EXTENSION OF THE VOTING RIGHTS ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501

EXTENSION OF THE VOTING RIGHTS ACT

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Ms. JORDAN. Thank you, Mr. Chairman. I would assume that all of you have copies of my statement before you. I would like to have my entire statement entered in the record please.

Mr. EDWARDS. Without objection, it is so ordered.

[The prepared statement of Hon. Barbara Jordan follows:]

STATEMENT OF HON. BARBARA JORDAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, members of the Subcommittee, I appreciate your granting me this opportunity to appear and testify in support of extension of the Voting Rights Act of 1965. Among all the civil rights legislation enacted in the 1960's, the Voting Rights Act epitomizes the black struggle for equality. In the South the Voting Rights Act has opened registration for eligible blacks. The Voting Rights Act has increased the possibility of free and equal participation by blacks as voters in the political process. But for many the promise is as yet unfulfilled. A few electoral victories should not mask reality: the Voting Rights Act may have overcome blatant discriminatory practices; it has yet to overcome subtle discriminatory practices. Although the means may be different the effect is the same. Blacks in the South continue to be excluded from meaningful participation in democratic institutions. Allowing the Voting Rights Act to lapse this year would vitiate the progress made in only the last four years. As a co-sponsor of H.R. 3343, which extends the Act for ten years and places a permanent ban on literacy tests, I would urge this subcommittee to do no less than report favorably this simple extension bill. That is the minimum which should be done.

My first attempts to become a member of the Texas House of Representatives were thwarted by the same type of discriminatory voting practices forbidden by the Voting Rights Act. In 1962, when I first ran for the Texas House, Harris County (Houston) was not divided into single member districts. I had to run at large—against all other candidates. I lost. I lost again in 1964. I could not get elected in an at-large election. In 1966 the Texas legislature was forced to reapportion itself. In *Reynolds* v. *Sims* the United States Supreme Court had applied the "one man—one vote" rule of *Baker* v. *Carr* to state legislative districts. The reapportionment created a new, single-member State Senatorial District in which I lived. I ran and won. Absent the Supreme Court ruling, I would have lost again. The same reapportionment which created single-member districts in Harris County created at-large districts in Bexar County (San Antonio) and Dallas County (Dallas). Another reapportionment in 1972 kept Bexar and Dallas at-large. Had the Voting Rights Act of 1965 applied to Texas, the state would have had to submit the 1966 and 1972 reapportionments to the Attorney General. He probably would have objected. But the Act did not apply to Texas. The Attorney General did not object. It was not until 1973 that the United States Supreme Court once again intervened. It held at-large elections in Bexar and Dallas counties had a discriminatory effect on blacks and browns and were thus unconstitutional. Only two weeks ago the State of Texas pleaded in Supreme Court chambers that at-large elections for the Texas House of Representatives in eight other Texas counties are not discriminatory. The minorities in Fort Worth, Lubbock, Midland, Odessa, El Paso and other Texas cities will have to wait for the Court to rescue their voting rights.

My political career was not assisted through passage of the Voting Rights Act. I know firsthand the difficulty minorities have in participating in the political process as equals. The same discriminatory practices which moved the Congress to pass the Voting Rights Act in 1965, and renew it in 1970, are practiced in Texas today.

In 1965 this Committee heard testimony that school teachers lose their jobs if they try to register. Mexican-Americans in Texas have lost their teaching jobs as the result of filing as a candidate.

In 1965 this Committee heard of Mary Thomas of Humphreys County, Mississippi. She tried to register. It happens that she also ran a small store which she used to support herself and six children. Fifteen minutes after trying to register

she was arrested on a business technicality, thrown in jail overnight and fined $300. In at least three Texas towns that we know of the white majority have boycotted Mexican-American owned businesses supporting minority candidates. The boycotts effectively ruined their businesses because they could not support themselves on the economy of the minority population alone.

In 1965 this Committee heard of a registrar disqualifying registration forms if a voter could not put down the exact year, month and date of their birth. Registration forms in Texas have been discarded if an individual made an error, crossed it out, and provided the correct information.

Voting Procedures in Texas are used to discourage voting participation. In some communities where paper ballots are used voters are not provided voting booths in which to cast secret ballots. They are forced to vote on large tables where everybody can see. There have been instances where the clerk handling absentee ballots will fill out the ballot for anglos over the phone but will not provide assistance to minority voters. Under state law, officials can open ballot boxes after only ten voters have deposited their ballots. Votes of minorities who need to vote early in the day because of their job situation are easily correlated with individuals.

Far more subject to abuse is the numbered stub system for paper ballots. After voting, an individual must sign the stub which is numbered to correspond with the ballot. The ballot is deposited in one box and the stub in another. The stub box is delivered to the District Court Clerk at the end of the voting day. Although the box is sealed and may only be opened in the presence of the District Court judge, there have been instances where the boxes have been delivered with the seal broken. Even in the larger metropolitan areas where voting machines are used, absentee voters must sign a numbered stub attached to their ballots.

To provide a remedy for these discriminatory voting practices perpetrated upon blacks and Mexican-Americans I have introduced H.R. 3247, which is before this subcommittee. My bill would extend the provisions of the Voting Rights Act to Texas, New Mexico, Arizona and parts of California. H.R. 3247 would guarantee to Mexican-Americans and blacks residing in these jurisdictions the same special attention to their voting rights now afforded blacks in the South.

Under my proposal a jurisdiction would be covered by the Voting Rights Act if, first, less than fifty percent of the eligible voters registered to vote or less than fifty percent of the eligible voters actually voted during the presidential election of 1972 and, second, if the jurisdiction printed election or registration materials only in the English language when more than five percent of the eligible voters are of a single mother tongue other than English. The current definition of a test or device includes any requirement "that a person as a prerequisite for voting or registration for voting demonstrate the ability to read, write, understand, or interpret any matter."

In its simplest form my bill amends the definition of the phrase "test or device" to make explicit the rulings of federal courts that the failure to provide bilingual registration forms and ballots constitutes the use of a literacy test. Note *Garza* v. *Smith*, 320 F. Supp. 131 (W.D. Tex. 1970), a class action suit on behlaf of Mexican-American citizens who were illiterate in English. Plaintiffs alleged that Texas statutes mandating assistance in balloting to physically handicapped voters while at the same time specifically prohibiting such assistance to voters who were illiterate in the English language deprived plaintiffs of equal protection of the laws. The court invalidated the statutes insofar as they withheld from illiterate voters the assistance they authorized with respect to blind and crippled voters. In reaching its decision the court relied upon the rationale of two Voting Rights cases arising in Louisiana and Mississippi.

Note also *Arroyo* v. *Tucker*, 372 F. Supp. 764 (E.D. Pa. 1974), a class action suit brought on behalf of Puerto Ricans who read and understood English with difficulty. Pursuant to Section 4(e) of the Voting Rights Act, they asked the court to mandate provision of bilingual registration and electorial materials in all areas of Philadelphia where more than five percent of the population was of Puerto Rican birth or extraction. The court granted the relief.

In *Torres* v. *Sachs*, 38 F. Supp 309 (S.D. N.Y. July 25, 1974), the court held that New York City's English-only election system constituted a proscribed "condition on the plaintiffs' right to vote" based on their ability to "read, write,

understand or interpret any matter in the English language." Similarly, in *Puerto Rican Organization for Political Action* v. *Kusper*, 350 F. Supp. 606 (N.D. Ill. 1972), a class action seeking bilingual election materials on behalf of Spanish-speaking voters pursuant to the Voting Rights Act, the court granted the requested relief.

