Address of Senator Strom Thurmond (D-SC) in the Senate against the compromise version of H. R. 6127, 1957 August 27

Strom Thurmond

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Mr. President, I was bitterly opposed to the passage of H. R. 6127 in the form which was approved by the Senate. I am even more bitterly opposed to the acceptance of this so-called compromise which has come back from the House of Representatives.

Later on I want to comment on various provisions of the entire bill, but at this time I am directing my comments at the specific provisions of the so-called compromise. In my view, it is no less than an attempt to compromise the United States Constitution itself.

In effect, it would be an illegal amendment to the Constitution because that would be the result in so far as the Constitutional guarantee of trial by jury is concerned.

Article III, Section 2, of the Constitution provides that:

"The trial of all Crimes, except in Cases of Impeachment, shall be by Jury..."

Again in the Sixth Amendment -- in the Bill of Rights -- it is provided that:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence."

The Fifth and Seventh Amendments to the Constitution provide additional guarantees of action by a jury under certain circumstances. The Fifth Amendment refers to the guarantee of indictment by a grand jury before a person shall be held to answer for a crime. The Seventh Amendment guarantees trial by jury in common law cases.
These guarantees were not included in our Constitution without good and sufficient reasons. They were written into the Constitution because of the abuses against the rights of the people by the King of England. Even before the Constitution and the Bill of Rights were drafted, our forefathers wrote indelibly into a historic document their complaints against denial of the right of trial by jury.

That document was the Declaration of Independence.

After declaring that all men are endowed with certain unalienable rights, including life, liberty, and the pursuit of happiness, the signers of the Declaration pointed out that the King had a history of "repeated injuries and usurpations, all having in direct object to the establishment of an absolute tyranny over these States." Then they proceeded to the listing of a bill of particulars against the King.

He was charged with "depriving us in many cases of the benefits of trial by jury."

Mr. President, when our forefathers won their freedom from Great Britain, they did not forget that they had fought to secure a right of trial by jury. They wrote into the Constitution the provisions guaranteeing trial by jury. Still not satisfied, they wrote into the Bill of Rights two years later the three specific additional provisions for jury action.

It is a well-known fact that there was general dissatisfaction with the Constitution when it was submitted to the States on September 28, 1787, because it did not contain a Bill of Rights.
A majority of the people of this country, under the leadership of George Mason, Thomas Jefferson, and others, were determined to have spelled out in the Constitution in the form of a Bill of Rights those guarantees of personal security which are embodied in the first ten Amendments.

It was nine months after the Constitution was submitted to the States before the ninth State ratified the Constitution thus making it effective.

Although by that time it was generally understood, and pledges had been made by the political leaders of the day, that a Bill of Rights would quickly be submitted to the people, four of the thirteen States still were outside the Union.

Nineteen months after the Constitution was submitted to the States, George Washington was inaugurated on April 30, 1789, as our first President. Even then, however, North Carolina and Rhode Island remained outside the Union for several months, North Carolina ratifying on November 21, 1789, and Rhode Island on May 29, 1790.

The reluctance of all the States to enter the Union which they had helped to create clearly demonstrated how strong the people felt about the necessity of including a Bill of Rights in the Constitution. The Constitution might never have been ratified had it not been for the assurances given to the people by Hamilton, Madison, and other political leaders that
a Bill of Rights would be drafted as soon as the Constitution was ratified. Leaders of that day carried out the mandate of the people, and the Bill of Rights with its guarantees of trial by jury was submitted to the States on September 25, 1789.

In 1941, the late John W. Davis, that great constitutional lawyer and one-time Democratic nominee for President, was asked to state what the Bill of Rights meant to him. "The Bill of Rights," he declared, "denies the power of any Government--the one set up in 1789, or any other--or of any majority, no matter how large, to invade the native rights of a single citizen."

Mr. Davis continued his definition with the following:

"There was a day when the absence of such rights in other countries could fill an American with incredulous pity. Yet today, over vast reaches of the earth, governments exist that have robbed their citizens by force or fraud of every one of the essential rights American citizens still enjoy. Usage blunts surprise, yet how can we regard without amazement and horror the depths to which the subjects of the totalitarian powers have fallen?

