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Statement before House Judiciary Subcommittee against pending civil rights bills

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STATEMENT BY SENATOR STROM THURMOND OF SOUTH CAROLINA BEFORE THE JUDICIARY SUBCOMMITTEE OF THE HOUSE OF REPRESENTATIVES IN OPPOSITION TO PENDING CIVIL RIGHTS BILLS, FEBRUARY 26, 1957.

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE:

I am here today to oppose the so-called civil rights bills. Tyranny by any other name/is just as bad. In other countries/tyranny has taken the forms of fascism, communism, and absolute monarchy. I do not want to see it foisted on the American people/under the alias of "civil rights."

Real civil rights and so-called civil rights should not be confused. Everybody favors human rights. But it is a fraud on the American people/to pretend that human rights can long endure/without constitutional restraint on the power of government.

The actual power of the Federal Government/should not be confused with power longed-for/by those who would destroy the States as sovereign governments.

USURPATION BY JUDICIARY

There have been a number of instances of attempted and real usurpation of power/by the Federal Government, which these pending bills would attempt to legalize, expand, and extend.

The most notorious illustration of this type of usurpation/is the May 17, 1954 school segregation decision/ by the United States Supreme Court. Since that time/there have been several other decisions by the Court/which I think have wakened people all over the country/who previously paid little attention, or cared little, what the result might be in the school segregation cases.
There are two recent cases. One arose in Pennsylvania and one in New York. The Pennsylvania case is Pennsylvania v. Steve Nelson, decided April 2, 1956, dealing with the right of the State to take action against a communist. The Supreme Court of the United States ruled that because there was a federal sedition law, the State of Pennsylvania had no authority in that field. The laws of 42 States were invalidated by the decision. Even the protest of the Department of Justice that the laws of the States did not interfere with enforcement of the federal law did not stop the Court.

The author of the federal law, the Honorable Howard Smith of Virginia, has stated there was no intent embodied in the federal act to prohibit the States from legislating against sedition.

The second case to which I refer arose when the City of New York dismissed from employment a teacher who had refused to disclose whether he was a communist when questioned by duly constituted authority. Here again the United States Supreme Court ruled against the power and authority of the local government contained in the Charter of the City of New York.

**USURPATION BY EXECUTIVE**

Now let me refer briefly to some attempts at usurpation of the rights of the States by the Executive Branch of the Federal Government. Administrators in some federal departments and agencies have issued directives having the effect of laws which have never been enacted by the Congress.
A specific illustration is that of the Civil Aeronautics Administration issuing a directive last year to withhold federal funds from facilities in the construction of airports where segregation of the races is practiced.

There is absolutely no basis in law for this administrative action, but by use of a directive or an edict the administrator effected a result just as though a law had been enacted.

Other attempts at federal interference from the Executive Branch with the rights of the individual citizen is demonstrated by the Contracts Compliance Commission. This Commission has dictated that contractors working on federal projects must employ persons of both the white and Negro races, whether the contractors wish to do so or not. The strength of the Commission lies in the power to withhold contracts, or threatening to do so, if a contractor fails to carry out the dictates of the Commission.

ATTEMPTED USURPATION BY CONGRESS

I can think of no better illustration of attempted usurpation of the rights of the States by the Legislative Branch of the Federal Government than what is going on here now. I believe that the Congress, by attempting to enact these so-called civil rights bills, is invading the rights of the States.

I want to make it clear that I am not appearing here today in defense of my State, or in defense of the Southern States generally, because I do not believe my State or the Southern States need a defense. But this is not a mere concern of the moment with me.
For many years/I have been deeply troubled by the problem of what is happening to constitutional government/in this country. That is what I am defending today. The illustrations I have cited provide a basis for my concern, and there are many other instances which might also be cited.

NO DOUBT AS TO CONSTITUTION

Wherever a person lives in this country, whatever political faith he holds, whatever he believes in connection with any matter of interest, he has one firm basis for knowing his rights. Those rights are enumerated in the Constitution of the United States. I believe in that document. I believe that it means/\newpage

exactly what it says, no more and no less.

If American citizens cannot believe in the Constitution, and know that it means exactly what it says, no more and no less, then there is no assurance/that our representative form of government will continue in this country.

I believe that people all over the country/are beginning to realize/that steps should be taken to preserve the constitutional guarantees/which are being infringed upon in many ways.

I believe we should also take steps to regain for the States/some of the powers previously lost/in unwarranted assaults on the States by the Federal Government.

