SPECIAL REPORT FROM
STUDENT NONVIOLENT COORDINATING COMMITTEE
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THE PRESIDENT'S 1965 VOTING BILL

This is an analysis of the voting bill which President Johnson intorduced into the House of Representatives last week. The bill is now before the Judiciary Committee of the House. There is little doubt that the Committee will change parts of the bill. And there is little doubt that, after the Committee reports the bill out to the House, there will be changes made during the debate. Too, whatever the bill looks like when it comes out of the House, it could be changed a great deal in the Senate, which it will go to next.

What we intend to do is provide an analysis f the bill at each of these critical stages: (1) as it was introduced into the House; (2) as it comes out of the House Judiciary Committee; (3) as it comes out of the House itself; (4) as it comes out of whatever Committee (if any) handles it in the Senate; (5) as it finally comes out of the Senate and is signed by the President.

We think this kind of stage-by-stage analysis will provide an indication of what we can expect when the bill finally becomes law.

AREAS AFFECTED BY THE BILL

Section 3A specifies that the terms of the bill will affect "any state, or any political subdivision of a state" in which any "test or device" was required for registration on November 1, 1964. This section also specifies that, to come under the bill, any state or political subdivision of a state must have had less than 50% of its persons of voting age (of all races) vote in the November 1964 election for President, or it must have had less than 50% of its persons of voting age (of all races) registered to vote on November 1, 1964.

Section 3B defines the phrase "test or device" as follows: any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter; (2) demonstrate any educational achievement or his knowledge of any particular subject; (3) possess good moral character; (4) prove his qualifications by voucher of registered voters or members of any other class.

Thus, the bill would prohibit the use of any of those measures defined as a test or device, in any state, county, or, presumably, any city which had registration separate from that of county or state, in which a requirement coming under the definition of test or device, was in effect on November 1, 1964, and in which less than 50% of those of voting age actually voted in the presidential election of 1964, or in which less than 50% of those of voting age were registered to vote on November 1, 1964.

It should be noted here that the bill does not specify that an area must meet <u>both</u> of these quota requirements. It specifies that an area must meet only <u>one</u> of them. It is very clear that, without a census of registered voters conducted by the U.S. Bureau of the Census, the requirement

of having less than 50% registration would be impossible to enforce. The Civil Rights Act of 1964 required that a census of registered voters be taken by the Bureau of the Census, but it has never done so. It cannot do so without an appropriation of funds which must be okayed, first of all, by the House Appropriations Committee. The subcommittee of that Committee which would first have to okay such an a-propriation is composed of a group of conservatives who seem quite unlikely to cooprate with a serious attempt to enfranchise Negroes in the South.

The President, of course, could find funds for the census, if he cared to do so, but this would mean that he would have to break with some very powerful congressmen, and he has thus far showed no inclination to do so. Thus we can expect that the requirement of less than 50% of voting age population registered will never be put into effect.

This would not necessarily mear that the prohibition of tests would not go into effect, because the other requirement could be used. The other one, based on the actual number of people who voted last November, looks pretty safe. However, we can see one possibility of getting around it. The election referred to in the bill is that of 1964. The only census figures available are those from 1960. There have considerable changes in the population of some counties during that four-year period. If a particular county wanted to challenge this part of the bill, they might go into federal court and argue that this part of the bill could not be put into effect without a new census, because the county had lost population between 1960 and 1964 and, thus, if the number of people who voted in 1964 is compared to the 1964 population rather than to the 1960 population, it might be found that more than 50% of the 1964 population voted last November.

We are not saying that this would happen, but we do think it is a possibility because the bill does not specify whether the 50% is to be computed on the basis of the 1960 or the 1964 population. We should suppose that the Bureau of the Census could estimate, statistically, what the 1964 population of any state, county, or city is, but we're not sure that even this would prevent a long and drawn-out lawsuit.

In addition to those states, counties and cities which come under the requirements listed above, Section 4A also authorizes the U.S. Attorney General to certify that, in his judgement, the appointment of federal registrars is necessary anywhere, in order to enforce the guarantees of the 15th amendment.

Who Decides the Areas that are Affected

Section 3A says that the Attorney General of the U.S. must determine that the test or device was a requirement in a state, county, or city on November 1, 1964. This may seem automatic, and not worth commenting on. But it is important because the prohibitions of testing in the bill cannot go into effect unless and until the Attorney General makes this determination, and causes the determination to be published in the Federal Register (a publication of the U.S. Government in which orders and decrees of the President are published officially). In the event that the Attorney General choses not to make such determinations or to dlay making them, the prohibitions of the bill would not go into effect. Thus, one part of the requirement for bringing an area under the bill is solely dependent upon the Attorney General's making and publishing these determinations. The bill does not say that the Attorney General must do this, it only says that he

does it. Thus, if he doesn't want to do it, or if the President doesn't want him to do it, it probably would not get done. This is important because it appears that within a year or so, Katzenbach is going to resign from the office and that Ramsey Clark, one of the President's Texas friends, will be appointed Attorney General. It could bery well be a year or more before the bill is actually ready to be implemented. In fa ct, if the experience with the Civil Rights Act of 1964 is anything to judge by, it will be that long or longer.