"The lesson is plain for all to read. No men enjoy freedom who do not deserve it. No men deserve freedom who are unwilling to defend it. Americans can be free so long as they compel the governments they themselves have erected to govern strictly within the limits set by the Bill of Rights. They can be free so long, and no longer, as they call to account every governmental agent and officer who trespasses on these rights to the smallest extent. They can be free only if they are ready to repel, by force of arms if need be, every assault upon their liberty, no matter whence it comes."

Mr. President, this Bill is an assault upon our liberty. The United States is a constitutional Government, and our Constitution cannot be suspended or abrogated to suit the whims of a radical and aggressive minority in any era.
The specific provisions in the Constitution and the Bill of Rights guaranteeing trial by jury have not been repealed. Neither have they been altered or amended by the Constitutional methods provided for making changes in our basic law if the people deem it wise to make such changes.

Nevertheless, in spite of the prevailing Constitutional guarantees of trial by jury, we are here presented with a proposal which would compromise the provisions of the Constitution -- yes, in my opinion, amend the Constitution illegally.

This compromise provides that in cases of criminal contempt, under the provisions of this act, "the accused may be tried with or without a jury" at the discretion of the judge.

It further provides:

"That in the event such proceeding for criminal contempt be tried before a judge without a jury and the sentence of the court upon conviction is a fine in excess of $300 or imprisonment in excess of 45 days, the accused in said proceeding, upon demand therefor, shall be entitled to a trial de novo before a jury..."

Mr. President, the first of the provisions I have just cited, giving discretion to a judge whether or not a jury trial is granted in a criminal case, is in direct conflict with the Constitution.

The Constitution does not provide for the exercise of any discretion in a criminal case as to whether the person accused shall have a jury trial. The Constitution says "The trial of all crimes except in cases of impeachment shall be by jury."

The Sixth Amendment says "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury..."
The Constitution does not say in some crimes. The Constitution says in all crimes. The Constitution does not say trial may be by jury. The Constitution says trial shall be by jury.

How, then, Mr. President, can we be presented with this compromise? How can we be asked to accept a proposal so clearly in conflict with and in violation of the Constitution?

The Constitution makes no exception to the trial by jury provision in criminal cases in the event contempt is involved. Let me repeat and let me emphasize. The Constitution says "The trial of all crimes shall be by jury" -- not all crimes except those involving contempt, but all crimes.

What power has been granted to this Congress to agree to any such proposal when it is in such complete contradiction to the Constitution? There is no power except the power of the people of this Nation by which the Constitution can be amended. The power of the people cannot be infringed upon by any lesser authority.

As the directly elected representatives of the people, this Congress should be the last body to attempt to infringe upon the authority which is vested solely in the people.

We are here dealing with one of the basic legal rights and one of the most vital personal liberties guaranteed under our form of government. But the proposed compromise insists that the treasured right of trial by jury be transformed into a matter of discretion for a judge -- for one person -- to decide whether it shall be granted or withheld.

This compromise attempts to make trial by jury a matter of degree, as stated in the second part of the provision which I quoted.
Under this proposal, if a man were to receive a sentence of a fine of $300 or 45 days imprisonment, he would be deprived of his right of trial by jury, except at the discretion of the judge. On the other hand, if a dollar were added to the amount of money, or even one cent, and a day, or even an hour, to the length of imprisonment, that man would be granted a new trial with a jury deciding the facts.

Mr. President, this is not something which can be compromised. The right of trial by jury is too dear a right to be measured in dollars and cents or in terms of days and hours. The right of trial by jury is guaranteed by the Constitution. It is a vital principle upon which our form of government is based. Principle is not a matter of degree.

This proposed compromise is a true child of the parent bill — like father, like son, or a chip off the old block. Both are bad. But the provisions of the compromise are even worse than the provisions of the bill which I opposed when it was approved by the Senate.

The enactment in the Senate of Part V, with its jury trial provision, was a vast improvement over the radical bill which was sent to us from the House of Representatives.

However, this unconstitutional compromise now makes Part V conform with the obnoxious provisions which were in the original bill. In the name of constitutional government, I hope that a majority of this Senate will vote against this proposal.

The principal purpose of this bill which the House has returned to the Senate is political. Both parties fear the bloc
voting of the pivotal states. Both parties want to be in position to claim credit for the passage of what is being called a "civil rights" bill. Both parties hope to be able to capitalize on the passage of a bill such as this one in the Congressional elections of 1958, and then to carry those gains into the presidential election of 1960.

Propaganda and pressure exerted upon the Congress and upon the American people explain how such a bill as this one came to be considered at all. Stewart Alsop, the newspaper columnist, only last week stated the simple facts of the case.

