In the Supreme Court

OF THE

United States

OCTOBER TERM, 1970

No. 43, Original

STATE OF OREGON, *Plaintiff*

vs.

JOHN N. MITCHELL, Attorney General of the United States, *Defendant*

No. 46, Original

UNITED STATES, *Plaintiff*

vs.

STATE OF ARIZONA, *Defendant*

No. 47, Original

UNITED STATES, *Plaintiff*

vs.

STATE OF IDAHO, *Defendant*

AMICI CURIAE BRIEF IN SUPPORT OF THE CONSTITUTIONALITY OF TITLE III OF THE VOTING RIGHTS ACT AMENDMENTS OF 1970

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INTEREST OF AMICI CURIAE

This brief is submitted by Citizens For Lowering The Voting Age—California, Independent Volunteers For Vote Extension (INVOLVE), Student California Teachers Association, Junior Statesmen of America, California Community College Student Government Association (CCCSGA), Let Us Vote (LUV), World Federalist Youth—USA, Kennedy Action Corps of the Greater Bay Area, Dennis King, Denise Puishes, Paul T. Currier, James Neil Alexander, and Sharon Guerrero, as friends of the court, in support of the constitutionality of Title III of the Voting Rights Act Amendments of 1970.

SUMMARY OF ARGUMENT

Katzenbach v. Morgan (1966) 384 US 641, 16 L ed 2d 828, 86 S Ct 1717 held that under Section 5 of Fourteenth Amendment, Congress has the power to permit any group of citizens to vote if the court can "perceive a basis" for a congressional conclusion that their exclusion from the vote violates the Equal Protection Clause. (384 US at 656, 16 L ed 2d at 838, 86 S Ct at 1726.)

Kramer v. Union Free School District (1969) 395 US 621, 23 L ed 2d 583, 89 S Ct 1890 interprets the Equal Protection Clause of the Fourteenth Amendment as forbidding the states from excluding from the franchise any group of its citizens, unless such exclusion is necessary to promote a compelling state interest.

The compelling state interest standard was employed in *Kramer* because plaintiff challenged the assumption that the state government fairly represented all the people (395 US at 628, 23 L ed 2d at 590, 89 S Ct at 1895). This reason for employment of the compelling state interest test is particularly persuasive when applied to the exclusion from the vote of 18-20 year olds. They have been "locked into a self-perpetuating status of exclusion from the electoral process," whereas the plaintiff in the *Kramer* case participated in the election of the New York State Legislature which established the restriction of which he complained.

Together, *Kramer* and *Katzenbach* mean that Title III is constitutional if a basis can be perceived for a congressional finding that the exclusion from the vote of 18-20 year olds is unnecessary to promote a compelling state interest.

Congress did not act irrationally when it found that the exclusion of 18-20 year olds from the vote "does not bear a reasonable relationship to any compelling state interest" and denies rights guaranteed by the Equal Protection Clause of the Fourteenth Amendment (Title III, Section 301(a) (2) and (3)). Congress was uniquely qualified to assess and weigh the interests of the states, those aged 18 through 20 years, and the nation.

Title III must also be sustained under the alternate holding in *Katzenbach v. Morgan*. A basis can be perceived for congressional findings that 18-20 year olds need the vote to overcome discrimination and that this need warrants intrusion upon state interests.

Federal legislation establishing a uniform national voting age in presidential elections and presidential primaries is, in all events, constitutional. Once Congress has spoken, the states can have no compelling interest in preventing United States citizens from voting for their president and vice-president.

ARGUMENT

I. CONGRESSIONAL ACTION PERMITTING ANY GROUP OF CITIZENS TO VOTE MUST BE UPHELD IF THE COURT CAN PERCEIVE A BASIS FOR A CONGRESSIONAL DETERMINATION THAT THEIR EXCLUSION FROM THE VOTE VIOLATES THE EQUAL PROTECTION CLAUSE.

Katzenbach v. Morgan (1966) 384 US 641, 16 L ed 2d 828, 86 S Ct 1717, upheld the constitutionality of Section 4(e) of the Voting Rights Act of 1965. Section 4(e) provided that no state could deny the right to vote to any person on the ground of his inability to read or write English if such a person had completed the sixth grade in a Puerto Rican School in which the language of instruction was not English. Congressional power to grant the right to vote to English illiterates was sustained under Section 5 of the Fourteenth Amendment. Section 5 provides: "The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."