The other requirement, the quota, is according to the bill, determined by the Director of the Census. The same thing applies to him as we mentioned above about the Attorney General. The Director of the Census could very well decide, himself, that he couldn't find out whether or not 50% of the voting age population of 1964 voted in the November 1964 ele ction, without taking a new census. Also, the bill does not say that the Director of the Census must makes these determinations, it only says that he does so. The Director of the Census is appointed by the President, and he doubtless would do whatever the President wanted him to do about it. We doubt that the registration requirement would ever be effective because we doubt that the Census Bureau would ever be able to determine how many Negroes and how many whites are registered, short of interviewing every person listed by the county registrar as being registered. We doubt this will be done, be cause it would expose entirely too much about the registration of voters -- the "tombstone vote", for example -- and because we doubt that the Bureau of the Census could ever get the appropiation for doing so.

What Happens in Affected Areas, once they are Determined?

Section 4A says that after the Attorney General and the Director of the Census cause the above determinations to be published in the Federal Register, the Civil Service Commission of the U.S. "shall appoint as many examiners (registrars) in such subdivisions (city, or county) as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and Local elections". But this section further specifies that the Civil Service Commission cannot make these appointments until the Attorney General certifies and publishes in the Federal Register "that he has received complaints in writing from 20 or more residents of a political subdivision with respect to which determinations have been made under Section 3 alleging that they have been denied the right to vote un der color of law by reason of race or color, and that he believes such complaints to be meritorious".

Thus, once the Attorney General and the Director of the Census have determined the areas affected by the bill, and have had these determinations published in the Federal Register, then 20 persons in each city or county must file complaints with the Attorney General stating that they have been denied the right to vote, "under color of law, by reason of race or color." This appears to mean that 20 persons must file a complaint that that they have been discriminated against by the local registrar, either through the application of a test, or in any other way. Then, the Attorney General would apparently have to investigate the complaints to see whether or not they are, as the bill says, " meritorious." Once this investigation had been completed, then, supposedly, the Attorney General would be in a position to certify the complaints, publish them in the Federal Register, and enable the Civil Service Commission to appoint federal registrars. The bill does not specify who will make the investigation upon which the Attorney General will determine whether or not the complaints are meritorious. The FBI has performed similar services

services for the Attorney General in the past, and would probably conduct these investigations.

It is by no means certain just what "under color of law" means, and the persons filing the complaints will require legal advice, not provided for in the bill, as to whether or not their complaints qualify in this respect. If they do not qualify, of course, the Attorney General could disregard them without even ordering an investigation to determine whether the complaints are "meritorious".

Once all these preliminary steps have been gone through, the Civil Service Commission may appoint the federal registrars for the city or county. Then persons who want to register under Section 5A must file an application with the Federal registrar. This application will be in a form yet to be devised by the C ivil Service Commission. It "shall contain allegation that the applicant is not otherwise registered to vote, and that, within 90 days preceding his application, he has been denied under color of law the opportunity to register or to vote, or has been found not qualified to vote by a person acting under color of law." This last allegation can be dispensed with by the Attorney General if he choses to do so. Here again, "under color of law" occurs and will have to be dealt with by expert legal advice to the person filing the application. Also, no one can file such an application without first having tried to register with the local registrar, and having been turned down. In other words, anyone not presently registered will have to try to register, and then he will have to wait until the local registrar informs him whether or not he has been registered before he can file application with the fe deral registrar. If the local registrar can delay notifying him past the 90 days specified in the bill, then he, apparently, would have to try again with the local registrar before he could make application to the federal registrar. Here is one place in which the tactics which have been used in the past by local registrars could be used again to nullify the whole federal registrar provisions. Furthermore, there are a great many persons in Mississippi who have tried to register with the local registrar and who have never been notified whether or not they are registered. If they file an application with the fe deral registrar, and' then the local registrar says they were registered all along, they could be prosecuted for perjury. Certainly the threat of this could be used to deter persons from applying to the Federal Registrar.