STATE OFFICIALS UNDERSTANDING

The administration of laws relating to civil rights/is being carried out much more intelligently at the local levels of
government/ than they could ever possibly be administered by edicts handed down from Washington. State officials and county officials know the people/ and know the problems of those people. Most officials of the Federal Government in Washington know much less about local problems/ than do the public officials in the States and in the counties.

If these so-called civil rights bills should be approved, then we must anticipate that the Federal Government, having usurped the authority of local government, will try to send federal detectives snooping throughout the land. Federal police could be sent into the home of any citizen/ charged with violating the "civil rights" laws.

If there are constitutional proposals here/ which any of the States wish to enact, I have no objection to that. Every State/ has the right to enact any constitutional law/ which has not been specifically delegated to the Federal Government/ in the Constitution.

On the other hand, I am firmly opposed to the enactment by Congress of laws/ in fields where the Congress has no authority, or in fields where there is no necessity for action by the Congress.

From my observations, I have gained the strong feeling/ that most of the States are performing their police duties well. I believe that the individual States/ are looking after their own problems in the field of civil rights/ better than any enactment of this Congress could provide for, and better than any commission/ appointed by the Chief Executive/ could look after them.
BILL OF RIGHTS GUARANTEES

Before taking up specific provisions of several of the bills pending before the committee, I should like to read for you two of the basic provisions in the Bill of Rights.

The Ninth Amendment to the Constitution provides:

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

The Tenth Amendment to the Constitution provides:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Those last two amendments of the Bill of Rights make clear the intent of the founding fathers. Their intent was that all rights not specifically listed, and all powers not specifically delegated to the Federal Government, would be held inalienable by the States, and the people.

BILL OF RIGHTS UNALTERED

This basic concept of the Bill of Rights has never been constitutionally amended, no matter what the federal courts have done, no matter what the Executive Branch of the Federal Government has done, and no matter what the Congress might have done or attempted to do in the past. The people and the States still retain all rights not specifically delegated to the Federal Government.

Let us also consider these proposals from a practical standpoint.
What could be accomplished by a federal law embodying provisions which are already on the statute books of the States that cannot be accomplished by the state laws? I fail to see that any benefit could come from the enactment of federal laws duplicating state statutes which guarantee the rights of citizens. Certainly the enactment of still other laws not approved by the States could result only in greater unrest than has been created by the recent decisions of the federal courts.

MR. DOOLEY WAS RIGHT

The truth is very much as Mr. Dooley, the writer-philosopher, stated it many years ago, that the Supreme Court follows the election returns. If he were alive today, I believe Mr. Dooley would note also that the election returns follow the Supreme Court.

And now it looks as if some people are trying to follow both the Supreme Court and the election returns.

Having made these general comments, I would like to comment specifically on some of the pending proposals. First, on the proposal for the establishment of a Commission on Civil Rights.

COMMISSION UNNEEDED

There is absolutely no reason for the establishment of such a commission. The Congress and its Committees can perform all of the investigative functions which would come within the sphere of constitutional authority.

I do not believe the members of any Commission, however established, could represent the views of the people of this country as well as the members of Congress can. I hope that the
members of this Committee and the members of the Congress will not permit themselves to be persuaded that anyone else can look after the problems of the people any better, or as well, as the Congress can.

Furthermore, there is no justification for an investigation in this field.

I hope this Committee will recommend against the establishment of such a Commission.

WOULD STIR UP TROUBLE

Another bill would provide for an additional Assistant Attorney General to head a new Civil Rights Division in the Justice Department. I have searched the testimony given by the Attorney General last year before the Committees of the Congress with regard to this proposal, and I have found no valid reason why an additional Assistant Attorney General is needed.

I can understand how an additional Assistant Attorney General might be needed if the Congress were to approve a Civil Rights Division and enact some of the other proposals in the so-called civil rights bills. But they are proposals not dealing with criminal offenses -- they deal with efforts of the Justice Department to enter into civil actions against citizens.

If the Justice Department is permitted to go into the various States to stir up and agitate persons to seek injunctions and to enter suits against their neighbors, then the Attorney General might need another assistant. However, the Justice Department should avoid civil litigation, instead of seeking to promote it.
I hope the members of this Committee will recognize this proposal as one which could turn neighbor against neighbor, and will treat it as it deserves by voting against it.

