SELECTED PROVISIONS OF THE 1965 VOTING RIGHTS ACT

The voting rights act, as with all legislation, is involved, detailed, and complex. We have tried here to select those provisions of the Act with which the staff will be most concerned.

It is important to establish in front that the Act does two things. First, it provides for the suspension of the use of literacy tests, vouchers, good moral character requirements and understanding tests. Second, it authorizes either the U.S. District Courts, or the U.S. Attorney General to cause federal registrars to be appointed.

When we say that literacy tests are suspended, there is the implication that something will happen, or can happen, or can be made to happen to a person who requires of somebody wanting to register, that they be able to read and write. The fact is that the Act does more than suspend literacy tests and the other devices mentioned above--it outlaws them. Section 12 (a) of the Act reads: "Whoever shall deprive or attempt to deprive any person of any right secured by section 2,3,4,5,7,or 10 ... shall be fined not more than $5,000, or imprisoned not more than five years, or both." Section 4 (a) of the Act secures the right of every person in Mississippi, Alabama, Georgia, Louisiana, South Carolina and Viriginia, to be registered to vote without having to take a literacy test, an understanding test, be vouched for, or prove his good moral character. Therefore, if any registrar in any of those states tries to make a person who wants to register do any of those four things, that registrar has committed a federal crime punishable by five years in prison and/or $5,000 fine. If this should happen to anyone in any of these states who is trying to register, that person should go immediately to the nearest U.S. Attorney's office and file an affidavit with the U.S. Attorney, setting forth the circumstances under which the crime was committed. Under the law, it then becomes the responsibility of the U.S. Attorney with whom the affidavit was filed to arrest the registrar who tried to impose the outlawed requirement, charge him with the crime, and prosecute him as a criminal in the U.S. District Court.

Of course, a registrar who has committed such a crime is guaranteed the right to a trial by jury. In the South this has usually

meant that conviction of such an official would be impossible because Negroes have always been kept off federal juries. The U.S. Justice Department uses this as an excuse for not prosecuting those guilty of civil rights crimes in the South. The U.S. Justice Department says that there is no chance of a conviction of such a criminal, so why bother to try him ?

But the fact is that there is a federal law which makes it a crime to exclude Negroes from federal juries. This law has never been enforced by the Justice Department. In other words, the U.S. Justice Department uses its own delinquency as an excuse for not enforcing the civil rights laws--for not prosecuting those guilty of civil rights crimes.

Thus, if the provisions of the Voting Rights Act of 1965 are to be enforced, Southern Negroes will have to find a way to do two things. First, they will have to try to register. If they are not permitted to register because of the requirement of literacy tests, vouchers, proofs of good moral character, or understanding tests, they will have to prefer charges against the registrar who imposed these requirements. When the U.S. Attorney, or the U.S. Justice Department in Washington says that there is no use trying the guilty registrar because a southern jury would not convict him, then, second, Southern Negroes will have to demand that the law which forbids keeping Negroes off juries be enforced.

This will have to be done if Southern vote registrars continue to impose literacy tests and the other devices mentioned above, as a requirement for registering to vote.

And it should be noted that the Act defines a literacy test as the requirement that a person "demonstrate the ability to read, write, understand or interpret any matter." This means that a registrar cannot even require persons to fill out an application form for themselves, because if he requires this, he is requiring that the "demonstrate the ability to write." The registrar must, under the terms of the Act, either fill out the form himself for those who cannot write, or he must permit someone else to fill it out for them. If they cannot sign their names, he must let them put an X on the application form, and he must, or he must permit someone else to, write their name in above the X, and then witness the X as a signature.

It appears that it may be more effective for people to demand that local registrars conform to the terms of the Act--and demand of the U.S. Justice Department that they be prosecuted, fine and imprisoned if they don't conform to it--than to demand federal registrars. The reason this appears to be so is that the Act is very clear and specific in stating what people's rights are under the Act and just as clear and specific in stating that it is crime for anyone to deprive people of their rights under the Act. On the other hand, The Act provides the Attorney General with many excuses for not appointing federal registrars. He has no excuse, either under the Voting Rights Act, or any other federal law, for not prosecuting local registrars if they do not do what the Act says they must do.

Following are the more detailed discussions of the specific terms of the Act which refer to the outlawing of tests and devices and the appointment of federal examiners.

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Section 3(a) of the Act provides that:

> "Whenever the Attorney General institutes a proceeding under any statute to enforce the guarantees of the fifteenth amendment / 15th Amendment reads: 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 any State or political subdivision / county / the court shall authorize the appointment of Federal examiners by the United States Civil Service Commission in accordance with Section 6 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the guarantees of the fifteenth amendment (1) as part of any interlocutory order / a court order which can be appealed to a higher court--one that is not final / if the court determines that the appointment of such examiners is necessary to enforce such guarantees or (2) as part of any final judgment if the court finds that violations of the fifteenth amendment justifying equitable relief have occurred in such State or subdivision: Provided, That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future."