The court rejected defendant's argument that an exercise of Congressional power under Section 5 of the Fourteenth Amendment is invalid unless limited to prohibiting the enforcement of state laws which a court would in any event declare unconstitutional as

being in violation of Section 1 of the Fourteenth Amendment. In this regard, the court states as follows:

> The Attorney General of the State of New York argues that an exercise of congressional power under Section 5 of the Fourteenth Amendment that prohibits the enforcement of a state law can only be sustained if the judicial branch determines that the state law is prohibited by the provisions of the Amendment that Congress sought to enforce. More specifically, he urges that Section 4(e) cannot be sustained as appropriate legislation to enforce the Equal Protection Clause unless the judiciary decides—even with the guidance of a congressional judgment—that the application of the English literacy requirement prohibited by Section 4(e) is forbidden by the Equal Protection Clause itself. We disagree. Neither the language nor history of Section 5 supports such a construction. As was said with regard to Section 5 in Ex parte Virginia, 100 US 339, 345, 25 L ed 676, 679, "It is the power of Congress which has been enlarged. Congress is authorized to *enforce* the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective." A construction of Section 5 that would require a judicial determination that the enforcement of the state law precluded by Congress violated the Amendment, as a condition of sustaining the congressional enactment, would depreciate both congressional resourcefulness and congressional responsibility for implementing the Amendment. It would confine the legislative power in this context to the insignificant role of abrogating only those state laws that the judicial branch was prepared to adjudge

unconstitutional, or of merely informing the judgment of the judiciary by particularizing the "majestic generalities" of Section 1 of the Amendment.

384 US 648-649, 16 L ed 2d 833-834, 86 S Ct at 1722.

The court reasoned that Section 5 grants the same broad power to Congress regarding the Fourteenth Amendment as expressed in the Necessary and Proper Clause (384 US at 650, 16 L ed 2d at 835, 86 S Ct at 1723). "Correctly viewed, Section 5 is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment" (384 US at 651, 16 L ed 2d at 836, 86 S Ct 1723-1724).

The court adopted the standard employed by *McCulloch v. Maryland,* 4 Wheat 316, 421, 4 L ed 579, with respect to the Necessary and Proper Clause in holding that Section 4(e) was appropriate legislation to enforce the Equal Protection Clause (384 US at 651, 16 L ed 2d at 836, 86 S Ct at 1724). Under this standard the only questions to be considered were: (1) whether Section 4(e) could be regarded as an enactment to enforce the Equal Protection Clause, (2) whether it was "plainly adapted to that end", and (3) whether it was not prohibited by but consistent with the Constitution (384 US at 651, 16 L ed 2d at 836, 86 S Ct at 1724).

As to the first question, there was "no doubt" in the court's mind that Section 4(e) could be regarded

as an enactment to enforce the Equal Protection Clause. It could be viewed as a measure to overcome discrimination either in the imposition of voting qualifications or in the provision or administration of governmental services (384 US at 652, 16 L ed 2d at 836, 86 S Ct at 1724).

As to the third question, it was held that the Congressional remedies adopted in Section 4(e) were not prohibited by but consistent with the Constitution, even though Section 4(e) only protected the voting rights of some English illiterates (384 US 656-657, 16 L ed 2d at 839, 86 S Ct at 1727). Section 4(e) was not invalid merely because Congress "might have gone further than it did" (384 US at 657, 16 L ed 2d at 839, 86 S Ct at 1727).

The court answered the first and third questions in summary fashion. The only question worthy of consideration was the second question; that is, was the legislation plainly adapted to furthering the Equal Protection Clause.

Even regarding that question, the court had little doubt. It states that Section 4(e) "may be readily seen as 'plainly adapted' to furthering these aims of the Equal Protection Clause" (384 US at 652, 16 L ed at 836, 86 S Ct at 1724).

When the court says that Section 4(e) is plainly adapted to furthering "these aims", the words "these aims" refer back to the statement in the preceding paragraph that Section 4(e) may be viewed as a measure aimed at overcoming discrimination (1) in

voting requirements, or (2) in the provision and administration of governmental services (384 US at 652, 16 L ed 2d at 836, 86 S Ct at 1724). The conclusion of the court was that Section 4(e) was plainly adapted to furthering *both* of those aims.

