope here is the ferment among young health professionals. They are eager to move.

Professionals in education must answer to much the same indictment. They preside all too complacently over a system that isn't working. They could change it, but often—as in the case of health professionals—they are obstacles to change rather than promoters of it. As for the colleges and universities, they have been jolted out of their complacency and are in an excellent position to accomplish the long-delayed overhaul of their institutions.

Let me say a word about private non-profit activities in general—cultural, civic, social service, religious, scientific and charitable organizations. Some of the worst known examples of organizational decay are in this category. And one of the gravest agents of decay is the sense of moral superiority that afflicts such institutions. Sad to say, people who believe that they are doing a noble thing are rarely good critics of their own efforts.

As we enter the 1970s, all such highminded organizations should re-examine their performance with unsparing honesty (not excluding the Urban Coalition). Let them ask whether they have spent too much time congratulating themselves. Let them ask what possible difference it would make if their organization went out of existence. Let them ask whether they are dabbling with a problem that calls for a massive assault. Let this be the year in which they ask toughminded outside critics to work with them in a no-holds-barred reappraisal of what they are doing.

Government agencies should not be exempted from such self-appraisal. They too are hampered in constructive change by the narcotic of self-congratulation. Somehow it is believed that one doesn't have to apply tough-minded criticism to noble and dedicated effort. Let each government agency honestly appraise the extent to which it has built an empire rather than served the public. And let it ask how much risk it has taken in fighting for good causes. The natural state of the bureaucracy is to be unbloody but bowed. It would look better with some honorable scars.

Now let's have a look at the person whom practically no one ever attacks, the person who holds the highest title a free society can award: citizen. What has he done to give one confidence in self-government? Not as much as one would like. Too many take a free ride as far as any distinctive effort to serve the common good. Too many are apathetic, self-absorbed and self-serving.

In a vital society the citizen has a role that goes far beyond duties at the ballot box. He must man the party machinery, support social and civic reform, provide adequate funds, criticize, demand, expose corruption and honor leaders who lead.

One thing the citizen can do—must do—is to reject fiercely and consistently all politicians who exploit fear and anger and hatred for their own purposes. He cannot rid himself entirely of those emotions. But he can rid himself of politicians who live by manipulating them. Such leaders will not move him toward a better future.

For example, pitting white ethnic minorities against black and brown minorities can only bring sorrow to both; and the politician who pursues that strategy should be rejected by both.

Polls have repeatedly shown that when all is said and done, most Americans do want to see our problems solved, including the problems of poverty, race and the quality of life. They do want to see justice done.

Another thing the citizen can do is to throw the weight of public opinion against those in the private sector who are unwilling to work toward the solution of our common problems. They should find out what major firms in their area are equal opportunity employers. Which firms are shirking on that front? Let those firms know that their failure is recognized. What firms are contributing most to pollution? Let them feel the weight of public disapproval.

Now let me say a word about the nature of the urban crisis. Too many Americans have come to equate the crisis in the cities with racial tensions—and they are tired of the race problem and wish it would go away.

It won't go away, but if it did, the urban crisis would remain. Discrimination, in some measure, touches most urban issues in this country. But such critically important issues as housing, manpower and income for the poor deeply involve white as well as black. Most of the poor are white. And one cannot blame racial tensions for our monumental traffic jams, for the inexorable advance of air and water pollution, for the breakdown in administration of the courts, for the shocking inefficiency and often corruption of municipal government.

It is true that when urban systems malfunction, minorities and the poor are hit first and hardest, but the problem is deeper and broader and ultimately affects us all.

Make no mistake about it, the urban problem is a deep-running crisis in the management of complexity and change.

In closing, let me remind you of an important thing to understand about any institution or social system, whether it is a nation or a city, a corporation or a federal agency: it doesn't move unless you give it a solid push. Not a mild push—a solid jolt. If the push is not administered by vigorous and purposeful leaders, it will be administered eventually by an aroused citizenry or by a crisis. Systemic inertia is characteristic of every human institution, but overwhelmingly true of this nation as a whole. Our system of checks and balances dilutes the thrust of positive action. The competition of interests inherent in our pluralism acts as a brake on concerted action. The system grinds to a halt between crises. Madison designed it in such a way that it simply won't move without vigorous leadership. I've often wondered why he didn't say so. Perhaps, having in mind his brilliant contemporaries, it just never occurred to him that the day might come when leadership would be lacking.

One final word—I said earlier that we perceive the dangers confronting us but are seized with a paralyzing passivity. I believe that passivity is curable. I believe that we can recover our power to act decisively—as individual citizens and as a nation. All it takes is money, guts and leadership.