In its just released report *The Voting Rights Act, Ten Years After*, the U.S. Civil Rights Commission notes these court decisions cited above. The Commission's recommendations numbers 8 and 9 further buttress the rationale of my bill. The Commission noted in part "if a state conducted elections exclusively in English in those years despite a sizeable non-English-speaking population, it may actually have applied a literacy test."

My amendment would apply the rationale of the courts and the Civil Rights Commission and incorporate into the Act the broad meaning of "tests or devices." Section 5 protections would thus be triggered where there are a significant number of voters not speaking English. The courts have held that English-only elections have the same effect as a literacy test. The Congress should take cognizance of these court decisions and amend the Voting Rights Act accordingly.

The poor quality of education among Mexican-Americans adds to the difficulty they have participating in the electoral process. The Census Bureau defines a functionally illiterate as one who is 14 years old or over who had less than five years of school. According to the Census, 5.5% of the total population was functionally illiterate in 1970. Among Mexican-Americans 18.8% are functionally illiterate. Numerous court cases and special studies have documented the poor quality of education received by Mexican-Americans in the Southwest.

There may be some who doubt whether jurisdictions have used an English-only ballot for the purpose of discriminating against Mexican-Americans. There is a steady trend in judicial decisions away from insistence on proof of illegal *purpose* before a finding of racial discrimination. The trend is toward accepting evidence of the *effect* as sufficient, at least to throw the burden of proof upon the alleged discriminators. The *purpose* of providing English-only elections where significant numbers of Mexican-Americans reside may not be discriminatory, but the *effect* is discriminatory, especially when coupled with the low educational attainment of the population.

I would not want to minimize for the subcommittee the very significant issues which must be answered in extending the Voting Rights Act to cover jurisdictions in which Mexican-Americans reside. To assist your deliberations, permit me to catalogue the issues I confronted in developing H.R. 3247.

First, does the Fifteenth Amendment language protecting the voting rights of blacks "on account of race, color, or previous condition of servitude" protect the voting rights of Mexican-Americans also? Mr. Chairman, I ask unanimous consent that you insert at this point in the record a February 24, 1975 letter and accompanying memorandum on this question from J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division. To summarize a quote from the memorandum:

Regarding the scope of the 15th Amendment, it is clear that its protection is not limited to blacks. Any denial of voting rights, on the ground of race or color, would contravene the 15th Amendment.

Neither for purposes of the 15th Amendment nor for other purposes do the terms "race or color" have precise, generally accepted meanings. Even under a narrow interpretation, Native Americans (i.e., Indians and Eskimos) can properly be regarded as a race. The status of such groups as Mexican-Americans and Puerto Ricans is less clear, but there is a substantial basis for regarding them as groups distinguished by race or color.

The memorandum goes on to point out that the Justice Department has been administering the Voting Rights Act as if "race or color" did, in fact, apply to Mexican-Americans. Other records in the Subcommittee's possession suggest that the Department has received 60 submissions from covered California and Arizona jurisdictions. Of these, the Department has formally objected to two submissions. One on the grounds the proposed change would abridge the voting rights of Indians and the other concerning Mexican-Americans.

I believe the Fifteenth Amendment contemplates voting protection of all races, including Mexican-Americans. The constitutional question is one which is resolved in my mind, but the members of the subcommittee should confront the issue directly.

Second, is language the primary voting problem among Mexican-Americans? Probably not, but it is characteristic of the myriad of problems Mexican-Americans face. Just as the Congress seized upon literacy tests as *characteristic* of the voting problems facing blacks in the South, so too are English-only ballots among a substantial Spanish speaking population. Printing of Spanish registration forms and Spanish ballots will not cure voting discrimination in the Southwest. I have incorporated the use of an English-only ballot as a "test or device" because it is a readily identifiable, objective criterion the Justice Department can easily apply nationally. Do not equate the employment of the English-only ballot test in my bill with the severity of the language problem. The Congress has the responsibility to give clear guidance to the Justice Department as to the jurisdictions to be covered by the Voting Rights Act. I can think of no clearer alternative criterion which is both characteristic of Mexican-American voting problems and provides clearer direction to the executive than the employment of an English-only ballot.

Third, what is the meaning of the Census term "mother tongue?" Census defines mother tongue as the language spoken in the person's home when he was a child. Data is gathered based on a 15% sample. Information on mother tongue is used to assist in the identification of the various ethnic groups in the population. In particular, the Spanish language population is defined primarily on this basis. Data on mother tongue does not always accurately reflect a person's current language skills. A person may have grown up in a Spanish speaking environment but speaks English quite well upon reaching voting age. To compensate for this discrepancy the subcommittee may wish to raise from 5% to 10% the mother tongue trigger in my bill. Despite its drawbacks, the mother tongue data is the only national data available from Census relating to persons who might speak a language other than English.

Fourth, does the Census count of individuals of a mother tongue other than English also include non-citizens? And if so, does the tabulation overestimate the relevant population? Census does include non-citizens in its "mother tongue" count. I would also point out that the tabulation does not count all persons, only heads of households. In this manner the non-citizenship problem is probably self-correcting.

Fifth, why it is necessary to amend Section 4(d) with a disclaimer? Section 4(d) of the Act provides that if a jurisdiction ceases to employ a "test or device," and if the jurisdiction can prove the "continuing effect" of a test or device has been mitigated, the jurisdiction may be relieved from coverage by the District Court. My bill amends the definition of "test or device" to include the employment of an English-only ballot where substantial numbers of persons of a mother tongue other than English reside. It is necessary to amend Section 4(d) to make clear that the mere printing of Spanish election materials is not sufficient grounds for the jurisdiction to escape coverage. Without this amendment a large loophole would be created.

I have attempted to bring to your deliberations a bill which speaks directly to the problems confronted by Mexican-Americans in the Southwest. Other witnesses who follow will further justify the need for this legislation. My bill may not be perfect in every respect. I trust this subcommittee will improve upon it. I hope that in presenting a bill which builds upon the principals of case law, which is simple and direct in its application, and which avoids the complexities of completely rewriting the existing Voting Rights Act, I have been of some assistance to the subcommittee.

NEW JURISDICTIONS PROPOSED TO BE COVERED UNDER THE VOTING RIGHTS ACT OF 1965 PURSUANT TO H.R. 3247

State	County	Percent voting 1972	Percent mother tongue
Arizona	Maricopa	49.5	[1] 11.0
California	Kings	43.7	[1] 16.9
	Merced	47.4	[1] 13.9
	Solano	49.1	[1] 5.01
	Tulare	48.4	[1] 20.9
Florida	Collier	47.5	[1] 8.6
	Dade	45.0	[1] 21.6
	Hardee	39.7	[1] 13.6
	Hendry	43.3	[1] 5.8
	Hillsborough	42.6	[1] 7.89
	Monroe	46.0	[1] 10.7
Maine	Franklin	N/A	[2] 6.94
	Piscataquis	45.1	[2] 5.18
	Somerset	N/A	[2] 11.0
	York	49.5	[2] 23.5
Massachusetts	Bristol	49.5	[2] 12.6
New Hampshire	Strafford	N/A	[2] 16.8
	Sullivan	44.5	[2] 11.1
New Mexico	Curry	41.9	[1] 13.2
	McKinley	42.8	[1] 10.4
	Otero	42.7	[1] 18.6
Ohio	Holmes	36.3	[3] 42.0
Pennsylvania	Berks	49.9	[3] 13.1
	Lancaster	48.0	[3] 10.1
	Lebanon	45.7	[3] 12.8
	Northampton	47.8	[3] 8.70
	Snyder	43.7	[3] 7.4
	Union	44.3	[3] 6.4
Texas	All Counties	45.3	[1] 14.5
Vermont	Addison	42.9	[2] 7.0
	Caledonia	48.9	[2] 11.9
	Chittenden	45.6	[2] 12.8
	Essex	N/A	[2] 25.8
	Franklin	N/A	[2] 17.6
	Lamoille	46.7	[2] 8.3
	Washington	N/A	[2] 8.5

[1] Spanish.
[2] French.
[3] German.