Section 6, referred to in the above quote, provides:

> "Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of Section 3 (a)...the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in the Federal, State and local elections."

Thus, the first way in which the Act provides for the appointment of federal registrars (they're called federal examiners in the Act) is through the filing of a suit by the Attorney General alleging that voting rights have been denied in violation of one of the civil rights acts (1957, 1960, 1964, or 1965).

When such a fuit is filed, whether or not, apparently, the Attorney General's complaint requests examiners, the Act requires that the U.S. District Judge in whose court the suit is filed decide the following questions: (1) Have denials or abridgements of the right to vote on account of race or color, in the county with respect to which the suit is filed, been few in number and promptly and effectively corrected by State or local action ? (2) Has the continuing effect of such incidents been eliminated ? and (3) Is there reasonable probability of the recurrence of such incidents in the future ?

The U.S. District Judge, then, is provided by the Act with broad discretion in determining whether or not to assign federal registrars. Decisions of the Judges, with respect to the three questions listed above, must be more or less discretionary, considering the ambiguous language of the Act: By what standard would a Judge Cox, or Clayton, or Elliot, decide how many incidents are more than a few ? By what standard would one of these Judges decide whether corrective action has been "prompt" and"effective" ? By what standard would such a judge decide the "reasonable probability" of recurrent incidents ?

Since the Act provides no standard, the standard the judge uses would be the judge's own.

The District Judge's decision on the appointment of registrars could, presumably, be appealed to the Circuit Court of Appeals and to the U.S. Supreme Court, if the Judge refused to authorize appointment of the registrars. However, whether or not such appeals are made, and the vigor with which they are made would be almost entirely up to the Attorney General and the President. Furthermore, such appeals are so time-consuming that the District Judge, in many cases, could effectively bar the appointment of registrars at a crucial time, even though he might feel certain he would be reversed eventually by the higher courts.

In the light of the past performances of many Southern Federal Judges, this discretionary power of the District Judge should be considered a very real problem with respect to securing the appointment of federal registrars through the filing of suits by the Attorney General. This should be kept in mind if, at any time inthe future, the Attorney General should propose that, instead of using his own authority under the act to have registrars appointed, the same purpose can be achieved through the filing of voting rights suits.

The authority of the Attorney General himself to cause registrars to be appointed is a complex procedure. First the Attorney General must cause the use of tests and devices in specific States and counties to be suspended and outlawed. Then, and only then, can he cause the appointment of registrars. We shall deal first with the sections of the Act authorizing suspension and outlawing of the tests, and then with the sections authorizing the Attorney General to cause the appointment of federal registrars.

Section 4(a) of the Act provides:

> "To assure that the right of citizens of the United States to vote is not denied or abridged on acdount of race or color, 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 any State with respect to which the determinations have been made under subsection (b) or in any political subdivision with respect to which such determinations have been made..."

Therefore, the use of a test or device is prohibited in any state or county with respect to which the Attorney General has implemented Section 4 (b) of the Act.

Section 4 (b) reads:

> "The provisions of subsection (a) / suspension of the use of tests and devices/ shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 percentum of such persons voted in the presidential election of November, 1964."

The terms "test or device" as used in the Act are defined in Section 4 (c) 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, or (4) prove his qualifications by the voucher of registered voters or members of any other class."

Thus the combined effect of Section 4 (a), (b) and (c), is that the use of literacy tests, understanding tests, voucher systems or moral character requirements is prohibited in any state, or any county of any state, which the Attorney General determines was using such devices as a requirement for registration on November 1, 1964 and in which the Director of the Census determines either that fewer than 50% of the voting age residents were registered, or that fewer than 50% of the voting age residents voted in the November, 1964 election.

According to the Act, these determinations as made by the Attorney General and by the Director of the Census are final when they are published in the Federal Register (the official publication of the U.S. Government) and the determinations cannot be appealed to any court.

The Act places two conditions on the Attorney General's authority to make these determinations. One of the conditions involves the Attorney General's own discretion; the other is imposed by the U.S. District Court of the District of Columbia. The first is contained in Section 4 (d) of the Act: "No state or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future."

The Attorney General thus has been directed by Congress to use his discretion (in much the same manner as the U.S. District Judges, described above in Section 3) in determining whether the number of incidents in a given state or county qualifies as "few" or many; whether the "continuing effect of such incidents has been eliminated"; and whether there is "reasonable probability" of future recurrences.

If a given state or county meets these qualifications, in the judgment of the Attorney General, he is not to make the determinations which would suspend use of the tests and devices. In other words, the Attorney General is given a convenient "out" which he can use to avoid causing the suspension of use of tests and devices in a state or county where politics may dictate the inadvisibility of such suspension.