With reference to discrimination in voting requirements, the court states:

> The result is no different if we confine our inquiry to the question whether Section 4(e) was merely legislation aimed at the elimination of an invidious discrimination in establishing voter qualifications.
>
> 384 US 653-654, 16 L ed 2d at 837, 86 S Ct at 1725.

> Here again, it is enough that we perceive a basis upon which Congress might predicate a judgment that the application of New York's English literacy requirement to deny the right to vote to a person with a sixth grade education in Puerto Rican schools in which the language of instruction was other than English constituted an invidious discrimination in violation of the Equal Protection Clause.
>
> 384 US at 656, 16 L ed 2d at 838, 86 S Ct at 1726.

In summary, *Katzenbach* stands for the proposition that Federal legislation aimed at eliminating discrimination in voting against any group of citizens is "plainly adapted" to that end and therefore "appropriate legislation" under Section 5 of the Fourteenth Amendment if the court can "*perceive* a basis upon which Congress *might* predicate a judg-

ment" (emphasis added) that the denial of the vote to such group violates the Equal Protection Clause.

II. EVEN IN THE ABSENCE OF CONGRESSIONAL ACTION, THE EQUAL PROTECTION CLAUSE BY ITS OWN FORCE FORBIDS THE STATES FROM DENYING THE VOTE TO ANY GROUP OF ITS CITIZENS UNLESS SUCH DENIAL IS NECESSARY TO PROMOTE A COMPELLING STATE INTEREST. THE FOREGOING IS TRUE WHETHER THE DENIAL OF THE VOTE IS BASED ON AGE OR ANY OTHER GROUND.

State laws governing the qualification of voters are subject to the limitations of the Equal Protection Clause. (*Carrington v. Rash* (1965) 380 US 89, 13 L ed 2d 675, 85 S Ct 775; *Harper v. Virginia State Bd. of Elections* (1966) 383 US 663, 16 L ed 2d 169, 86 S Ct 1079; *Kramer v. Union Free School District No. 15* (1969) 395 US 621, 23 L ed 2d 583, 89 S Ct 1886). Mr. Justice Harlan's dissent in *Carrington v. Rash* notes that it is the first case holding that state voter qualifications are subject to the Equal Protection Clause. (380 US at 97, 13 L ed 2d at 681, 85 S Ct at 780).

Prior to *Carrington v. Rash,* the court had upheld the constitutionality of a literacy test in *Lassiter v. Northampton County Bd. of Elections* (1959) 360 US 45, 3 L ed 2d 1072, 79 S Ct 985 and a requirement that voters be registered in a state for at least a year in *Pope v. Williams* (1904) 193 US 621, 24 S Ct 573, 48 L ed 817. Mr. Justice Harlan points out in his dissent in *Carrington v. Rash* that the *Lassiter* and *Pope* cases were primarily concerned with the appli-

cation of the Fifteenth Amendment, not the Equal Protection Clause, to state laws governing the qualifications of voters. (See footnote No. 1, 380 US at 98, 13 L ed 2d 681-682, 85 S Ct at 781.)

General language contained in the *Lassiter* and *Pope* cases regarding the "broad" power of the states to establish voter qualifications is inconsistent with the line of recent Supreme Court cases commencing with *Carrington v. Rash* and culminating in *Kramer v. Union Free School District No. 15* (1969) 395 US 621, 23 L ed 2d 583, 89 S Ct 1886. Mr. Justice Stewart's dissent in the *Kramer* case notes that the literacy test in the *Lassiter* case was upheld under the traditional test used to determine a statute's validity under the Equal Protection Clause and that under this test a legislative classification is invalid only if it rests on grounds wholly irrelevant to achievement of its objective. (395 US at 636, 23 L ed 2d at 595, 89 S Ct at 1894.) There was no consideration in the *Lassiter* case as to whether literacy tests were necessary to promote a compelling state interest.

The principle is now established that any exclusion of citizens from the right to vote must be carefully and meticulously scrutinized by the courts and that the Equal Protection Clause of the Fourteenth Amendment is violated unless the exclusion is necessary to promote a compelling state interest. (*Kramer v. Union Free School District No. 15,* 395 US 621, 23 L ed 2d 583, 89 S Ct 1886.) The *Kramer* case involved the constitutionality of a New York law limiting school district voters in certain

New York school districts to those who owned or leased taxable real property in the district, were the spouse of one who owned or leased such property, or were the parent or guardian of a child enrolled in a local district school. Plaintiff was unmarried, without children, and did not own or lease any real property in his school district. The court addressed itself to the question of "whether the exclusion was necessary to promote a compelling state interest." (395 US at 630, 23 L ed 2d at 591, 89 S Ct at 1891.) It was held that it was not.