He said that "behind the shifting, complex, often fascinating drama of the struggle over civil rights, there is one simple political reality -- the Negro vote in the key industrial states in the North. That is, of course, in hard political terms, what the fight has been all about."

To explain his point, he cited the situation prevailing in New York, Pennsylvania, and Illinois. Pointing out that the "Negro vote can be absolutely decisive in these states, Mr. Alsop stated that it is "almost inconceivable that any presidential candidate could lose those three states and win an election."

The following four paragraphs are quoted directly from Mr. Alsop's column:

"In 1954, Averell Harriman was elected Governor of New York by less than 15,000 votes over Sen. Irving Ives. According to Harris' analysis, Harriman polled a whopping 79 percent of the Negro vote. Negro voters thus supplied Harriman with his margin of victory several times over. Two years later, the
Democrats had dropped some 90,000 Negro votes to the Republicans -- or about six times the number of votes Ives needed to defeat Harriman.

"Or take another close race -- the victory of Sen. Joseph Clark of Pennsylvania over the Republican incumbent, Sen. James Duff, in 1956. Again, Clark just squeaked in, with a plurality of less than 18,000 votes. Clark, despite the Supreme Court, carried the Negro vote by a huge 76 per cent margin, which was worth about 150,000 votes to him. Suppose the Negro vote had dropped off as sharply in Pennsylvania as it did in Illinois, where it nose-dived from 75 per cent in 1952 to 58 per cent in 1956. Then Duff would be in the Senate by a comfortable majority, and Clark would be practicing law.

"Other examples could be cited, like that of Sen. Paul Douglas of Illinois, who owes about 60 per cent of his 1954 plurality to the Negro vote. But the lesson is clear enough. If the Republicans can attract something approaching half the Negro vote in the Northern states, the Republican Party will then be the normal majority party in those states.

"Read the role of big states in which the Negroes can be expected to poll 5 per cent or more of the total vote -- not only New York, Pennsylvania and Illinois, but such states as Michigan, Ohio, New Jersey, California. It then becomes clear what is at stake in the civil rights struggle -- nothing less than the future balance of political power in the Nation."

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Mr. President, the advocates of this legislation may believe it fits their objective today, but I am convinced that if this bill is enacted into law, that eventually it will be just as undesirable to its advocates as it is to me.

No explanation of this bill can alter the fact that it was, and is now, under the proposed compromise, a force bill. Its purpose is to put a weapon of force into the hands of the Attorney General and into the hands of federal judges to exercise arbitrarily.

Just as the Attorney General can decide arbitrarily whether or not to prosecute a case, so now this compromise provides federal judges with authority to exercise discretion in applying the law.

Jury trial may be granted or withheld on any grounds whatsoever in the mind of a judge so long as he does not exceed the maximum limit set for denying trial by jury.

The proponents of this bill claim it would strengthen the rights of individuals. In contrast to this claim, the bill actually would strengthen the bureaucratic power of the Attorney General and the arbitrary authority of federal judges.

No new right is granted by this bill. No old right held by the people is better protected. The substance of the bill is to deprive the people of a right held under the Constitution.

When this bill was debated in the Senate, many authorities were quoted on the importance of trial by jury. At that time I quoted that great legal mind of eighteenth century England, Blackstone. Because of the authoritative place he holds in jurisprudence, I want to quote him again at this time. This is what Blackstone had to say:
"...The trial by jury ever has been, and I trust ever will be, looked upon as the glory of the English law. And if it has been so great an advantage over others in regulating civil property, how much must that advantage be heightened when it is applied to criminal cases!... It is the most transcendent privilege which any subject can enjoy, or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbors and equals. A constitution, that I may venture to affirm has, under Providence, secured the just liberties of this nation for a long succession of ages. And therefore a celebrated French writer, who concludes, that because Rome, Sparta, and Carthage have lost their liberties, therefore those of England in time must perish, should have recollected that Rome, Sparta, and Carthage, at the time when their liberties were lost, were strangers to the trial by jury."

At another point, Blackstone further declared his faith in trial by jury in these words:

"...A competent number of sensible and upright jurymen; chosen by lot... will be found the best investigators of truth, and the surest guardians of public justice. For the most powerful individual in the state will be cautious of committing any flagrant invasion of another's right, when he knows that the fact of his oppression must be examined and decided by twelve indifferent men, not appointed till the hour of trial; and that, when once the fact is ascertained, the law must of course redress it. This, therefore, preserves in the hands of the people that share which they ought to have in the administration of public justice..."