The bill does not specify what qualifications for registration will be imposed by the Federal Registrars. It states, in Section 5B that "any person whom the examiner (registrar) finds to have the qualifications prescribed by state law in accordance with instructions" prepared by the Civil Service Commission "shall promptly be placed on a list of eligible voters." The Civil Service Commission has not, of course, prepared these instructions yet, so it is impossible really to evaluate the adequacy of this whoe set of the bill's provisions. It appears, though it is not certain, that the federal registrars could not impose a literacy test. B ut the provision quoted above, "qualifications prescribed by state law", is, to say the least, disturbing. If the provisions as they are ultimately prepared by the Civil Service Commission were for any reason unsatisfactory, it would be extremely difficult, if not impossible, to get them altered. These provisions, though te chnically prepared by the Civil Service Commission, would obviously contain whatever the President wanted them to contain.

The areas ultimately brought under the terms of the bill, if any, remain under those terms until, according to Section 10, "the Attorney General notifies the

the Civil Service Commission that all persons listed by the examiner (federal registrar) have been placed on the appropiate voting registration roll, and (2) that there is no longer any reasonable cause to believe that persons will be deprived or denied the right to vote on account of race or color in such subdivision." Thus, apparently, the Attorney General could not remove the restrictions of the bill from any city or county until all persons whose applications have been accepted by the federal registrar, and who have been determined to be qualified under state law to vote have actually been put on the voting rolls of the city or county. Of course, the moment this has been accomplished, the Attorney General could determine that no further threat of disfranchisement exists and he could relieve the city or coutny or responsibility under the bill. This authority of the Attorney General, coupled with the deficiencies of the whole federal registrar provisions may make the bill of doubtful permanent value.

Section 3C provides that a city or county which has been brought under the terms of the bill by the Attorney General may seek a judgment in a three-judge court in the District of Columbia, stating that no person has been denied the right to vote in that city or county within the past ten years. If the three-judge court rules in favor of the City or County, then the terms of the bill would not apply. This section also provides that such a judgment cannot be had by any city or county which, by the final action of any court of the U.S. has been found guilty of disfranchising Negroes, until at least 10 years after the date of that judgment. This writer cannot say just what a "final action" of the courts is, but a competent lawyer could probably give a pretty good idea. In any case, this provision does not apparently supercede Section 10, which leaves in the hands of the Attorney General how long the terms of the bill will be in effect in a given city or county.

ENFORCEMENT OF THE BILL

Section 9 of the bill provides that depriving or attmpting to deprive anyone of the rights secured by Sections 2 or three, or violation of Section 7 (which refers to the actual voting of persons registered by federal registrars) is a federal crime pumishable by 5 years imprisonment, $5,000 fine, or both. Since Section 2 is a very general prohibition against racial disfranchisement, the criminal jprovisions of the bill probably would not have much effect with respect to it.

Section 3 contains the prohibition against "tests or devices", as defined in the bill, in the quota areas. This would seem to mean that a registrar who attempted to give an applicant a literacy test after his county had been determined to fall under the provisions of the bill, would be committing this crime.

If this is true, and if the Attorney General would prosecute such persons, this would be one of the strongest sections of the bill. However, we know that the federal government has long had authority, though not as specific as this, to invoke criminal prosecution against such persons, and that it has been very reluctant to do so. Furtermore, if, as in the Schwerner-Chaney-Goodman case, the federal courts will not entertain prosecutions for depriving persons of life, it hardly seems likely that the criminal provisions of this act would be

an effedtive deterrent against depriving persons of the right to vote.. However, a great deal would depend upon the determination with which the Attorney General and the Justice Department pursued such prosecutions.

On the other hand, Section 9D authorizes the Attorney General to seek injunctions against persons who violate the provisions of the bill. This has been the course almost universally followed by the federal-government heretofore and there is little reason to suppose they would begin criminal prosecutions when they have this "out" of seeking civil injunctions. And we know how ineffective the injunctive process has been. Never has a registrar, or any other official in the South, been punished as a result of an injunction secured by the Justice Department, although some have actually been found in contempt of such injunctions (for example, Theron Lynd, Forrest County, Miss., registrar.)

A great deal more could be said about the pitfalls of this bill, but we think the principal ones have been covered here. We urge all staff members to read the bill carefully, to discuss it, to compare it with this analysis, and to look for other inadequacies of the bill, and of this analysis.

We have little reason to think that the Preisdent is really determined to secure the right to vote for Negroes in the South, other than his own words, and it ill behooves us to permit him to give the American people and Southern Negroes yet another snow-job.

On the other hand, there is the theoretical possibility that the President, for whatever reasons, does want to enfranchise Southern Negroes. If this is actually as well as theoretically true, it seems very clear that he'll never be able to do it until he consults with those who know what is needed--Southern Negroes.

If he had done this before drafting his voting rights bill, it would doubtless have been quite different.