WORSE THAN EX POST FACTO

Another proposal of the so-called civil rights bills is closely related to the one I have just discussed. It would provide that:

"Whenever any persons have engaged or about to engage in any acts or practices which would give rise to a cause of action ... the Attorney General may institute for the United States or in the name of the United States but for the benefit of the real party in interest, a civil action or other proper proceeding or redress or preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order."

Now that proposal is one which I would label as even more insidious than any ex post facto law which could possibly be imagined.

An ex post facto law would at least apply to some real act committed by a person which was not in violation of law at the time. The point is, however, in such instance the person would actually have committed the act.

This proposal would permit the Justice Department to secure an injunction from a federal judge or to institute a civil suit on behalf of some person against a second person when the latter had committed no act at all. An injunction might be secured from a federal judge charging a violation of the law without any evidence that a person even intended to do so.
How any person could support by oath a charge as to whether another person was "about to engage" in violating the law is beyond my understanding.

Many of the pioneers who settled this new continent came because they wanted to escape the tyranny of European despots. They wanted their families to live in a new land where everybody could be guaranteed the right to trial by jury, instead of the decrees of dictators.

Congress, as the directly elected representatives of the people, should be the last to consider depriving the people of jury trials. We should never consider it at all. But, if this proposal to strengthen the civil rights statutes is approved, that would be its effect.

AGENTS COULD MEDDLE

Under this provision, the Attorney General could dispatch his agents throughout the land. They would be empowered to meddle with private business, police elections, intervene in private lawsuits, and breed litigation generally. They would keep our people in a constant state of apprehension and harassment. Liberty quickly perishes under such government, as we have seen it perish in foreign nations.

A further provision of that same proposal would permit the by-passing of State authorities in such cases. The Federal District Courts would take over original jurisdiction, regardless of administrative remedies, and the right of appeal to the State Courts.
STATE COURTS STRIPPED

This could be a step toward future elimination of the State courts altogether. I do not believe the Congress has, or should want, the power to strip our State courts of authority and vest the Federal Courts with that authority.

Still another proposal among the so-called civil rights bills "provide a means of further securing and protecting the right to vote." I have had a search made of the laws of all 48 states and the right to vote is protected by law in every State.

S. C. CONSTITUTION PROTECTS VOTER

In South Carolina, my own state, the Constitution of 1895 provides in Article III, Section 5, that the General Assembly shall provide by law for crimes against the election laws and, further, for right of appeal to the State Supreme Court for any person denied registration.

The South Carolina election statute spells out the right of appeal to the State Supreme Court. It also requires a special session of the Court if no session is scheduled between the time of an appeal and the next election.

Article II, Section 15 of South Carolina's Constitution, provides that no power, civil or military, shall at any time prevent the free exercise of the right of suffrage in the State.

In pursuance of the Constitutional provisions, the South Carolina General Assembly has passed laws to punish anyone who shall threaten, mistreat or abuse any voter with a view to
control or intimidate him/in the free exercise of his right of suffrage. Anyone who violates any of the provisions in regard to general, special or primary elections, is subject to a fine and/or imprisonment.

In this proposed federal bill/to "protect the right to vote," a person could be prosecuted or an injunction obtained against him/based on surmise as to what he might be about to do. The bill says that the Attorney General may institute proceedings against a person/who has engaged or "is about to engage in" any act or practice/which would deprive any other person of any right or privilege concerned with voting. This is the same vicious provision I referred to earlier/in the so-called provision to strengthen the civil rights statutes.

NO LYNCHINGS IN FIVE YEARS

One of the most ridiculous proposals among the so-called civil rights bills is the anti-lynching bill.

I am as much opposed to murder/in any form and wherever it occurs/as anybody can be. I am also opposed to the Federal Government attempting to seize police power/constitutionally belonging to the States.

At my request, the Library of Congress made a search of the records of cases classified as lynchings. For the 10 years of 1946 through 1955, the reports made by Tuskegee Institute listed 15 instances of what was classified as lynchings. For the past five years none was listed by Tuskegee, although one source listed three. The Library of Congress reported that it
checked with the National Association for the Advancement of Colored People, here in Washington, and an official of that organization declined to state whether the NAACP classified the other three cases as lynchings.

Not all of the slayings classified as lynchings involved Negroes. Some of the persons were white.

The instances classified as lynchings during the past 10 years, all so classified being in six States of the South, totaled either 15 or 18, according to which figure you want to accept. The population of those six States is approximately sixteen million people.