Mr. President, the wisdom of Blackstone's words is undeniable. The liberty of every citizen must continue to be protected by the right of trial by jury. This is not a right which applies to one person and is denied another. The Constitution makes no exception in its guarantee of trial by jury to every citizen.

On May 9, 1957, Associate Justice Brennan of the United States Supreme Court delivered an address in Denver, Colorado. In this address Justice Brennan dealt with the subject of trial by jury and made the following statement:
American tradition has given the right to trial by jury a special place in public esteem that causes Americans generally to speak out in wrath at any suggestion to deprive them of it... One has only to remember that it is still true in many States that so highly is the jury function prized, that judges are forbidden to comment on the evidence and even to instruct the jury except as the parties request instructions. The jury is a symbol to Americans that they are bosses of their government. They pay the price, and willingly, of the imperfections, inefficiencies and, if you please, greater expense of jury trials because they put such store upon the jury system as a guaranty of their liberties..."

Mr. President, that is a significant statement to me coming from a member of the present Supreme Court. I will not predict what the Court might do when the constitutionality of the denial of trial by jury as embodied in this so-called compromise is presented to the Court.

However, I shall not be surprised if the Court declares the Bill unconstitutional, because on June 10, 1957, in Reid v. Covert, the so-called military wives case, the Supreme Court issued a strong opinion on behalf of trial by jury. In that case the Court said:

"Trial by jury in a court of law and in accordance with traditional modes of procedure after an indictment by grand jury has served and remains one of our most vital barriers to governmental arbitrariness. These elemental procedural safeguards were imbedded in our Constitution to secure their inviolateness and sanctity against the passing demands of expediency or convenience." 

And further:

"If... the Government can no longer satisfactorily operate within the bounds laid down by the Constitution, that instrument can be amended by the method which it prescribes. But we have no authority to read exceptions into it which are not there."
That is certainly a clue to what might be expected from the Court when it is called upon to decide the constitutionality of Part 5 of H. R. 6127 as it has been amended by this so-called compromise.

Many claims have been made that this is a bill to protect the individual's right to vote. The evidence proves that there are more than adequate laws in all of the States to protect the right to vote. I requested the Library of Congress to make a study of the laws of the States by which the right to vote is protected in each State. A summary of these laws was submitted to me, and I request that this summary be printed in the Record at the conclusion of my remarks.

As to my own State of South Carolina, I shall discuss at some length the constitutional and statutory safeguards protecting a citizen's right to vote.

I do not know of a single case having arisen in South Carolina in which a potential voter has charged that he has been deprived of his right to vote. Had such an instance occurred, justice would have been secured in the courts of South Carolina. The Federal Government has no monopoly over the administration of justice.

Both white and Negro citizens exercise their franchise freely in South Carolina. Our requirements are not stringent. South Carolina does not require the payment of a poll tax as a prerequisite to voting. Registration is necessary only once every ten years.
Proof that Negroes vote in large numbers in South Carolina -- if proof is desired -- can be found in an article which was published following the general election in 1952 in The Lighthouse and Informer, a Columbia, South Carolina, Negro newspaper. In its issue of November 8, 1952, The Lighthouse and Informer discussed the results of the election and declared that: "Estimates placed the Negro votes at between 60,000 and 80,000 who actually voted..."

This represents almost one-fourth of the votes cast in that election. I did not see an estimate of the Negro votes in the 1956 general election, but reports which came to me indicated there was another large turnout.

Mr. President, I shall now read the provisions of the South Carolina Constitution which protect a citizen's right to vote.

S. C. CONSTITUTION ELECTION PROVISIONS

Article 1, Section 9. SUFFRAGE

"The right of suffrage, as regulated in this Constitution, shall be protected by law regulating elections and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult or improper conduct."

Article 1, Section 10. ELECTIONS FREE AND OPEN.

"All elections shall be free and open, and every inhabitant of this State possessing the qualifications provided for in this Constitution shall have an equal right to elect officers and be elected to fill public office."

Article 2. Section 5. APPEAL; CRIMES AGAINST ELECTION LAWS.