Ms. JORDAN. Before going into my statement, Mr. Chairman, I would like to address myself to the question which was posed by counsel for minority in looking at section 3 of the Voting Rights Act as being, perhaps, adequate to alleviate the kinds of problems of discrimination which may be experienced by blacks or minority people.

Now, as you well know, section 3 prestages instigation by the Department of Justice, by the Attorney General, which means the burden of proof comes upon the Department to do that.

Section 5, by contrast, places the burden of proof on the jurisdiction which I feel is much more expedient and much more effective in determining the discriminatory effect it would have on easing the restrictions which may prevail in the voting registration jurisdiction.

Now, having said that, I am going to proceed with my statement and try to summarize it, Mr. Chairman, without reading it verbatim.

As you know, I have cosponsored H.R. 3343, which at the minimum extends the Voting Rights Act for 10 years and places a permanent ban on literacy tests.

Since the passage of the Voting Rights Act of 1965, the number of black elected officials has increased in the South from, I think, 72 to some 900. That is good. That is progress. But, I will suggest, Mr. Badillo, that the Civil Rights Commission did not indicate that we had reached a plateau in determining progress, but the report goes further to say that, even in spite of what we have done in terms of gain, we need to do more and we need to do better.

Section 5 is only now coming into fruition. Only in the past 3 years has section 5 been used as the mechanism for easing discriminatory acts in jurisdictions which are covered by Voting Right Act.

I ran for the legislature in Texas in 1962, and in 1964. I lost both of those races. I lost these races because they were at-large elections within the entire county of Harris, which includes Houston, Tex. If we had had legislation like the Voting Rights Act in 1965, in 1962, in 1964, I might have been able to begin my political career much earlier, but we did not have the Voting Rights Act.

But, as we all know, we finally got *Baker* v. *Carr* and decided people ought to be represented in the State legislative bodies, rather than massive amounts of acreage and, consequently, reapportionment is what made it possible for me to get finally elected to the State senate in 1966.

If the Voting Rights Act had been in effect in 1962 and 1964, if those at-large plans had been submitted to the Attorney General of the United States, I will suggest that he would have objected to those plans and that the Texas Legislature would have had to go back into the business of drafting legislative districts which purport with the population, were not discriminatory in effect. Only 2 weeks ago, the State of Texas was before the Supreme Court again, and the at-large districts still remain; Fort Worth, Lubbock, Midland, El Paso, and other Texas cities still at-large, still have a discriminatory effect.

This committee heard in 1965 about many minorities who were deprived of the right to register to vote. Today in Texas Mexican-Americans have lost their teaching jobs as a result of filing for candidates. And we have heard of at least three Texas towns where the white majority boycotted Mexican-American businesses because these persons who owned the businesses were supporting minority candidates. The boycotts ruined their business.

In 1965 you heard in this committee of the disqualifying of registration forms, simply because the registrant could not put down the exact year, the month or the date of birth. Today in Texas there are instances where registration forms have been discarded simply because a person makes an error, crosses it out, and has to correct it.

Voting procedures in Texas as of right now are used to discourage voting participation. There are jurisdictions within the State of Texas where the person who is voting has to mark his ballot on a large table in full view of everybody. There are instances where, when casting a written ballot he has to sign a stub with a number on it, deposit it in a box, and, yes, that box is supposed to be transmitted under seal to a district judge and opened only in his presence, but the boxes have arrived with these stubs in them where the seal was broken.

Consequently, because of the problems I have talked about in Texas, I have introduced and there is pending before this subcommittee, H.R. 3247, which will try to take care of the State of Texas as well as jurisdictions in New Mexico, Arizona, and parts of California. Texas is not covered at this time under the Voting Rights Act of 1965. Texas was not covered, because there was no literacy test in Texas, and consequently it was not necessary to include Texas among these Southern States which were covered.

What does, then, the act which I have introduced, do, which would extend coverage to a State like Texas? If less than 50 percent of those eligible actually vote, and if, and this is the key, the registration

materials are presented only in the English language, when at least 5 percent of the population of a jurisdiction speaks a mother tongue other than English, they would be covered.

It is very simple to look at the trigger in H.R. 3247. What sets off measures for protection under the Voting Rights Act?

My bill simply expands the definition of the word, "test or device," to incude the printing of registration forms and election materials only in the English language when, in fact, 5 percent or more of the population in the jurisdiction speaks a mother tongue other than English. In my testimony, I cite several court cases to which I would direct your attention. *Arroyo* v. *Tucker*, where Puerto Ricans filed a class action suit because of the difficulties in understanding and reading the English language. *Torres* v. *Sachs*, which is a similar kind of situation, English only. *Puerto Rican Organization for Political Action* v. *Kusper*, another one which I would direct to your attention. The rationale in the bill which I have introduced, and which I hope this committee will consider in its expansion efforts of the Voting Rights Act, the rationale is to simply incorporate into the act a broad meaning of the words, test or device as buttressed by these court decisions.

I did not want to blind myself for one moment to the issues which must be answered in this legislation if new jurisdictions are to be covered. I have placed a map on the board with the pink representing the jurisdictions which would be covered and the blue representing the jurisdictions which are currently covered.

The act, you can see, covers the deep South, but it also picks up some jurisdictions in New England and in the West.

It is time for us to protect against discriminatory devices which may be used to deprive persons who want to register to vote and are prevented from doing so. We have to do that. The Justice Department and court decisions have sought to state whether the 15th amendment applies race, color, or conditions of servitude to Mexican-Americans. We ought to make to clear—we ought to make it very clear that we want the Voting Rights Act to cover those minorities who are discriminated against on the basis of the fact that they can scarcely read and understand the English language.

Do I just get that terminology "mother-tongue" from some place that has no legislative history? The Census Department classifies mother-tongue as that language which is spoken in the home at the time the child is growing up. The Census Bureau is already equipped to count mother-tongue. You will note at the conclusion of my testimony, I have listed all of the jurisdictions which would be covered by States and otherwise, and the percentage of the population speaking a mother-tongue other than English. You will note that the overwhelming numbers fall in those who speak Spanish.

I think that it is time for us to solidify the gains we have made in the South as far as black people are concerned and see to it that we continue to have the provisions of section 5 available to us. But I think we ought to go one step further. We ought to include the States like Texas, my home State, with its large Mexican-American population, and see to it that these people are also included in the covered jurisdictions under the Voting Rights Act and its extension.

Mr. Chairman, that concludes my testimony, and I will answer any questions from the committee.