TAKE PRIDE IN AMERICA

(Mr. MILLER of Ohio asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. MILLER of Ohio. Mr. Speaker, in 1968, the United States led the world in the production of crude petroleum with an output of 3,329,000,000 barrels—approximately one-fourth of the world total. The State of Texas alone produced more than any other country in the world except the Soviet Union and Venezuela.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows:

To Mr. PELLY (at the request of Mr. ARENDS), for December 13 to December 18, on account of urgent personal business.

To Mr. HOSMER (at the request of Mr. GERALD R. FORD), for today and the balance of the week, on account of eye surgery.

To Mr. EILBERG (at the request of Mr. ALBERT), for today, on account of illness.

To Mr. FOUNTAIN (at the request of Mr. GRAY), for today, on account of illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. MILLER of Ohio); to revise and extend their remarks and include extraneous material:)

Mr. MILLER of Ohio, for 5 minutes, today.

Mr. WILLIAMS, for 10 minutes, today.

Mr. LUKENS, for 5 minutes, today.

(The following Members (at the request of Mr. ROE); to revise and extend their remarks and include extraneous matter:)

Mr. GONZALEZ, for 10 minutes, today.

Mr. FLOOD, for 15 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. PHILBIN in five instances and to include extraneous matter.

Mr. MAHON to revise and extend remarks made in Committee of the Whole on the supplemental appropriation bill and to include extraneous matter.

Mr. COLMER to extend his remarks immediately following the last speech of the gentleman from New York (Mr. CELLER).

(The following Members (at the request of Mr. ROE) and to include extraneous matter:)

Mr. POWELL.
Mr. FISHER in three instances.
Mr. CAREY.
Mr. PATTEN.
Mr. BOLAND.
Mr. RODINO in two instances.
Mr. GONZALEZ in two instances.
Mr. BIAGGI in two instances.
Mr. HOLIFIELD.
Mr. PURCELL in two instances.
Mr. BLATNIK in two instances.
Mr. BINGHAM in three instances.
Mr. VANIK in two instances.
Mr. BYRNE of Pennsylvania.
Mr. RARICK in two instances.
Mr. HELSTOSKI in two instances.
Mr. BRADEMAS in six instances.
Mr. HAGAN in two instances.

(The following Members (at the request of Mr. MILLER of Ohio) and to include extraneous matter:)

Mr. DUNCAN.
Mr. QUILLEN in four instances.
Mr. ROUDEBUSH.
Mr. TEAGUE of California.
Mr. WYMAN in two instances.
Mr. PELLY in five instances.
Mr. REID of New York.
Mrs. HECKLER of Massachusetts.
Mr. HALPERN.
Mr. STEIGER of Wisconsin.
Mr. FISH.

Mr. MINSHALL.
Mr. BERRY in three instances.
Mr. NELSEN.
Mr. QUIE.
Mr. SCHWENGEL in three instances.
Mr. BROWN of Ohio.
Mr. STAFFORD.
Mr. ESCH.
Mr. SCHERLE.
Mr. MCDONALD of Michigan.

ADJOURNMENT

Mr. ROE. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 7 o'clock and 59 minutes p.m.), the House adjourned until tomorrow, Friday, December 12, 1969, at 12 o'clock noon.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the proper calendar, as follows:

Mr. DENT: Committee on House Administration. House Resolution 744. Resolution Providing for the printing of the proceedings in the Committee on House Administration incident to the presentation of a portrait of the Honorable Samuel N. Friedel; without amendment (Rept. No. 91-741). Ordered to be printed.

Mr. DENT: Committee on House Administration. Senate Concurrent Resolution 44. Concurrent resolution to authorize printing of manuscript entitled "Separation of Powers and the Independent Agencies: Cases and Selected Readings", as a Senate document; with an amendment (Rept. No. 91-742). Ordered to be printed.

Mr. DENT: Committee on House Administration. Senate Concurrent Resolution 46. Concurrent resolution authorizing the printing of a report entitled "Handbook for Small Business" as a Senate document; without amendment (Rept. No. 91-743). Ordered to be printed.

Mr. PERKINS: Committee on Education and Labor. H.R. 13630. A bill to extend certain expiring provisions of law relating to vocational education; without amendment (Rept. No. 91-744). Referred to the Committee of the Whole House on the State of the Union.

Mr. RIVERS: Committee on Armed Services. S. 59. An act to authorize the Secretary of the Army to adjust the legislative jurisdiction exercised by the United States over lands within the Army, National Guard Facility, Ethan Allen, and the U.S. Army Materiel Command Firing Range, Underhill, Vt. without amendment (Rept. No. 91-745). Referred to the Committee of the Whole House on the State of the Union.