"Any person denied registration shall have the right to appeal to the Court of Common Pleas, or any Judge thereof, and thence to the Supreme Court, to determine his right to vote under the limitations imposed in this Article, and on such appeal the hearing shall be de novo, and the General Assembly shall provide
by law for such appeal, and for the correction of illegal and fraudulent registration, voting, and all other crimes against the election laws."

Article 2. Section 8. REGISTRATION PROVIDED; ELECTIONS; BOARD OF REGISTRATION; BOOKS OF REGISTRATION.

"The General Assembly shall provide by law for the registration of all qualified electors, and shall prescribe the manner of holding elections and of ascertaining the results of the same: Provided, At the first registration under this Constitution, and until the first of January, 1898, the registration shall be conducted by a Board of three discreet persons in each County, to be appointed by the Governor, by and with the advice and consent of the Senate. For the first registration to be provided for under this Constitution, the registration books shall be kept open for at least six consecutive weeks; and thereafter from time to time at least one week in each month, up to thirty days next preceding the first election to be held under this Constitution. The registration books shall be public records open to the inspection of any citizen at all times."

Article 2. Section 15. RIGHT OF SUFFRAGE FREE.

"No power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage in this State."

In addition to these general provisions of the Constitution protecting the right to vote, I shall now read specific statutory provisions contained in the South Carolina Code. I believe it is especially appropriate that I do so in view of the fact that it has been charged that South Carolina, as well as other States, has failed to protect the right of citizens to vote.
The charge is false. The right of every citizen to vote in South Carolina is protected, and I want the Record to be clear; therefore, I cite the following provisions of law in South Carolina:

SOUTH CAROLINA CODE

TITLE 23

23-73. APPEAL FROM DENIAL OF REGISTRATION.

"The boards of registration to be appointed under Section 23-51 shall be the judges of the legal qualifications of all applicants for registration. Any person denied registration shall have the right of appeal from the decision of the board of registration denying him registration to the court of common pleas of the county or any judge thereof and thence to the Supreme Court."

23-74. PROCEEDINGS IN COURT OF COMMON PLEAS.

"Any person denied registration and desiring to appeal must within ten days after written notice to him of the decision of the board of registration file with the board a written notice of his intention to appeal therefrom. Within ten days after the filing of such notice of intention to appeal, the board of registration shall file with the clerk of the court of common pleas for the county the notice of intention to appeal and any papers in its possession relating to the case, together with a report of the case if it deem proper. The clerk of the court shall file the same and enter the case on a special docket to be known as calendar No. 4. If the applicant desires the appeal to be heard by a judge at chambers he shall give every member of the board of registration four days' written notice of the time and place of the hearing. On such appeal the hearing shall be de novo."
23-75. FURTHER APPEAL TO SUPREME COURT.

"From the decision of the court of common pleas or any judge thereof the applicant may further appeal to the Supreme Court by filing a written notice of his intention to appeal therefrom in the office of the clerk of the court of common pleas within ten days after written notice to him of the filing of such decision and within such time serving a copy of such notice on every member of the board of registration. Thereupon the clerk of the court of common pleas shall certify all the papers in the case to the clerk of the Supreme Court within ten days after the filing of such notice of intention to appeal. The clerk of the Supreme Court shall place the case on a special docket, and it shall come up for hearing upon the call thereof under such rules as the Supreme Court may make. If such appeal be filed with the clerk of the Supreme Court at a time that a session thereof will not be held between the date of filing and an election at which the applicant will be entitled to vote if registered the Chief Justice or, if he is unable to act or disqualified, the senior associate justice shall call an extra term of the court to hear and determine the case."

23-100. RIGHT TO VOTE

"No elector shall vote in any polling precinct unless his name appears on the registration books for that precinct. But if the name of any registered elector does not appear or incorrectly appears on the registration books of his polling precinct he shall, nevertheless, be entitled to vote upon the production and
presentation to the managers of election of such precinct, in
addition to his registration certificate, of a certificate of
the clerk of the court of common pleas of his county that his
name is enrolled in the registration book or record of his
county on file in such clerk's office or a certificate of the
Secretary of State that his name is enrolled in the registration
book or record of his county on file in the office of the Secretary
of State."

23-349. VOTER NOT TO TAKE MORE THAN FIVE MINUTES IN BOOTH; TALKING
IN BOOTH, ETC.