The Supreme Court states as follows:

> "In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification." Williams v. Rhodes, 393 US 23, 30, 89 S Ct 5, 10, 21, L ed 2d at 24 (1968). And, in this case, we must give the statute a close and exacting examination. "(S)ince the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." Reynolds v. Sims, 377 US 533, 562, 84 S Ct 1362, 1381, 12 L ed 2d at 506 (1964). See Williams v. Rhodes, *supra,* 393 US at 31, 89 S Ct at 10; Wesberry v. Sanders, 376 US 1, 17, 84 S Ct 526, 535, 11 L ed 2d 481 (1964). This careful examination is necessary because statutes distributing the franchise constitute the foundation of our representative society. Any unjustified discrimination in determining

who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government.

395 US at 626, 23 L ed 2d at 589, 89 S Ct at 1889.

And, for these reasons, the deference usually given to the judgment of legislators does not extend to decisions concerning which resident citizens may participate in the election of legislators and other public officials. Those decisions must be carefully scrutinized by the court to determine whether each resident citizen has, as far as is possible, an equal voice in the selections. Accordingly, when we are reviewing statutes which deny some residents the right to vote, the general presumption of constitutionality afforded state statutes and the traditional approval given state classifications if the court can conceive of a "rational basis" for the distinctions made are not applicable. See Harper v. Virginia State Bd. of Elections, 383 US 663, 670, 86 S Ct 1079, 1083, 16 L ed 2d 169 (1966). The presumption of constitutionality and the approval given "rational" classifications in other types of enactments are based on an assumption that the institutions of state government are structured so as to represent fairly all the people. However, when the challenge to the statute is in effect a challenge of this basic assumption, the assumption can no longer serve as the basis for presuming constitutionality.

395 US 627-628, 23 L ed 2d 589-590, 89 S Ct at 1890.

The majority of the court reasoned that only a compelling state interest could justify the exclusion of

plaintiff from the school district elections despite the fact he was eligible to vote in all other elections, including the election of the New York Legislature which enacted the law excluding him from voting in school district elections.

The court states as follows:

> And, the assumption is no less under attack because the legislature which decides who may participate at the various levels of political choice is fairly elected. Legislation which delegates decision making to bodies elected by only a portion of those eligible to vote for the legislature can cause unfair representation. Such legislation can exclude a minority of voters from any voice in the decisions just as effectively as if the decisions were made by legislators the minority had no voice in selecting.
>
> 395 US at 628, 23 L ed 2d at 590, 89 S Ct at 1890.

The dissenting opinion of Mr. Justice Stewart in the *Kramer* case argues that the reason advanced by the majority of the court for applying the compelling state interest standard, rather than the traditional equal protection standard, was not applicable since "The voting qualifications at issue have been promulgated not by Union Free School District No. 15, but by the New York State Legislature and the appellant is of course fully able to participate in the election of representatives in that body." (395 US at 639, 23 L ed 2d at 596, 89 S Ct 1895-1896.) The dissenting opinion further states:

> The appellant is eligible to vote in all state, local, and Federal elections in which general govern-

> mental policy is determined. He is fully able, therefore, to participate not only in the processes by which the requirements for school district voting may be changed, but also in those by which the levels of state and Federal financial assistance to the District are determined. He clearly is not locked into any self-perpetuating status of exclusion from the electoral process.
>
> 395 US at 640, 23 L ed 2d at 597, 89 S Ct at 1896.

The reasons advanced by the majority of the court in the *Kramer* case for the application of the compelling state interest standard are particularly persuasive when applied to the exclusion from the vote of persons aged 18 through 20 years. Unlike the plaintiff in the *Kramer* case, those aged 18 through 20 years have been "locked" into a "self-perpetuating status of exclusion from the electoral process" since they do not participate in the selection of the legislators who deny them the right to vote.[1]

---

[1]There are two procedures for amendment of the Constitution of the State of California. One requires the affirmative vote of two-thirds of all members elected to each of the two houses of the California Legislature followed by ratification by a majority of the qualified electors voting thereon at a general election. (Cal. Const., Art. XVIII). The other requires a petition circulated and signed by registered qualified voters equal to 8% of all votes cast for all candidates for Governor at the last preceding election at which a Governor was elected followed by ratification of the amendment by a majority of the qualified electors voting thereon at a general election. (Cal. Const., Art. IV, Sec. 1). At the present time such a petition must be signed by 520,276 registered qualified voters.