Mr. RIVERS: Committee on Armed Services. H.R. 12535. A bill to authorize the Secretary of the Army to release certain restrictions on a tract of land heretofore conveyed to the State of Texas in order that such land may be used for the city of El Paso North-South Freeway; without amendment (Rept. No. 91-746). Referred to the Committee of the Whole House on the State of the Union.

Mr. MAHON: Committee on Appropriations. H.R. 15209. A bill making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes; without amendment (Rept. No. 91-747). Referred to the Committee of the Whole House on the State of the Union.

Mr. FALLON: Committee on Public Works. H.R. 15166. A bill authorizing additional appropriations for prosecution of projects in certain comprehensive river basin plans for flood control, navigation, and for other purposes; without amendment (Rept. No. 91-748. Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ANDREWS of North Dakota:

H.R. 15195. A bill to strengthen State and local governments, to provide the States with additional financial resources to improve elementary and secondary education by returning a portion of the Federal revenue to the States; to the Committee on Ways and Means.

By Mr. AYRES (for himself, Mr. PERKINS, Mrs. GREEN of Oregon, Mr. THOMPSON of New Jersey, Mr. BELL of California, Mr. DENT, Mr. REID of New York, Mr. DANIELS of New Jersey, Mr. BRADEMAS, Mr. CAREY, Mr. DELLENBACK, Mr. HAWKINS, Mr. ESCH, Mr. HATHAWAY, Mrs. MINK, Mr. SCHEUER, Mr. MEEDS, Mr. HANSEN of Idaho, Mr. MOORHEAD, Mr. FINDLEY, Mr. HAMILTON, Mr. YATES, Mr. PODELL, Mr. REES, and Mr. SYMINGTON):

H.R. 15196. A bill to amend the National Foundation on the Arts and the Humanities Act of 1965, as amended; to the Committee on Education and Labor.

By Mr. AYRES (for himself, Mr. PERKINS, Mr. DADDARIO, Mr. PREYER of North Carolina, Mr. BROOMFIELD, Mr. PUCINSKI, and Mr. MIKVA):

H.R. 15197. A bill to amend the National Foundation on the Arts and the Humanities Act of 1965, as amended; to the Committee on Education and Labor.

By Mr. BOGGS:

H.R. 15198. A bill relating to the income tax treatment of certain sales of real property by a corporation; to the Committee on Ways and Means.

By Mr. COHELAN (for himself and Mr. SANDMAN):

H.R. 15199. A bill to provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs; to the Committee on Public Works.

By Mr. DAVIS of Georgia:

H.R. 15200. A bill to end discrimination in the availability of Federal crop insurance and to authorize the appropriation of additional funds for the administration of the Federal crop insurance program; to the Committee on Agriculture.

By Mr. DELLENBACK:

H.R. 15201. A bill to amend section 1482 of title 10 of the United States Code to provide for the payment of certain expenses incident to the death of members of the Armed Forces in which no remains are recovered; to the Committee on Armed Services.

By Mr. DOWNING:

H.R. 15202. A bill to amend title XVIII of the Social Security Act to provide payment for chiropractors' services under the program of supplementary medical insurance benefits for the aged; to the Committee on Ways and Means.

By Mr. FOLEY:

H.R. 15203. A bill to protect interstate and foreign commerce by prohibiting the movement in such commerce of horses which are "sored," and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. KYROS:

H.R. 15204. A bill to provide for the orderly marketing of articles imported into the United States, to establish a flexible basis for the adjustment by the U.S. economy to expanded trade, and to afford foreign supplying nations a fair share of the growth or change in the U.S. market; to the Committee on Ways and Means.

By Mr. LEGGETT (for himself, Mr. JOHNSON of California, and Mr. Moss):

H.R. 15205. A bill to designate the navigation lock on the Sacramento Deepwater ship channel in the State of California as the William G. Stone navigation lock; to the Committee on Public Works.

By Mr. McFALL:

H.R. 15206. A bill to authorize and foster joint rates for international transportation of property, to facilitate the transportation of such propery, and for other purposes; all to the end of developing, coordinating, and preserving all modes of transportation subject to the provisions of this Act, as well as developing and preserving port and airport gateways of the United States, necessary to meet the needs of the commerce of the United States, and of the national defense; to the Committee on Interstate and Foreign Commerce.

By Mr. ROBERTS:

H.R. 15207. A bill to provide for a modification of the project for Denison Dam (Lake Texoma), Red River, Tex. and Okla., authorized by the Flood Control Act of 1938, and for other purposes; to the Committee on Public Works.