6,630 MURDERS IN THREE CITIES

Now I want to give you some information about three cities which have a total population of about fourteen million people, about two million less than the six States to which I referred. These cities are Chicago, New York and Washington.

According to Federal Bureau of Investigation records, the three cities had a total of 6,630 murders and non-negligent manslaughters during the 10-year period of 1946 through 1955. Chicago, with a population of 4,920,816, had 2,815; New York, with a population of 7,891,957, had 3,081; and Washington (the District of Columbia) with a population of 802,178, had 734.

These facts speak for themselves. This Committee has before it a bill purporting to prevent lynching when there has been in 10 years a total of 15 lynchings, so classified, in States having a total population of about sixteen million.
But the 6,630 killings which have taken place in three cities of fourteen million population has attracted no attention here.

32 KILLINGS IN D. C. IN 6 MONTHS

In the District of Columbia alone, during the first half of 1956, the last period for which statistics are available, 32 slayings were recorded. That was more than twice the number of lynchings classified by Tuskegee Institute during the past 10 years, and Washington has only about one-twentieth the population of the States involved.

This is not to say that I believe any federal action is called for in connection with murders and mob slayings in Chicago and New York. But it would appear appropriate to start with the city of Washington, which is directly under the jurisdiction of the Congress, if legislation would help to reduce the present homicide rate.

The fact that no effort has been made in this direction makes it crystal clear that some crocodile tears are being shed before this Committee.

S. C. HAS ANTI-LYNCH LAW

Twenty of the 48 States already have specific anti-lynching laws. Seven of these States are in the deep South. They are: Alabama, Georgia, North Carolina, South Carolina, Tennessee, Texas, and Virginia. Two others, Kentucky and West Virginia, are considered border States. The other 11 are: California, Illinois, Indiana, Kansas, Minnesota, Nebraska, New Jersey, New Mexico, New York, Ohio, and Pennsylvania.
The statistics on lynchings, to which I referred, failed to include hundreds of mob or gang slayings I have read about in the newspapers in some of the Northern States which have anti-lynching laws. I think it is most regrettable that anti-lynch laws have not been invoked in some of those gang slayings.

COUNTIES FINANCIALLY LIABLE FOR LYNCHINGS

South Carolina not only has a criminal statute against lynching, it also has a constitutional provision, Article 6, Section 6, which provides:

"In all cases of lynching when death ensues, the county where such lynching takes place shall, without regard to the conduct of the officers, be liable in exemplary damages of not less than $2,000 to the legal representatives of the person lynched."

Plaintiffs in years past have brought civil actions under this provision and have collected damages. There has been no death in South Carolina classified as a lynching in 10 years.

FEPC OF RUSSIAN ORIGIN

Another proposal among these so-called civil rights bills is one "To Prohibit Discrimination in Employment Because of Race, Religion, Color, National Origin, or Ancestry." This is also referred to under a short title as "The Federal Equality of Opportunity in Employment Act."

This old FEPC proposal was patterned after a Russian law written by Stalin about 1920, referred to in Russia as Stalin's "All-Races Law." The Russian law does not include the word "religion" because Stalin did not want to admit the existence of religion in Russia at the time he wrote the law. But the
provisions in the FEPC proposal faithfully follow the Russian pattern and Stalin's "All-Races Law."

The so-called Fair Employment Practices Commission should have another name / because the purpose of the Commission requires another name.

FORCED EMPLOYMENT PRACTICES COMMISSION

Instead of calling it a Fair Employment Practices Commission, it should be called a Forced Employment Practices Commission.

The proponents of this type legislation advocate that an employer should be forced to hire persons who might, for various reasons, be undesirable as employees. Labor unions would be affected in the same way.

What the proponents of this legislation have not taken into consideration is that the employers, who provide the jobs, themselves become a minority and are discriminated against and abused, if put under this law.

I don't believe that Congress, or any official of the Executive Branch of the Government, or the Supreme Court, sitting here in Washington, is as well trained as the individual employer or labor union / to decide who they need for the job to be done.

Although 12 States have enacted FEPC laws with enforcement provisions, 36 States have no such provision. To me / that is sufficient evidence that a majority of the citizens in three-fourths of the States / do not want or feel a need for FEPC, or that the people and their legislatures do not consider it constitutional.
My view is that the FEPC is absolutely unconstitutional because it deprives an employer of control of his business without due process.