Mr. EDWARDS. Thank you very much, Ms. Jordan.

Mr. Drinan?

Mr. DRINAN. I want to thank you too, and this is a very creative idea in connection with new jurisdictions proposed for the coverage. Does the Census Bureau have this down only by county and not by city?

Ms. JORDAN. They have it by city also, as my understanding, yes.

Mr. DRINAN. I assume, therefore, in Massachusetts, there would be more cities rather than one county which does in fact qualify for the mother-tongue?

Ms. JORDAN. That would be true, Father, provided we hit the 5 percent.

Mr. DRINAN. In my own congressional district, I would think some areas might well come into that category.

One thought occurred to me: do you contemplate that a person would save the embarrassment by asking for a bilingual ballot by having all the ballots published bilingually, so the person could pick up a ballot with no discrimination at the door, so to speak, rather than the person saying, well, I want a Spanish ballot?

Ms. JORDAN. I would contemplate that these are local kinds of decisions which would be made, but the person going to seek a ballot or registration form still might say to the official who was in charge, "I want a Spanish or I want an English," and would just have to say that. There is no way of preventing him from saying it. I mean you cannot slide that under the table. He wants to vote and register. He wants to understand what he is doing. He just has to say to the registrar, I want a ballot in Spanish, or, I want a ballot in English, and that is it.

Mr. DRINAN. I assume this is from the Census Bureau?

Ms. JORDAN. Yes.

Mr. DRINAN. Would they have this broken down by congressional district? Could the computer do that?

Ms. JORDAN. I assume it could.

Mr. DRINAN. I think that would be very helpful. That simply would tell the people what Congressmen are for it in that election.

Mr. EDWARDS. Thank you very much, Mr. Drinan.

With the subcommittee's permission, we are going to go right on through until 1 o'clock, and I think we will take care of all three of our colleagues.

Mr. Butler?

Mr. BUTLER. Thank you, Mr. Chairman. I apologize to the witness for interrupting. The observation I made was if voting rights could have projected 4 years earlier, by this time you would probably be President of the United States.

I am quite interested in your proposal and quite sympathetic certainly with your views. We are going to endeavor to assure the right to vote to all Americans. We ought to extend it to places where it is needed. So in this regard, I mentioned in earlier testimony with Mr. Young that what is lacking in the Voting Rights Act is a stimulation or incentive to the State to do something about it.

We had some hope in Virginia that if we had 5 years experience that we would get out from under the Voting Rights Act without discrimination, and then of course, it was taken away, extended, and now it is going to be extended again, I expect.

I think it would be in the interest of all people to put in this legislation something which would say to the States that come under the act what could be done to get out of it after a given period of time, but you need a given criteria.

I would like to know if you have given some thought to this possibility, and if you have some suggestion along this line?

Ms. JORDAN. Mr. Butler, there is presently in the law a provision which would allow a State to get out from under the jurisdiction of the Voting Rights Act. If they have experience which reflects there are no circumstances procedurally which prevailed in this jurisdiction which would mandate continued coverage of that jurisdiction, the State can now go into the courts and ask to be removed from the coverage of the Voting Rights Act.

Now, I do not know anything that I would want to add to that because there is a way for them to bail out.

Mr. BUTLER. The trigger device, as far as the South is concerned, deals with a situation which prevailed prior to 1964; and because you had a test or device, as you know, at that time the State was originally under and now remains under the act. Congress will not let the State establish a period of purity because it keeps eluding us with the extension of the act.

Well, I was thinking in terms of some criteria indicating a lack of discrimination or criteria of voting percentage, say, 60 percent. If we vote 60 percent of the voting age population, would that not be an indication that voter apathy is likely to affect turn out and not discrimination? Have you given any thought to this at all? I am most anxious to find something that would give hope to the States and incentive to meet this problem, other than the negative injustice that we now have.

Ms. JORDAN. I confess that I have not given any thought to that. But I will give it some thought because I want to be helpful, Mr. Butler, to your enlightenment.

Mr. BUTLER. Thank you.

Mr. EDWARDS. Mr. Badillo.

Mr. BADILLO. Congressman Jordan, I want you to know I support your proposal, and it is important to include as many jurisdictions as possible, and I am working with you to see in what way—you could not only go and get your proposal enacted, but go beyond that. I want to establish clearly although your proposal is specifically geared to a mother language other than English, once the State or the Congress covers it, would it cover all people, black or white?

Ms. JORDAN. Yes.

Mr. BADILLO. Therefore, as far as we can establish, thus far, you are not just expanding it for Spanish-speaking people. You are expanding it to all, and it is not limited?

Ms. JORDAN. That is right.

Mr. BADILLO. Is it not a fact that in Texas where there have been discrimination acts attempted and carried out, they are being applied in equal force to black and Spanish-speaking people?

Ms. JORDAN. That too is correct.

Mr. BADILLO. The problem we have is that once we accept your formula and many other jurisdictions covered, there are many areas of huge size—for example, the county of Los Angeles, which has 7 million people, of which 1.5 million are Mexican-Americans, who

would not be covered because California has had over 50 percent voting in the last 3 general elections. We are groping for a formula that would cover the entire State, you see, instead of just a political subdivision. Far more than 5 percent of the people are Spanish-speaking, and that is the reason that we have included the provision that we have in the bill that Congressman Rangel and I have submitted.

Have you had a chance to look at the bill?

Ms. JORDAN. I had a chance to look at your bill, Mr. Badillo. I have had some difficulty with covering the entire State of California, when most of the State, the overwhelming majority of the State, does not fit the triggering criteria presently in the 1965 act.

Now, I frankly feel that political difficulties will become enhanced if we move in the direction of your bill, and it is necessary in my judgment to cover the entire State of Texas, because most of it ought to be covered. But where a jurisdiction such as California, where the problem is not a statewide problem, but only selectively involved, and we are under the formula which I have developed, you will pick up three or four jurisdictions within the State of California which do not have the problem of a large Spanish-speaking population.

Mr. BADILLO. You are still leaving out 1.5 million people in Los Angeles County. Isn't that a significant amount of people that should be included?

I just want the point to be included in the bill we have submitted that technically by covering the States, we provided that the provisions of sections 5, 6, and 8 will apply, but in fact it will be unlikely that the Federal examiner will be sent to the jurisdictions in California where there are no black or Spanish-speaking people.

A mechanism is still required for enacting provisions for enforcement so that when you get certain numbers of people who complain of discrimination, and therefore even though the State as a whole may be covered realistically speaking, the complaints of the act involved would come from the county where there is a significant minority population.

Ms. JORDAN. That is true, but I am not interested, frankly, in making this act apply to jurisdictions where there is no necessity that it apply. I just do not think we ought to be in that business. You refer to Los Angeles County. I checked the figures very carefully there. The voting participation rate in Los Angeles County was 58.8 percent. Now, that was above more than 50 percent in the formula, and I do not think that we ought to be in the business of moving into jurisdictions where there is no necessity for us to move.

Mr. BADILLO. We disagree on what that necessity is. The fact that there may be over 50 percent registration and voting does not mean that black and Spanish-speaking people are not being discriminated against because when you have a county of 7 million, you may have 5 million whites who vote up to 80 percent. You may have 2 million blacks and Spanish-speaking people who do not have the right to vote at all, and you still go over 50 percent. I do not think that standard of 50 percent is a standard that would protect the minority in any part of the country.