By Mr. TEAGUE of California:

H.R. 15208. A bill to provide for the payment of reasonable costs, expenses, and attorneys' fees to defendants in actions by the United States for the condemnation of real property after determination of the amount of just compensation, or after abandonment of such actions by the United States, and for other purposes; to the Committee on the Judiciary.

By Mr. MAHON:

H.R. 15209. A bill making supplemental appropriations for the fiscal year ending June 30, 1970, and for other purposes.

By Mr. DENT:

H.R. 15210. A bill to amend title 18 of the United States Code by adding a new chapter 404 to establish an Institute for Continuing Studies of Juvenile Justice; to the Committee on the Judiciary.

By Mr. FALLON:

H.R. 15211. A bill to amend the Federal Food, Drug, and Cosmetic Act to include a definition of food supplements, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. JACOBS:

H.R. 15212. A bill to provide comprehensive preschool education programs in the Department of Health, Education, and Welfare; to the Committee on Education and Labor.

By Mr. MONAGAN:

H.R. 15213. A bill to encourage the growth of international trade on a fair and equitable basis; to the Committee on Ways and Means.

By Mr. QUIE:

H.R. 15214. A bill to amend the National Foundation on the Arts and the Humanities Act of 1965, as amended; to the Committee on Education and Labor.

By Mr. RANDALL:

H.R. 15215. A bill to make the armed robbery of gasoline stations a Federal offense; to the Committee on the Judiciary.

By Mr. RIVERS:

H.R. 15216. A bill to authorize the Secretary of Defense to lend certain Army, Navy, and Air Force equipment and to provide transportation and other services to the Boy Scouts of America in connection with World Jamboree of Boy Scouts to be held in Japan in 1971, and for other purposes; to the Committee on Armed Services.

By Mr. RUTH:

H.R. 15217. A bill to encourage the growth of international trade on a fair and equitable basis; to the Committee on Ways and Means.

By Mr. BIAGGI:

H. Res. 746. Resolution to create a special

Committee on Film Classification; to the Committee on Rules.

By Mr. DEVINE:

H. Res. 747. Resolution amending the rules of the House to prohibit a single appropriation bill from carrying appropriations for more than one executive department; to the Committee on Rules.

H. Res. 748. Resolution to amend rule XXI of the Rules of the House of Representatives to require the yeas and nays in the case of final action by the House of Representatives on general appropriation bills; to the Committee on Rules.

By Mr. PERKINS (for himself and Mr. BRADEMAS):

H. Res. 749. Resolution authorizing travel for certain members of the committee on Education and Labor; to the Committee on Rules.

By Mr. RIVERS:

H. Res. 750. Resolution to provide for the further expenses of the investigation and study authorized by House Resolution 105; to the Committee on House Administration.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. CHAMBERLAIN:

H.R. 15218. A bill for the relief of Dr. Turan Argun; to the Committee on the Judiciary.

By Mr. COLLIER:

H.R. 15219. A bill for the relief of Maj. Michael M. Mills, U.S. Air Force; to the Committee on the Judiciary.

By Mr. CORMAN:

H.R. 15220. A bill for the relief of Mrs. In-Soon Lee Castronova; to the Committee on the Judiciary.

By Mr. FISHER:

H.R. 15221. A bill for the relief of Maria Gagliardi Paladino; to the Committee on the Judiciary.

By Mr. McKNEALLY:

H.R. 15222. A bill for the relief of Thomas R. Keefe; to the Committee on the Judiciary.

EXTENSIONS OF REMARKS

MEDICAL RESEARCH AND THE ATOMIC ENERGY COMMISSION

HON. CHET HOLIFIELD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 11, 1969

Mr. HOLIFIELD. Mr. Speaker, on several occasions in the recent past there have been statements in the record by members of the Joint Committee on Atomic Energy concerning new clinical treatments with L-dopa for several neurological diseases. The Honorable CRAIG HOSMER of California pointed to the outstanding medical efforts being supported by the Atomic Energy Commission and particularly to the work of Dr. George C. Cotzias and his colleagues at Brookhaven National Laboratory with L-dopa. Senator CLINTON ANDERSON made two statements, one concerning the use of L-dopa for Parkinson's disease and the other concerning L-dopa and dystonia musculorum deformaris, a neurological disease which affects young people.