On August 21, 1970, the California Senate defeated a measure to amend the California Constitution to lower the voting age to 18 years. Commencing in 1947, twenty-nine separate bills have been introduced in the California Legislature to amend the California Constitution to lower the voting age to 18 or 19 years (Assembly Interim Committee on Elections and Constitutional Amendments,

The court in the *Kramer* case states as follows:

> Statutes granting the franchise to residents on a selective basis always pose the danger of denying some citizens any effective voice in the governmental affairs which substantially affect their lives.
>
> 395 US 626-627, 23 L ed 2d at 589, 89 S Ct at 1889.

The war in Viet Nam and the imposition upon 18-20 year olds of the greater part of the national burden of compulsory military service are "affairs which substantially affect their lives" in which they have had no "effective voice."

Congress was entitled to use the standard employed in the *Kramer* case to determine the constitutionality of the exclusion from the vote of 18-20 year olds. Congress had the right to ask the question: is the exclusion from the vote of 18-20 year olds necessary to promote a compelling state interest. There is nothing in the Constitution that grants a greater authority to a state to exclude citizens from the vote when the exclusion is based on age than when based on other grounds.[2] Except for exclusions based on

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1969 *Interim Report on Minimum Voting Age/Age of Majority*, p. 38). None of these bills passed the State Legislature. All but one died in committee. The people of California have not been permitted by their legislature to vote on the question of whether their Constitution should be so amended.

[2]The sole reference in the Constitution to age in connection with voting occurs in Article XIV, Section 2, which provides for a reduction of a state's representatives in the House of Representatives "when the right to vote at any election . . . is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime . . ." Article XIV, Section

race or sex, which are specially prohibited by the Constitution, the same standard is employed to determine the constitutionality of the exclusion from the vote of any group of citizens. Only exclusions necessary to promote a compelling state interest are valid.

Mr. Justice Stewart notes in his dissent in the *Kramer* case:

> For as I have suggested, there is no *persuasive reason for distinguishing constitutionally* between the voter qualifications New York has required for its Union Free School District elections and *qualifications based on factors such as age,* residence, or literacy. (Emphasis added.)
>
> 395 US at 641, 23 L ed 2d at 597, 89 S Ct at 1896.

2, sets forth a sanction against voting discrimination based on a formula which describes those persons who were eligible to vote in 1866. Under this formula, the representation by a state in the House of Representatives is reduced "in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state". The reference to 21 year old male citizens is nothing more than a description of those eligible to vote at the time the Fourtenth Amendment was adopted. The Equal Protection Clause "is not shackled to the political theory of a particular era". *Harper v. Virginia State Bd. of Elections,* (1966) 383 US 663, 669, 16 L ed 169, 174, 86 S Ct 1079, 1083.

Professors Freund and Cox of Harvard Law School point out that Section 2 was directed at restriction of the franchise and had nothing to do with enlargement, "as is apparent from state laws reducing the voting age below 21. The most that can be inferred is that in 1866-68 Congress and the State legislatures were willing to accept 21 years as a reasonable measure of the maturity and responsibility necessary to vote *at that time.*" They go on to say that it "is nowise inconsistent to conclude that *in our time* a 21 year requirement unreasonably discriminates against eighteen, nineteen and twenty year olds because of changed conditions . . ." New York Times, April 12, 1970, Section IV, p. 131.

As to the legislative history of this section, see, Van Alstyne, *The Fourteenth Amendment, The 'Right' to Vote, and the Understanding of the Thirty-Ninth Congress,* 1965, The Supreme Court Review 33.

Regarding Congressional power to abrogate state voting restrictions, Paul A. Freund, Professor of Law at Harvard, notes: "The question for Congress is essentially the same, whether the exclusion be on criteria of sex,[3] residence, literacy or age. (Cong. Rec., daily ed., 91st, 2d, March 11, 1970, S 3503).