It seems to me we are interested in the rights of minorities, and therefore when you have the 50 percent standard, you would enable the majority to freeze out the minority.

What we are suggesting here is that you conclude that 5 percent Spanish-speaking people is the standard because certainly 5 percent is well below 50 percent.

We are trying to cover the situation where there is a significant minority. In the case of the Los Angeles County, 1.5 million would be Mexicans whose voting turnout is quite low becuase of the fact that they are not able to qualify under the provisions of this act, and that 50 percent formula does not protect the rights of the group.

Ms. JORDAN. I confess to being ecstatic about any jurisdiction where the voting participation was above the national average, and that it was so high in comparison to Texas, it was so high that I became absolutely mesmerized by that degree of participation and hope that if we in the State of Texas, if we ever reach that kind of percentage that the millennium would have arrived. So I confess to not expanding my formula to take in Los Angeles County.

Mr. BADILLO. We seem to have arrived at Connecticut, New Jersey, and other areas in terms of the majority participating well over 50 percent, but it has not arrived for those blacks and Spanish-speaking people who are in effect not a gross amount under the voting rights, but in other rights, and that is the reason we are seeking this form.

Mr. EDWARDS. Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman. Ms. Jordan, I appreciate your presentation this morning. I have one area of clarification I would like to address.

In terms of your proposal, that mother tongue be used as a measure of triggering the act's special provisions. There would be a problem centered around the instructions on the ballot, on what is considered the ballot, separately from the registration form at the moment. Is it the instructions that are the problem or is it the issues that are presented for voting? I take it it is probably both of those and not the candidates' names.

Ms. JORDAN. Quite right, both.

Mr. KINDNESS. With regard to the registration form, does the problem center around the way the registration program administers or applies rather than the form itself? This is a matter, an area I am not so sure about. Helpful persons at the Board of Elections could cause the registration to be effective, no matter what the form is, what type was used.

Ms. JORDAN. Mr. Kindness, the complaints that we have heard, seen in the section, have centered around more than the face of registration form, the procedures of where to go, the hours of polling places being open, and that sort of discriminatory effect.

The point of the matter is that if we were to expand the coverage of the act to include, let us say, the State of Texas possible voting changes would be subject to approval of the Attorney General. So we could take care of wherever this discrimination would occur, whether we are talking about the face of the form or the polling places that are going to be open, the convenience, the balloting. We could take care of the whole plethora after the discriminatory act, whether the purpose of the discriminator are discriminatory in effect if we had a covered jurisdiction. We would then have a place to go about the complaint, whatever the nature.

Mr. KINDNESS. One other question: I notice Holmes County Ohio is on the map, a lonely little place out in the Midwest, where a part of the population of people, which I believe are described by their grouping as being Amish, and they speak German, and they also do not believe, as a part of their faith, in participating in Government.

I am not quite sure whether this problem can be overcome by the approach you suggest since it is a matter of their belief. The forms, the registration forms and ballots, could be available, I suppose, but I am not sure what would be accomplished in that kind of situation.

Ms. JORDAN. They would not be covered under the act. The reason you see, the pink shading in there is because of the language that is reflected there. But it would not reflect 5 percent of the jurisdiction, that is the 5 percent or more. The population of the State of Ohio certainly does not speak this language, so we would not be covered under the act.

That is placed there to show anomalies that occur across the country, and there might be an isolated country here, but that really does not bring the weight of the Federal Government to bear on this little country.

Mr. KINDNESS. That would not be the effect of your bill?

Ms. JORDAN. That would not be the effect, no.

Mr. ALCOCK. If I could clarify, Holmes County, Ohio, it shows up statistically because of the formula. It is an anomaly in that sense, but if the country were to be covered should the Congress approve Ms. Jordan's bill or a similar bill, that would mean that the minorities in that county would be protected by virtue of their race or color in that county.

Now, there is a question whether the people that show up speaking German in Holmes County would be covered. In other words, are they a race or color?

Mr. KINDNESS. If I follow you correctly, is that not a rather anomalous thing to set up in the law?

Mr. ALCOCK. Well, that is an anomaly in a statistical formula, just as under the current act, there are counties in Idaho and towns in New England that show up where there are very few minorities.

Mr. KINDNESS Thank you.

Mr. EDWARDS. I have a couple of questions, Ms. Jordan. You have listed these new jurisdictions that would be covered; however, you have some jurisdictions where I have never seen any record of discrimination, the French-speaking of New England, for example. Does that make your trigger inappropriate?

Ms. JORDAN. The thing about it is, it is not easy to find a trigger which will take care of most of the people you want to help, so there are instances under this formula where we will pick up a new community where there is no problem. You may, the committee if they saw fit, go into the formula. They may want to change the percentage from 5 percent to 10 percent or more to see that this situation does not occur. It does not occur often, and it was just a matter, Mr. Chairman, of trying to balance the equities and how can you best get done what you want to get done even though you have some cities which do not necessarily need to be covered.

Mr. EDWARDS. Now, in your list of extensions, does each of these jurisdictions have election material printed only in English?

Ms. JORDAN. No, sir. That is not the case. I simply listed them to show that these are the jurisdictions that would be covered, but this was not an instance where each of the jurisdictions were covered.

Mr. EDWARDS. Are you saying that some of the jurisdictions, the election material was some other language that was implemented?

Mr. ALCOCK. Well no, sir. None of the jurisdictions listed at the end of Ms. Jordan's testimony provided registration forms and ballots printed in a language other than English during 1972 elections. Now, the closest that a jurisdiction came in this regard was New Mexico which in 1972 printed the proposed State constitutional amendments in Spanish. But the ballot itself and the registration forms were not printed in Spanish for the 1972 election.

Mr. EDWARDS. The last question is, who will make the determination as to when the English-only election materials have been used and the determination that more than 5 percent of the persons of the voting age have another tongue other than English?

Ms. JORDAN. We have to leave it with the Department of Justice, to the Attorney General to do that.

Mr. EDWARDS. Thank you.

Mr. PARKER. Ms. Jordan, your bill proposes to add to the definition of test or device, the use of election or registration material printed only in the English language.

Now, if there was bilingual assistance, but the ballot was in English, would that qualify as a test or device?

Ms. JORDAN. It would definitely qualify.

Mr. PARKER. That is all.

Mr. EDWARDS. Mr. Klee.

Mr. KLEE. Thank you very much, Mr. Chairman. I first would like to thank Ms. Jordan for clearing up the burden of going forward and the burden of proof under section 3 and section 5. I would like to explore some of the possible constitutional problems with your triggering mechanism, particularly centering around your 5 percent statistics.

Do you feel that the use of the 5 percent minimum level would unconstitutionally deny either the right to travel or equal protection of the law to those people of a non-English mother-tongue language outside the minimum 5 percent area?

Ms. JORDAN. Would it deprive them of equal protection?

Mr. KLEE. Or the constitutional right to travel? I am referring to the language in *Oregon* v. *Mitchell* that this is one great Nation, and the language in Gaston County where it was pointed out that just because a person may be educated outside the State, that he was free to travel in the country, and the Voting Rights Act really applied to the Nation as a whole, and a person should feel free to live wherever he wants and be entitled to the same protection.

Ms. JORDAN. You know we have had 10 years experience with the Voting Rights Act, and if Congress chose to apply this act to the entire country, it would do so, and I think that takes care of your constitutional problem, but Congress has not chosen to do that, and that is a decision which Congress in its wisdom or judgment can make.