"No voter, while receiving, preparing and casting his ballot,
shall occupy a booth or compartment for a longer time than five
minutes. No voter shall be allowed to occupy a booth or compartment
already occupied by another, nor to speak or converse with anyone,
except as herein provided, while in the booth. After having
voted, or declined or failed to vote within five minutes, the
voter shall immediately withdraw from the voting place and shall
not enter the polling place again during the election."

23-350. UNAUTHORIZED PERSONS NOT ALLOWED WITHIN GUARD RAIL;
ASSISTANCE.

"No person other than a voter preparing his ballot shall be
allowed within the guard rail, except as herein provided. A
voter who is not required to sign the poll list himself by this
Title may appeal to the managers for assistance and the chairman
of the managers shall appoint one of the managers and a bystander
to be designated by the voter to assist him in preparing his ballot.
After the voter's ballot has been prepared the bystander so appointed shall immediately leave the vicinity of the guard rail."

23-656. PROCURING OR OFFERING TO PROCURE VOTES BY THREATS.

"At or before every election, general, special or primary, any person who shall, by threats or any other form of intimidation, procure or offer or promise to endeavor to procure another to vote for or against any particular candidate in such election shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than one hundred dollars nor more than five hundred dollars or be imprisoned at hard labor for not less than one month nor more than six months, or both by such fine and such imprisonment, in the discretion of the court."

23-657. THREATENING OR ABUSING VOTERS, ETC.

"If any person shall, at any of the elections, general, special or primary, in any city, town, ward or polling precinct, threaten, mistreat or abuse any voter with a view to control or intimidate him in the free exercise of his right of suffrage, such offender shall upon conviction thereof suffer fine and imprisonment, at the discretion of the court."

23-658. SELLING OR GIVING AWAY LIQUOR WITHIN ONE MILE OF VOTING PRECINCT.

"It shall be unlawful hereafter for any person to sell, barter, give away or treat any voter to any malt or intoxicating liquor within one mile of any voting precinct during any primary or other election day, under a penalty, upon conviction thereof, of not more than one hundred dollars nor more than thirty days imprisonment with labor. All offenses against the provisions of this section shall be heard, tried and determined before the court of general sessions after indictment."
23-659. ALLOWING BALLOT TO BE SEEN, IMPROPER ASSISTANCE, ETC.

"In any election, general, special or primary, any voter who shall (a) except as provided by law, allow his ballot to be seen by any person, (b) take or remove or attempt to take or remove any ballot from the polling place before the close of the polls, (c) place any mark upon his ballot by which it may be identified, (d) take into the election booth any mechanical device to enable him to mark his ballot or (e) remain longer than the specified time allowed by law in the booth or compartment after having been notified that his time has expired and requested by a manager to leave the compartment or booth and any person who shall (a) interfere with any voter who is inside of the polling place or is marking his ballot, (b) unduly influence or attempt to influence unduly any voter in the preparation of his ballot, (c) endeavor to induce any voter to show how he marks or has marked his ballot or (d) aid or attempt to aid any voter by means of any mechanical device whatever in marking his ballot shall be fined not exceeding one hundred dollars or be imprisoned not exceeding thirty days."

23-667. ILLEGAL CONDUCT AT ELECTIONS GENERALLY.

"Every person who shall vote at any general, special or primary election who is not entitled to vote and every person who shall by force, intimidation, deception, fraud, bribery or undue influence obtain, procure or control the vote of any voter to be cast for any candidate or measure other than as intended or desired by such voter or who shall violate any of the provisions of this Title in regard to general, special or primary elections shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment in jail for not less than three months nor more than twelve months or both, in the discretion of the court."
Mr. President, the provisions of the South Carolina Constitution and the provisions of the South Carolina statutes, which I have just read, prove the absolute lack of necessity for additional protection of the right to vote in my State. Also, the summary of the laws of other States, which I have requested to be printed in the Record at the conclusion of my remarks, prove there is no necessity for greater protection of the right to vote in any other State.

The claim that this is a right to vote bill is completely without foundation. If the advocates of this so-called civil rights bill want to deny the right of trial by jury to American citizens, they should proclaim their objective and seek to remove the guarantee of trial by jury from the Constitution. They should follow constitutional methods. Then the people of this Nation would not be misled, as some have been, to think that H. R. 6127 would give birth to a right to vote for anybody—a right already held by those it purports to help.

Mr. President, I also object to Part I of this bill which would create a Commission on Civil Rights. To begin with, there is absolutely no need or reason for the establishment of such a commission. If there were any necessity for an investigation in the field of civil rights, it should be conducted by the States, or by an appropriate committee of the Congress within the jurisdiction held by the Congress.