In *Harper v. Virginia State Bd. of Elections* (1966) 383 US 663, 16 L ed 2d 169, 86 S Ct at 1079, the Supreme Court, overruling *Breedlove v. Suttles,* 302 US at 277, 82 L ed at 252, 58 S Ct at 205, held that a $1.50 poll tax imposed by the State of Virginia was unconstitutional. Citing *United States v. Classic* (1941) 313 US 299, 314-315, 85 L ed 1368, 1376, 61 S Ct at 1031), the court noted that the right to vote in congressional elections is conferred by Art. I, Sec. 2 of the Constitution. (383 US at 665, 16 L ed 2d at 171, 86 S Ct at 1080.) Without deciding the question the court notes that the right to vote in state elections, although nowhere expressly conferred, may be implicit in the Constitution, particularly by reason of the First Amendment. (383 US at 665, 16 L ed 2d at 171, 86 S Ct at 1080.) "For it is enough to say that once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment". (383 US at 665, 16 L ed 2d at 171, 86 S Ct at 1081.)

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[3]Professor Freund here refers to his earlier conclusion that Congress had the power by simple legislation to grant the vote to women (Cong. Rec., daily ed., 91st, 2d, March 11, 1970, S 3503).

With respect to the protection of voting rights against state laws concerning voting qualifications, the court concludes as follows:

> We have long been mindful that where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined.
>
> 383 US at 670, 16 L ed 2d at 174, 86 S Ct at 1083.

The court also notes that the boundaries for the application of the Equal Protection Clause must change to meet modern conditions.

> We agree of course, with Mr. Justice Holmes that the Due Process Clause of the Fourteenth Amendment "does not enact Mr. Herbert Spencer's Social Statics" (Lochner v. New York, 189 US 45, 75, 49 L ed 937, 949, 25 S Ct at 539). Likewise, the Equal Protection Clause is not shackled to the political theory of a particular era. In determining what lines are unconstitutionally discriminatory, we have never been confined to historic notions of equality, any more than we have restricted due process to a fixed catalogue of what was at a given time deemed to be the limits of fundamental rights. See Malloy v. Hogan, 378 US 1, 5-6, 12 L ed 2d 653, 657, 658, 84 S Ct 1489. Notions of what constitutes equal treatment for purposes of the Equal Protection Clause *do* change. This court in 1896 held that laws providing for separate public facilities for white and Negro citizens did not deprive the latter of the equal protection and

> treatment that the Fourteenth Amendment commands. Plessy v. Ferguson, 163 US 537, 41 L ed 256, 16 S Ct 1138. Seven of the eight Justices then sitting subscribed to the court's opinion, thus joining in expressions of what constituted unequal and discriminatory treatment that sound strange to a contemporary ear. When, in 1954—more than a half-century later—we repudiated the "separate-but-equal" doctrine of Plessy as respects public education, we stated: "In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when Plessy v. Ferguson was written." Brown v. Board of Education, 347 US 483, 492, 98 L ed 873, 880, 74 S Ct 686, 38 ALR 2d 1180.
>
> In a recent searching re-examination of the Equal Protection Clause, we held, as already noted, that "the opportunity for equal participation by all voters in the election of state legislators" is required. Reynolds v. Sims, supra, 377 US at 566, 12 L ed 2d at 529.
>
> 383 US at 669-670, 16 L ed 2d at 174, 86 S Ct 1082-1083.

White v. Crook, (D.C. Ala 1966) 251 F. Supp. 401 held that an Alabama statute denying women the right to serve on juries violated the Equal Protection Clause of the Fourteenth Amendment. It was immaterial that the framers of the Fourteenth Amendment might not have foreseen the result reached by the court.

> The argument that the Fourteenth Amendment was not historically intended to require the states

> to make women eligible for jury service reflects a misconception of the functioning of the Constitution and this court's obligation in interpreting it. The Constitution of the United States must be read as embodying general principles meant to govern society and the institutions of government as they evolve through time. It is therefore this court's function to apply the Constitution as a living document to the legal cases and controversies of contemporary society.
>
> 251 F. Supp. at 408.