I have a little bit of difficulty with expanding the act to cover the entire country because I do recognize that there are areas of the country wherein the effect of the act would not be felt and would not be felt, let us say, as necessary.

The argument you present, however, is one which could be made by an individual. There is no way to get around that. It could be made.

Mr. KLEE. I would also like to find out whether you would support making election day a national holiday so people would have all day to go to the polls?

Ms. JORDAN. Oh, yes, I would. If you could advise Mr. Butler to introduce the bill, I would cosponsor it.

Mr. KLEE. The last question would concern a reapportionment plan that might take place. Assume that a city is controlled by a black or other minority, which presents a reapportionment plan, and let us say in 1980 that perhaps the plan insures that the minority would be able to control more seats than they were proportionately entitled to by their representation in population. Would you think that Voting Rights Act would enable either a State official or concerned white citizens to submit that plan for preclearance to the Attorney General?

Would that plan be subject to the Voting Rights Act, as you see it?

Ms. JORDAN. It would be straining the Voting Rights Act to make it apply. We are talking about the affected group which is discriminated against. On the basis of race, color, previous condition of servitude, if you write the 15th amendment into it. The argument could be made, but I would suspect without success by the white majority that they were being discriminated against by the black minority inasmuch as the entire legislative history of this act, as it has been developed, does reflect that it is keyed to impact on the minority.

Mr. KLEE. I am glad you focused in on the "race or color" language in the 15th amendment. It is clear, I suppose, that blacks do comprise a race. Perhaps it is less clear that whites or Caucasians do, and particularly that the Spanish-speaking people do.

Do you have any problem in deciding whether Spanish-speaking people do constitute a race under the 15th amendment?

Ms. JORDAN. I do not have a problem. I think the Chairman of the Committee has received a letter from one of the Assistant Attorneys General dealing with the question of whether Mexican-Americans can be included as a race under the 15th amendment, and I hope, Mr. Chairman, that in these proceedings you will see fit to submit that letter and its accompanying memorandum into the record because it does address the very question you raised quite specifically.

Mr. EDWARDS. Yes, that letter and enclosure, the opinion of the Attorney General, without a shadow of a doubt, without objection, will be inserted in the record at this point.

[The material referred to follows:]

DEPARTMENT OF JUSTICE,
Washington, D.C., February 24, 1975.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil Rights and Constitutional Rights, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of January 16, 1975 in which you noted that "there may be some question as to whether Spanish Speaking and Native American citizens are included under 'race or color' as protected citizens under the Voting Rights Act of 1965, as amended, and under the 15th Amendment" and requested our opinion as to whether such citizens are protected by the Voting Rights Act and the 15th Amendment. Please excuse our delay in responding.

I am enclosing a memorandum which discusses these matters. Our basic conclusions are as follows: It is clear that Indians and Eskimos are racial groups for

purposes of the 15th Amendment and the Voting Rights Act. The status of Spanish-speaking citizens is less clear. However, in implementing Section 5 of the Act, the Department has interpreted the phrase "race or color" as applying to Puerto Ricans and Chicanos. In our opinion, this interpretation is consistent with the terms and the spirit of the Act and the 15th Amendment. We believe that generally speaking the same conclusions would apply to citizens of Cuban or Central or South American origin.

I hope that this material will be of assistance.

Sincerely,

J. STANLEY POTTINGER,
Assistant Attorney General, Civil Rights Division.

THE MEANING OF "RACE OR COLOR" FOR PURPOSES OF THE 15TH AMENDMENT AND THE VOTING RIGHTS ACT

Introduction; summary

This memorandum discusses the meaning of "race or color" as those terms are used in the 15th Amendment and in the Voting Rights Act of 1965 as amended (the Act). In his letter of January 16, 1975 to Mr. Pottinger, Congressman Edwards requested an opinion as to whether Spanish-speaking and Native American citizens are included under "race or color" and thus within the protection of the 15th Amendment and the Act.

Our conclusions may be summarized as follows:

(1) Regarding the scope of the 15th Amendment, it is clear that its protection is not limited to blacks. Any denial of voting rights, on the ground or race or color, would contravene the 15th Amendment.

(2) Neither for purposes of the 15th Amendment nor for other purposes do the terms "race or color" have precise, generally accepted meanings. Even under a narrow interpretation, Native Americans (i.e., Indians and Eskimos) can properly be regarded as a race. The status of such groups as Mexican Americans and Puerto Ricans is less clear, but there is a substantial basis for regarding them as groups distinguished by race or color (as well as by culture or other factors).

(3) With regard to the Act, it is proper to assume that Congress intended to protect any group which is a group defined by race or color for purposes of the 15th Amendment. The practice of the Department of Justice in implementing the Act has been to treat Indians, Puerto Ricans and Mexican Americans as racial groups. This practice is supported by the legislative history of the 1965 Act and the 1970 Amendments and by pertinent court decisions.

Discussion

1. *The 15th Amendment*

The 15th Amendment, which was adopted by Congress in 1869 and ratified by the requisite number of states in 1870, provides as follows:

> Sec. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any States on account of race, color, or previous condition of servitude.
>
> Sec. 2. The Congress shall have power to enforce this article by appropriate legislation.

One purpose of the amendment was to enfranchise blacks in the North. As of January 1870, 16 northern and border states denied the right to vote to blacks.[1] The other main purpose was to safeguard the recently established voting rights of blacks in the states which had been in the Confederacy. See generally Gillette, The Right to Vote: Politics and the Passage of the Fifteenth Amendment (1965); Mathews, Legislative and Judicial History of the Fifteenth Amendment (1909).

Nonetheless, both the language and the legislative history of the 15th Amendment indicate that its protection extends not only to blacks but also to any other group defined by race or color. For example, during its consideration of the proposed amendment, the Senate twice rejected a proposal by Senator Howard of Michigan to substitute (for the forerunner of § 1) a provision which stated that: "Citizens . . . of African descent shall have the same right to vote and hold office . . . as other citizens . . . ." Cong. Globe, 40th Cong., 3d Sess. (1869), p. 1012; p. 1311. Some of the opposition to Senator Howard's proposal was based on the belief that the amendment's protection should not be limited to one race. See, e.g., Cong. Globe, 40th Cong., 3d Sess. (1869), p. 1008 (Senator Edmunds).

[1] See H. Rep. No. 3, 41st Cong., 2d sess. (1870), p. 91. Each of the 16 States limited the right to vote to "white males." In addition, two of the 16, Indiana and Oregon, expressly barred "Negroes and mulattoes." Oregon also expressly barred "Chinamen."

It should also be noted that a major reason for opposition to the amendment on the part of members of Congress from California and Oregon and for failure of ratification in those states was fear that it would lead to enfranchisement of Chinese persons.

In short, both the language and the history of the 15th Amendment indicate that it prohibits any denial of voting rights based upon the victim's race or color. This conclusion is supported by dictum in contemporaneous opinions of the Supreme Court. See, e.g., the *Slaughter House Cases*, 83 U.S. 36, 72 (1873) (referring to "the Mexican or Chinese race"); *United States* v. *Reese*, 92 U.S. 214 (1875).