NEGRO EDITOR BACKS SEGREGATION

If the proponents of the FEPC bill are directing the legislation principally at the status of Negroes in the South, I would like to refer them to a Negro editor for some information as to the real situation in the South.

I am talking about Davis Lee of Newark, New Jersey, who publishes the Newark Telegram. Mr. Lee has traveled all over this country during the past several years and has published many stories in his newspaper describing the excellent jobs held by Negroes in the South. He has described how many Negroes have been successful in establishing their own businesses. He has told the story of how Negroes have progressed generally throughout the South.

SEGREGATION PROTECTS NEGRO

Mr. Lee has consistently advocated maintaining segregation of the races because it is advantageous to the Negro. He has stated many times that Negroes are best protected within the framework of segregation, because they do not have to compete directly with more able white employees or white businessmen in a segregated system.

He says this gives the Negro an advantage, because under segregation he can carry on a successful business, or compete as an employee, with persons of similar training and background much more successfully than he could if forced to compete in an integrated society.
If the purpose of the advocates of the FEPC is to assist and uplift the Negro and other minority races, I would suggest that they read what Mr. Lee has written. They should attempt to provide assistance without attempting to dictate to any race what its relationship must be to any other race.

There is ample evidence the Negro is better off today under the type segregation practiced in the South than under integration or the type segregation practiced outside the South. The question then becomes whether the purpose of the legislation is to help the Negro or whether it is designed to try to force integration of the white and Negro races in the South.

As far as the question of fair treatment is concerned, I believe that Mr. Lee could also inform this Committee as to some of the pressures which have been brought on him, as an individual and as a New Jersey editor, because he has had the courage to publish his views, and present the facts he has found during his travels.

ONLY FIVE POLL TAX STATES

Finally, Mr. Chairman, I want to make reference to another proposal in this group of so-called civil rights bills. This is the proposal to remove the poll tax as a requirement for voting.

While I was Governor of South Carolina, I proposed that the poll tax be removed in my State as a prerequisite for voting. The question was submitted to the people in a referendum and a large majority voted to remove that requirement.

This was done, as it should have been, by action of the
General Assembly in submitting the question to the people of the State involved.

Only five of the 48 States require the payment of a poll tax as a prerequisite to voting. If the people of those States desire to have the tax removed, they can do so through orderly processes established by the constitutions of those States. Action by the Federal Government is not needed/to remove the poll tax in any of those states. Action by the Congress/by statute/would be in violation of the Constitution.

I believe the Attorney General of the State of Texas testified during the hearings last year/that the poll tax in that state was earmarked as revenue for public education. In some states it may be necessary to maintain the tax/to secure sufficient revenue to defray all of the costs of public education.

The Federal Government has invaded so many fields of taxation/that it is terribly difficult for the States to find sufficient sources of revenue/to carry on the normal operations of government.

Mr. Chairman, I appreciate the time which has been allocated to me. I would like to say/in conclusion/that I hope this Committee will not recommend/the enactment of any of these so-called civil rights bills.

UNCONSTITUTIONAL AMENDING

I believe the effect of enactment of such legislation as these proposals/would be to alter our form of government, without following the procedures established by the Constitution.
I believe the effect of enacting these bills into law would be to take from the States power and authority guaranteed to them by the Constitution.

In recent years there have been more and more assaults by the Federal Government on the rights of the States, as the Federal Government has seized power held by the States. In many instances, I believe, this has been done without a constitutional basis.

The States have lost prestige. But more important, the States have lost a part of their sovereignty whenever the Federal Government has taken over additional responsibilities. That loss might seem unimportant at the time, but gradually it could become a major part of the sovereignty of the States.

Officials of the Federal Government, whether in the Executive, Legislative, or the Judicial Branch, should not forget to whom they owe their allegiance. Each of us owes his allegiance to the Constitution and to the people -- not to any agency, department, or person. We have taken an oath to support and defend the Constitution.

We must take into account the facts as they really are, and not be panicked by the organized pressures which so often beset public officials.

STATES CREATED UNION

We must not lose sight of the fact that the States created the Federal Union; the Federal Government did not create the States. All of the powers held by the Federal Government were delegated to it by the States in the Constitution. The Federal Government
had no power, and should have no power, which was not granted by the States in the Constitution.

If this Congress approves the legislation embodied in the bills pending before the Committee, it will be an unwarranted attempt to seize power/not rightfully held by the Congress or by any branch of the Federal Government.

I hope this Committee will consider these facts/and recommend the disapproval of these bills.