The fact that many state legislatures were malapportioned in the early days of the nation did not place that condition forever behind the reach of constitutional prohibition. The antiquity of the practice did not cause the Supreme Court to refrain from invalidating malapportionment under the Equal Protection Clause. As noted in *Levy v. Louisiana* (1968) 391 US 68, 71, 20 L ed 2d 436, 439, 88 S Ct 1509, 1511, the high Court has not hesitated to strike down classifications which had history and tradition on their side. Mr. Justice Holmes stated:

> With regard to that, we may add that when we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it had taken a century and has cost their successors much sweat and blood to prove that they created a nation. The case before us must be considered in

> the light of our whole experience, and not merely in that of what was said a hundred years ago.
>
> *Missouri v. Holland* (1920) 252 US 416, 433, 64 L ed 641, 648, 40 S Ct 382, 383.

"We must never forget" said Mr. Chief Justice Marshall in *McCulloch v. Maryland,* 4 Wheat 316, 407 (4 L ed 579, 602), "that it is a constitution we are expounding."

Otsuka v. Hite (1966) 64 C. 2d 596 involved the question of whether bona fide conscientious objectors who had pleaded guilty to a violation of the Federal Selective Service Act could constitutionally be treated as persons convicted of an "infamous crime" and hence rendered ineligible to vote by the California Constitution. The California Supreme Court held that to preserve its constitutionality, the "infamous crime" voting restriction of the California Constitution must be limited to conviction of crimes involving moral corruption and dishonesty, thereby branding their perpetrator a threat to the integrity of the elective process. (64 C. 2d at 599). No compelling interest was served by denying plaintiffs the vote.

The principle that state voter laws qualifying the right to vote are unconstitutional unless necessary to promote a compelling state interest was perhaps not clearly promulgated by the United States Supreme Court until the 1969 decision in the *Kramer* case. Nevertheless in 1966 in the *Otsuka* case the California Supreme Court noted that voting is a fundamental right and that in ruling on the validity of state im-

posed restrictions on this right, the United States Supreme Court has "in effect tended to apply the principle that the state must show it has a compelling interest in abridging the right". (64 C. 2d at 602).

The California Supreme Court also noted the high Court's "ever increasing recognition of the importance of this right" (64 C. 2d at 601):

> Thus "this court has stressed on numerous occasions, 'The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.' *Reynolds v. Sims,* 377 US 533, 555 (84 S Ct 1362, 1387, 12 L ed 2d 506, 523). The right is fundamental 'because preservative of all rights' *Yick Wo v. Hopkins,* 118 US 356, 370 (6 S Ct 1064, 1071, 30 L ed 220, 226)." (*Harman v. Forssenius* (1965) 380 US 528, 537 (85 S Ct 1177, 14 L ed 2d 50).) Such matters are "close to the core of our constitutional system" (*Carrington v. Rash* (1965) supra, 380 US 89, 96) and "vital to the maintenance of democratic institutions" (id. at p. 94, quoting from *Schneider v. New Jersey,* 308 US 147, 161 (60 S Ct 146, 84 L ed 155).) (See also *United States v. Mississippi* (1965) 380 US 128, 144 (85 S Ct 808, 13 L ed 2d 717) ("the right to vote in this country is . . . precious"); *Louisiana v. United States* (1965) 380 US 145, 153 (85 S Ct 817, 13 L ed 2d 709) ("The cherished right of people in a country like ours to vote"); and, finally, the recent case of *Harper v. Virginia State Bd. of Elections* (1966) supra, 86 S Ct 1079, 1083, 16 L ed 2d 169, 175 ("the right to vote is . . . precious . . . fundamental").) Rather than being a creature of the California Constitu-

> tion, the right of suffrage in this as in every other state of the Union flows from the well-springs of our national political heritage.
>
> 64 C. 2d 601-602.

In a recent unanimous decision voiding California's English literacy tests as to those literate in Spanish, the California Supreme Court states:

> "Commencing with the reapportion decisions following *Baker v. Carr* (1962) 369 US186 (7 L ed 2d 663, 82 S Ct 691), the high court has given ever-increasing recognition to the importance of the franchise and has abandoned the tolerance of *Lassiter* in favor of strict scrutiny of restrictions on it."
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> *Castro v. State of California* (1970) 2 C. 3d 223, 234.