There does not appear to be any authoritative, comprehensive explanation of the meaning of "race or color" for purposes of the 15th Amendment. Historical sources warrant consideration, but, under general principles regarding interpretation of the Constitution, even if the original understanding were clear, it would not necessarily be determinative. Court decisions are also pertinent, but our review of the cases failed to reveal any dealing squarely with the 15th Amendment's coverage of Indians, Mexican Americans, Puerto Ricans or similar groups.

Thus, the question of the status, for 15th Amendment purposes, of particular groups is essentially a factual one. The amendment is not to be interpreted in an inflexible manner. The result in particular cases would seem to depend not only upon biological factors, but also upon the manner in which the group regards itself and the manner in which it is regarded by the surrounding community. Cf. *United States* v. *Flagler County School District*, 457 F.2d 1402 (5th Cir., 1972).

2. *The meaning of "race or color"*

Before turning to the groups which are the subject of Congressman Edward's inquiry, it should be appropriate to consider views expressed in Congress during and shortly before adoption of the 15th Amendment.

In 1866, during debate on a proposed constitutional amendment reducing the congressional representation of any state which denied the right to vote on the ground of "race or color," Congressman Bromall noted (1) that some writers said that there were five races, while others referred to 15 or even 1000 races and (2) that "color" was also very indefinite and applied to persons of African descent whether they were black or white in appearance. Cong. Globe, 39th Cong., 1st Sess., (1866), p. 433.

Moreover, even the term "African descent" which was used in Senator Howard's proposal (discussed above) was subject to varying definitions. See Cong. Globe, 40th Cong., 3d Sess. (1869), p. 1009, where Senator Howard referred to state laws treating as of African descent persons with one-eighth or more "African blood."

According to Mathews, supra, p. 41, when the 15th Amendment was being considered in Congress, "The only classes of men to which it was generally understood that the words 'race or color' applied were negroes, Chinese, and Indians" (footnote omitted). Mathews pointed out that: "The ethnological condition of things in this country prevented these words [race or color] from having any very distinct meaning" (footnote omitted).

a. *Native Americans*

It seems clear that Native Americans, such as American Indians and Eskimos constitute separate groups. As noted above, according to Mathews, there was general agreement in Congress in 1869 that the 15th Amendment would protect the voting rights of Indians. Under the approach used by the Bureau of the Census for the 1970 Census, the set of races included both American Indians and Eskimos. See 1970 Census of the Population, vol. I, pt. 1, p. App. -53.

Some support for the foregoing conclusion can be found in Justice Harlan's dissent in a case decided under the 14th Amendment, *Elk* v. *Wilkins*, 112 U.S. 94 (1884), where he repeatedly referred to the plaintiff as a member of the "Indian race." See also *Rice* v. *Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 76 (1955), where the Court stated that an Iowa law prohibiting cemeteries from refusing burials solely because of race or color would cover refusal to bury an Indian.

b. *Spanish-speaking citizens*

This category encompasses a number of different groups, the largest of which are Mexican Americans and Puerto Ricans. Our conclusion that both Mexican Americans and Puerto Ricans can properly be regarded as groups defined by "race or color" would seem to apply generally to citizens of Cuban or Central or South American origin. However, this would not appear to be true with respect

to persons born in Spain or their descendants. The discussion which follows is limited to Chicanos and Puerto Ricans.

The practice of the Bureau of the Census has been to treat as white the vast majority of persons of Mexican origin or Puerto Rican origin. See Bureau of the Census, Census of Population: 1970, Persons of Spanish Origin, report PC(2)-1C (June 1973), p. IX. Thus, it could be asserted that while Chicanos and Puerto Ricans may be national-origin groups, they are not groups defined by race or color.

The answers to the foregoing assertion are that the meaning of "race or color" for purposes of the 15th Amendment is not necessarily the same as the meaning for census purposes and that Chicanos and Puerto Ricans do in fact have distinctive racial characteristics. For example, regarding Mexican Americans, it should be pertinent that, in 1921, the population of Mexico was 10.3% white, 29.2% Indian and 60.5% mestizo (mixed ancestry) and that the present breakdown is roughly the same. Encyclopedia Britannica, vol. 15, p. 329 (1971 ed.). In other words, the vast majority of the population of Mexico is at least in part of Indian ancestry. It should follow that Mexican Americans, as a class, are distinguished from the population generally not only by their national origin but also by their racial characteristics. See generally, National Council of LaRaza Report on Impact of Limited Federal Statistical Data/Information Policies on Hispanic Americans (June 1974), printed in Hearings on H.J. Res. 406 before a Subcommittee of the House Committee on Post Office and Civil Service, 93d Cong., 2d Sess., ser. 93-52, (1974), p. 171.

According to the Encyclopedia Britannica, vol. 18, p. 849, the people of Puerto Rico are mostly descendants of a European stock (i.e., Spanish) with an admixture of Negro and some Indian strains. Thus, the same conclusion regarding status as a "race" should be permissible with regard to Puerto Ricans as a class.

In the more recent voting cases, it has not been necessary for the Court to determine the precise scope of the 15th Amendment, because it is now established that the Equal Protection Clause of the 14th Amendment applies to voting rights. (But see the dissent of Justice Harlan in *Oregon* v. *Mitchell*, 400 U.S. 112, 154-209 (1970).) Thus, for example, in *White* v. *Regester*, 412 U.S. 755 (1973), the Court was not required to make distinctions between racial discrimination and national-origin discrimination. Similarly, *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966), was disposed of on the basis of the 14th Amendment.

Hernandez v. *Texas*, 347 U.S. 475, 478 (1954), a case involving the exclusion of Mexican Americans from juries, suggests that Mexican Americans are not a group defined by "race or color." Chief Justice Warren found it necessary to show that the 14th Amendment also prohibits discrimination based upon "ancestry or national origin." Still, that issue was not crucial to the decision and there is no reason to regard *Hernandez* as determinative regarding the present question. In *Keyes* v. *School District No. 1, Denver*, 413 U.S. 189, 195 (1973), the Court referred to Denver as a "tri-ethnic, as distinguished from a biracial, community." Still, the Court recognized the fact that, with regard to discrimination in education and other areas, ". . . in the Southwest Hispanos and Negroes have a great many things in common," 413 U.S. at 197. The over-all decision may suggest that, if the Court were faced with the 15th Amendment issue, it would hold that Chicanos or Puerto Ricans are groups characterized by their race or color (as well as by other factors).

The 15th Amendment refers to "color" as well as race, but it appears that generally "color" is one means of identifying a race. For example, the Mississippi Constitution of 1890 provided: "Separate schools shall be maintained for children of the white and colored races." As described by the United States Supreme Court, the Mississippi Supreme Court "held that this provision of the Constitution divided the educable children into those of the pure white or Caucasian race, on the one hand, and the brown, yellow and black races, on the other. . . ." *Gong Lum* v. *Rice*, 275 U.S. 78, 82. Similarly, Webster's Third New International Dictionary says that adjective "brown" is applied to "a race of men . . . having skin of the color brown."

One conclusion which can be stated firmly is that Congress has the power under §2 of the 15th Amendment to enact legislation protecting the voting rights of Chicanos or Puerto Ricans. This conclusion should be valid under either a *Katzenbach* v. *Morgan*-type approach to Congress' power under the 15th Amendment or a more limited approach (cf. *Oregon* v. *Mitchell*, 400 U.S. 112 (1970)). Regarding future legislation, however, this point may be academic in view of the now-established view that Congress' power under §5 of the 14th Amendment encompasses protection of the voting rights of any racial or national-origin group.