Recently Dr. Cotzias was awarded the Albert Lasker Award for his brilliant clinical work with L-dopa. Since the Joint Committee has for a long time been interested in the team efforts at the Brookhaven National Laboratory, I wrote to Dr. Cotzias and congratulated him on behalf of myself and the other members of the Joint Committee. I received a reply from this great, but humble man. This is a real man and a real scientist and a real doctor who puts his faith in the data he records. His great efforts resulted in a true reward for all mankind. He did not sit in his laboratory scanning data others had collected, shaking his head over past failures and then doing nothing. He decided something needed to be done, and did it.

L-Dopa is a newly developed drug which has been developed and used in many clinical cases. It has given miraculous relief to persons suffering from Parkinsons disease.

Dr. Cotzias is not like the pseudoscientists and nonscientists—or to use a descriptive terminology from Orwell's book "1984"—the "unscientists" who run all over the country making strident, sensational charges about the dire results that will befall mankind because of nuclear power reactors and the Plowshare programs. It would certainly be helpful and eliminate the arousing of unnecessary fears if the unlearned would try to establish facts by performing research instead of regurgitating computer runs made on a third party's data.

I would like to place Dr. Cotzia's letter in the RECORD to indicate other areas of Atomic Energy Commission sponsored medical research from which we can expect significant benefits for all mankind. The letter follows:

BROOKHAVEN NATIONAL LABORATORY,
ASSOCIATED UNIVERSITIES, INC.
Upton, L.I., N.Y., November 24, 1969.

Hon. CHET HOLIFIELD,
Chairman, Joint Committee on Atomic Energy, Congress of the United States, Washing, D.C.

DEAR REPRESENTATIVE HOLIFIELD: My colleagues and I are deeply touched by the warm accolade in your letter of November 17. We thank both you and the members of your Committee.

The results to which you refer constitute the fruition of team work that was continued over many years. Sustaining such labor outside the complex climate provided at Brookhaven by the AEC, would have been impossible.

The main lesson from this is the following: if one wants progress with debilitating diseases, one must couple long-term, in-patient investigations with highly sophisticated laboratory research on animals, their tissues, their cells and even fragments of their cells. Such tedious and frustrating enterprise is never immediately rewarding. If the Brookhaven environment can flourish we cannot help but remain productive. The work that led to tritiated thymidine; studies of the genetic control of hypertension; of extracorporeal irradiation; of the remarkable progress toward a cure of hoof and mouth disease; of the synthesis of the first human protein (insulin), were bought at bargain prices by a small group of incredibly dedicated people here at the Medical Department at Brookhaven.

We are of course elated that our results have been confirmed and that from this thousands of patients have derived, or will derive, benefit and hope. We do not intend, however, to rest on these perishable laurels. As scientists, we accept this success as a mandate to pursue novel investigations in animals and man *with increased urgency.*

Our collective experimence and sophistication combined with, hopefully, increased financial support should further increase our effectiveness. Presently, for instance, we appear to have hit on even more fundamental processes which we are elucidating in animals before we apply them to the therapy of man. Given credits of time and money, we believe that other diseases of the brain will be ameliorated at Brookhaven. I hope you will agree that at this juncture, besides misleading you, false modesty or humility would be inexcusable.

Again, many cordial thanks for your generous letter.

Very sincerely yours,

GEORGE C. COTZIAS, M.D.

SANDS POINT NAVAL TRAINING DEVICES CENTER

HON. LESTER L. WOLFF

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 11, 1969

Mr. WOLFF. Mr. Speaker, as you know, many local communities are faced with overcrowded schools—the result of growing populations coupled with the all too frequent problem of lack of available land on which to build schools.

In Port Washington, which is part of the Third Congressional District, which I am proud to represent in Congress, this problem has developed. Recently, however, the General Services Administration announced that a 161-acre tract of Federal property, the former site of the Sands Point Training Devices Center will be available to bidders with the greatest need.

I am concerned with the fact that Port Washington's school system's needs are both immediate and acute.

Recently, Mr. Speaker, I received a unanimous resolution that had been passed by the residents of the affected area regarding this issue. Since I firmly feel that the Federal Government has a responsibility to meet the needs of local communities, especially in the important area of education, I would like to take this opportunity to include this resolution in the RECORD:

Whereas the Port Washington Board of Education last month released a comprehensive public school building program geared to meet the needs of an expanding school population for the next ten years; and

Whereas the key to this plan is the acquisition of 50 acres of free land from the Federal Government, part of the former site of the Sands Point Naval Training Devices Center, declared surplus by the General Services Administration last week; and

Whereas two additional parties, Nassau County and the Sands Point Country Day School, have made known their interest in the entire 161 acre tract, to the exclusion of the requirements of the Port Washington School District; and

Whereas the Port Washington School District is the only applicant combining both public and educational use, and requires only