The Congress should not delegate its authority to a commission. In such a delicate and sensitive area, the Congress should proceed with great deliberation and care. There is no present indication that any such study will be needed in the foreseeable future.

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The establishment of a commission as proposed in this bill is most unwise.

Section 104 (a) of Part I provides The Commission shall --

"(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and

"(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution."

These two paragraphs provide the commission with absolute authority to probe into and to meddle into every phase of the relations existing between individuals, limited only by the imagination of the commission and its staff.

The commission can go far afield from a survey on whether the right to vote is protected. Through the power granted in the paragraphs I have cited, the commission could exert its efforts toward bringing about integration of the races in the schools and elsewhere. It would be armed with a powerful weapon when it combined its investigative power and its authority to force witnesses to answer questions.

I do not believe the people of this country realize the almost unlimited powers of inquiry which would be placed in the hands of this political commission. I do not believe the people of this country want to have such a strong-arm method of persuasion imposed upon them. Section 105 (f) of Part I provides that "subpoenas for the attendance and testimony of witnesses or the protection of written or other matter may be issued in accordance with the rules of the commission..."

This is an unusual grant of authority. Many of the committees and special committees of the Congress do not have this power.
The Truman commission on civil rights did not have it. The subpoena is a punitive measure, generally reserved for penal process whereby powers are granted to force testimony which would not otherwise be available. If the proposed commission were simply a fact-finding commission and non-political, the extreme power to force testimony by the use of a subpoena would not be needed. The power of subpoena in the hands of a political commission and the additional power to enforce its subpoenas by court order diverge from the authority usually held by traditional fact-finding groups.

There are several grounds for serious objection to Section 104 (a) of Part I. This section permits complaints to be submitted to the commission for investigation, but it does not require the person complaining to have a direct interest in the matter. This means, of course, that any meddler can inject himself into the relationship existing between other persons. It opens the door for fanatics to stir up trouble against innocent people.

This section opens the door wide for such organizations as the NAACP, the ADA, and others to make complaints to the commission with little or no basis for doing so.

If an NAACP official in Washington made a complaint against a citizen of South Carolina, the South Carolina citizen would not have the opportunity of confronting his accuser unless the accuser appeared voluntarily.

Although Part I requires sworn allegations to the commission,
there is no requirement that testimony taken by the commission be taken under oath. Failure to make all witnesses subject to perjury prosecutions by placing them under oath would certainly make testimony of little value. The commission might adopt a rule to require sworn testimony, but this should not be left to the discretion of the commission. It should be written into law.

There are many other objections to Part I which were pointed out during the debate before the Senate passed its version of the bill. I shall not go into them further at this time.

Part II of the bill provides for the appointment of an additional Assistant Attorney General in the Justice Department. Since the Justice Department already has a section to handle civil rights cases, there is no reason to create this new position. The creation of a new division would require many additional attorneys and other employees in the Justice Department. The Department has not disclosed how many additional lawyers, clerks, and stenographers it would plan to employ.

A civil rights division in the Justice Department is not needed because there is no indication that there will be any increase in the number of civil rights cases which are now being handled by a section in the Department.

The Attorney General had a most difficult time trying to show that an additional Assistant Attorney General was needed, and he failed completely in his efforts to do so. As a matter of fact, even those who have advocated passage of H. R. 6127 have been forced to admit time after time that conditions relating to civil rights matters have been steadily improving all over the
country. Since conditions have improved and there is no indication that conditions will change—unless the Attorney General and the Civil Rights Commission create trouble—there is absolutely no justification for the appointment of an additional Assistant Attorney General in charge of a civil rights division in the Justice Department.

Part III of the bill as originally written, which was completely obnoxious, was removed. I have stated my views on Part IV several times, objecting to its grant of dictatorial power to the Attorney General. The Congress should never agree to place such authority in the hands of any one official of the Government.

Another particularly obnoxious provision is found in Section 131 (d) which provides that:

"(d) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law."

No legitimate reason has been presented as to why administrative remedies and remedies provided in the courts of the States, should not be exhausted prior to federal district courts taking jurisdiction in election law violations.

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 to vest it in the federal courts. Some of the advocates of H. R. 6127 have spoken out strongly on behalf of the federal courts during the debate on the jury trial amendment. I wish they were equally as vehement in their defense of our State courts.