3. *The Voting Rights Act*

The general question here is what groups did Congress intend to protect by the Voting Rights Act, as amended. Basic provisions of the Act incorporate by reference the standards of the 15th Amendment, e.g., §3, or track the language of the amendment, e.g., §2, §4(a) and §5. 42 U.S.C. 1973–1973c. In our opinion the terms and the legislative history of the 1965 Act and the 1970 Amendments demonstrate that the meaning of "race or color" for purposes of the statute is as broad as the meaning for purposes of the 15th Amendment itself. In other words, even though the statute does not attempt to define "race or color," the conclusions expressed above with regard to Indians, Chicanos and Puerto Ricans also apply with respect to the Act.

Undoubtedly, the Administration which proposed the 1965 Act and the Congress which enacted it were concerned primarily with discrimination against blacks in certain southern states. See, e.g., the prepared statements of Attorney General Katzenbach in the Senate and House hearings on the 1965 Act.[2] Still, there were some references to other minority groups which would be protected by the bill. See, e.g., Senate hearings, p. 33 (Katzenbach reference to Indians); House hearings, p. 88 (Katzenbach reference to Eskimos). Moreover, Attorney General Katzenbach acknowledged that every person has a race or color and that in that sense everyone would be protected. Senate hearings, p. 202.

The legislative history and the 1965 action of the Department of Justice with respect to Apache County, Arizona should make clear that Indians are a "race" within the meaning of the Act. See *Apache County* v. *United States*, 256 F. Supp. 903 (D. D.C., 1966). In implementing § 5 with respect to the presently covered Arizona counties, the Department has continued to regard Indians as a protected group. See, e.g., Section 5 summary regarding Arizona statute abolishing straight party voting.

Section 4(e) of the Act, intended to benefit Puerto Ricans living in New York, is based solely upon the 14th Amendment. See § 4(e)(1), 42 U.S.C. 1973b(e)(1). Thus, it might be argued that, because § 4(e)(1) makes no reference to the 15th Amendment, this shows that the Congress did not consider Puerto Ricans to be a "race." However, the legislative history of § 4(e) does not seem to support that view. More likely, the issue was not the nature of the group, but the nature of the discrimination. That is, Congress may have felt that the distinction related to the type of education provided by American-flag schools, not race,[3] and that the 14th Amendment provided a firmer basis. Even Attorney General Katzenbach, who stated that proposed § 4(e) should be based on the 14th Amendment, acknowledged that Congress "may" also have the power under § 2 of the 15th Amendment to enact such a law. See House hearings, p. 100.

In regard to recent § 5 submissions, the Department of Justice has treated Puerto Ricans as a racial group.[4] This practice was referred to and assumed to be correct by the 2d Circuit in *United Jewish Organizations of Williamsburgh, Inc.* v. *Wilson*, No. 1251, 2d Cir. (Jan. 6, 1975, slip op. p. 5993, footnote 21). Similarly, in implementing § 5, the Department has treated Chicanos as a racial group. See, e.g., Section 5 summary regarding reapportionment of Cochise County College Board of Directors.

An important consideration in regard to adoption, in 1970, of § 201, 42 U.S.C. 1973aa, was the effect of literacy tests upon Spanish-speaking citizens (and Indians). See. e.g., the joint statement of ten members of the Senate Judiciary Committee, 116 Cong. Rec. 5521 (1970). Thus, it is fully consistent with the spirit of the Act as amended to treat Mexican Americans and Puerto Ricans as racial groups.

Mr. KLEE. In that letter, does the Attorney General indicate whether whites or Caucasians are also considered a race under the 15th amendment?

Ms. JORDAN. No, I have got a copy, and I have read it. It does not.

Mr. KLEE. Do you consider your 5 percent triggering device to be based on the 14th amendment insofar as it applies to French and

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[2] Hearings on Voting Rights before the Senate Committee on the Judiciary, 89th Cong., 1st sess. (1965), p. 8; Hearings on Voting Rights before a Subcommittee of the House Committee on the Judiciary, ser. 2, 89th Cong., 1st sess. (1965), p. 2.

[3] Cf. *Camacho* v. *Rogers*, 199 F. Supp. 155, 160 (S.D. N.Y., 1961), discussed by Congressman Gilbert at 111 Congressional Record 16235.

[4] See U.S. Department of Justice, Civil Rights Division, memorandum of decision regarding certain New York State laws submitted under sec. 5, Nos. V6541–47 (July 1, 1974), p. 10.

Germans, or do you see it as constitutionally mandated by the 15th amendment?

Ms. JORDAN. I think only the 15th amendment is involved here, because we are talking about the right to vote, and the right to vote, and the focus of the 15th amendment and my triggering device is addressed to the issue of voting only.

Mr. KLEE. Thank you very much, Mr. Chairman.

Mr. EDWARDS. Thank you, Ms. Jordan. I do not think the other members have any more questions of you.

The next witness is our distinguished colleague from New York, Congressman Charles Rangel. Mr. Rangel was for a number of years a valued member at the committee and for some unscrutable reason, he left the committee. We miss him very much, but we are delighted to have you back, Mr. Rangel.

You may proceed with your statement.

TESTIMONY OF HON. CHARLES B. RANGEL, A REPRESENTATIVE FROM THE 19TH DISTRICT OF NEW YORK

Mr. RANGEL. Thank you, Mr. Chairman.

I hope I will be given permission to submit my statement for the record and to just make a few short remarks in connection with my support of the extension of the Voting Rights Act for the additional 10 years.

Mr. EDWARDS. Without objection, so ordered.

[The prepared statement of Hon. Charles B. Rangel follows:]

STATEMENT OF HON. CHARLES B. RANGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman and distinguished members of the Subcommittee: I am extremely honored to have this opportunity to appear and testify here today. My testimony will be in support of legislation introduced last month that proposes to extend for ten years those temporary provisions of the Voting Rights Act of 1965, which are scheduled to expire in August of this year. As was stated by Mr. Rodino of New Jersey, the distinguished Chairman of the Judiciary Committee, the legislation now being considered will undoubtedly be among the most important to be considered by the 94th Congress. The Committee and its Chairman are to be commended for recognizing and emphasizing the crucial nature of this legislation by scheduling these hearings at this first opportunity in the 94th Congress. While many committees of the Congress, including my own Committee on Ways and Means, are occupied with the important problems of the economy, it is left to committees such as Judiciary to insure that the vital civil liberties of all Americans continue to be protected.

Mr. Edwards of California, the astute and perceptive Chairman of this subcommittee, in a recent statement on the floor of the House of Representatives, reflected on the question of voting rights within the context of the many economic problems which have beset this nation. He concluded that voting rights and the economy are far from unrelated when viewed in the light of how minority citizens feel about their country. At a time when blacks and other minority citizens are suffering an unemployment rate of almost double that of other Americans, it would add insult to injury if the Congress were to ignore the problems that plague significant numbers of disadvantaged citizens at the polls.

Besides the early, high-priority scheduling, this Committee is to be commended for setting aside so many days of hearings so an informed judgment can be made based upon an analysis of all available facts gathered from a variety of sources.

The importance of the voting rights issue is further illustrated by the bipartisan support that has surfaced for the general concept that the essential features of the Voting Rights Act need to be extended. In this connection, I recognize the important step taken by Mr. McClory, who recently co-sponsored and introduced