The second limitation on the Attorney General's authority to cause the suspension of the use of tests and devices is contained in Section 4(a) of the Act. It is provided that any state or county which uses tests may appear in the U.S. District Court of the District of Columbia and present evidence that, in the past five years, "no such test or device has been used...for the purpose or with the effect of denying or abridging the right to vote on account of race or color."

The state or county, in appearing before the court, asks the court to delcare that the tests have not been used to discriminate, and presents evidence to support its case. Then, according to the Act, "If the Attorney General determines that he has no reason to believe that any such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment,"

Presumably, if the Attorney General chooses, he may go into court and present evidence that the tests have been used to discriminate and the court must decide whether or not the use of the tests should be suspended. If the court decides the tests should be suspended, it does not issue the judgment.

There is one barrier to the use of this procedure by a state or county to avoid suspension of the use of tests for registering. Section 4 (a) of the Act provides "That no such declaratory judgment shall issue with respect to any plaintiff /state or county/ for a period of five years after the entry of a final judgment of any court of the United States...whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff."

In other words, no state or county may avoid suspension of the use of tests under this procedure within five years of the time any U.S. court issued a finding that tests were being used to discriminate on account of race or color. This applies to such court findings that come after the passage of the Act, as well as to those which were issued before the Act was passed.

On August 7, 1965, the Attorney General caused to be published in the Federal Register his determination that "one or more tests or devices as defined in section 4 (c) of the Act" was being maintained on November 1, 1964, in 21 states. The Southern states named by the Attorney General were: Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Virginia.

On the same date the Director of the Census cause to be published in the Federal Register his determination that less than 50% of the persons of voting age residing in the states of Alabama, Georgia, Louisiana, Mississippi, South Carolina and Virginia voted in the presidential election in 1964. The Director of the Census caused to be published his further determination that fewer than 50% of the persons of voting age residing in the following counties of North Carolina voted in the presidential election of 1964: Anson, Bertie, Caswell, Chowan, Craven, Cumberland, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Hertford, Hoke, Lenoir, Nash, Northampton, Onslow, Pasquotank, Person, Pitt, Robeson, Scotland, Vance, Wayne and Wilson.

Sedtion 12 (a) of the Act provides that: "Whover shall deprive or attempt to deprive any person of any right secured by sections 2,3,4,5,7, or 10....shall be fined not more than $5,000 or imprisoned not more than five years, or both."

Under the terms of the Act, then, in the states and counties listed above, as of August 7 1965, it became a federal crime

for anyone to deprive any prospective registrant of his right to register without being required to take a literacy test, have someone vouch for him, prove good moral character, or prove his understanding of any matter.

If, in any of the states or counties listed, anyone, registrar or otherwise, tries to, or does, impose such a requirement on any prospective registrant, he should be reported to the United States Attorney for the District (not the FBI), or to the Civil Rights Division of the Justice Department in Washington, and the person upon whom this criminal requirement was imposed should demand prosecution of the guilty party just as would be the case if he had robbed a bank.

Now, to the authority of the Attorney General to have federal registrars appointed.

Section 6 (b) of the Act reads:

> "Whenever...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, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State and local elections."

The Attorney General, then, is authorized by the Act to cause the appointment of federal registrars either upon the basis of complaints of persons in the States and counties listed above (and such other states and counties with respect to which he may publish determinations) or upon his own judgment that federal registrars are needed "to enforce the guarantees of the fifteenth amendment."

It is important to note that the provision for appointment of registrars on the complaints of twenty persons is not mandatory for the Attorney General. The words "and that he believes such complaints to be meritorious" could be very important here, because they vest discretion in the Attorney General. The twenty people must make the complaints, and then the Attorney General must determine whether or not the complaints are meritorious. This could mean a long drawn-out investigative process by the Attorney General and the FBI to determine the merit of the complaints.

Another catch in this section is the provision that the Attorney General is directed to consider, among other things, "whether substantial evidence exists that bona fide efforts are being made" to comply with the fifteenth amendment. Here again considerable discretion vests in the Attorney General when he determines whether or not such efforts, if they exist, are "substantial" and "bona fide". Furthermore, the complaints of the twenty persons must allege that they have been denied the right to vote "under color of law". This might be amuch more difficult allegation to substantiate than an allegation of the denial of a specific right secured by the Act. All in all, it seems that the Attorney General has been given a clear and comprehensive set of excuses for failing to appoint federal registrars.

At this writing the Attorney General has caused federal registrars to be appointed in Leflore and Madison Counties, Mississippi; Dallas, Hale, Lowndes and Marengo Counties, Alabama; and Plaquemines, East Carrol and East Feliciana Counties in Louisiana.

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