The court in the *Castro* case further notes that *Reynolds v. Sims,* (1964) 377 US 533, 84 S Ct 1362, 12 L ed 2d 506, "signalled the end to approval of restrictions on the right to vote once a rational connection between the constraint and a legitimate state policy was demonstrated" (2 C. 3d at 234); that *Carrington v. Rash,* (1965) 380 US 89, 85 S Ct 775, 13 L ed 2d 675 "for the first time held state voter qualifications subject to the equal protection clause" (2 C. 3d at 234); that "the clear implication of *Harper* is that more than 'rationality' must be demanded of state voter qualifications" (2 C. 3d at 235); and that *Kramer v. Union School District* (1969) 395 US at 621, 89 S Ct at 1886, 23 L ed 2d at 583 announced "a new constitutional standard" (2 C. 3d at 235).

Two different tests have been used to determine the validity of a state statute under the Equal Protection Clause. The traditional test, according to the dissent in the *Kramer* case, is whether the classification rests on grounds wholly irrelevant to achievement of the regulation's objectives. (395 US at 636, 23 L ed 2d at 595, 89 S Ct at 1894.) Under this test it is sufficient to sustain the validity of the statute if the classification is rationally related to a permissible legislative end. (395 US at 637, 23 L ed 2d 595-596, 89 S Ct at 1895.) As noted in *Levy v. Louisiana* (1968) 391 US 68, 71, 20 L ed 2d 436, 439, 88 S Ct 1509, 1511, in applying the Equal Protection Clause to social and economic legislation, the courts give great latitude to the legislature in making classifications.

This traditional test, however, is not applied to classifications touching upon fundamental rights. It is not applied to cases involving voting rights. The dissent in the *Kramer* case comments on the court's decision as follows: "Instead, it strikes down New York's statute by asserting that the traditional equal protection standard is inapt in this case . . ." (395 US at 638, 23 L ed 2d at 596, 89 S Ct at 1895.) It was not applied in *Levy v. Louisiana* (1968) 391 US 68, 71, 20 L ed 2d 436, 439, 88 S Ct 1509, 1511. It was not applied in *Shapiro v. Thompson,* (1969) 394 US 618, 22 L ed 2d 600, 89 S Ct 1322 involving the constitutionality of a one year residency requirement for receiving public assistance. Since that classification served to penalize the exercise of the constitutional right of interstate travel, the classification was unconstitu-

tional "unless shown to be necessary to promote a *compelling* governmental interest". (394 US at 634, 22 L ed 2d at 615, 89 S Ct at 1331.)

The dissent in the *Kramer* case notes that the majority opinion is "quite explicit" in explaining why the traditional equal protection standard is inapplicable to restrictions on the right to vote. (395 US at 639, 23 L ed 2d at 596, 89 S Ct at 1895.) The traditional test rests on the assumption that the state government fairly represents all the people. When the challenge to the statute is a challenge to that assumption, there can be no such assumption and the traditional test is inapplicable. (395 US at 628, 638-639, 23 L ed 2d at 590, 596, 89 S Ct at 1890, 1895.)

The reason given by the court in the *Kramer* case for the use of the compelling state interest test is particularly persuasive when applied to 18-20 year olds who have been "locked into a self-perpetuating status of exclusion from the electoral process". The plaintiff in the *Kramer* case participated in the election of the New York State Legislature which established the restrictions of which he complained.

Congressional inquiry as to whether the exclusion of 18-20 year olds from the franchise violated the Equal Protection Clause involved the same question asked by the court in the *Kramer* case: Is the exclusion from the vote of this group of citizens necessary to promote a compelling state interest. The same standard must be applied to the voting rights of citizens aged 18 through 20 years as has been applied to

the voting rights of other citizens.[4] The Equal Protection Clause would be self-contradictory if judicial or legislative standards for its application varied, not according to the right being asserted, but according to the class of persons asserting it.

III. A CONGRESSIONAL DETERMINATION THAT THE EQUAL PROTECTION CLAUSE FORBIDS THE DENIAL OF THE VOTE TO ANY GROUP OF CITIZENS IS CONCLUSIVE WHEN A BASIS CAN BE PERCEIVED FOR A CONGRESSIONAL FINDING THAT SUCH DENIAL IS NOT NECESSARY TO PROMOTE A COMPELLING STATE INTEREST.

Kramer v. Union Free School District (1969) 395 US 621, 23 L ed 2d 583, 89 S Ct 1886 interprets the Equal Protection Clause of the Fourteenth

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[4]See *Hall v. Beals* (1969) 369 US 45, 24 L ed 2d 214, 90 S Ct 200, which involved a challenge to state durational residency requirements in presidential elections. The majority dismissed the case as moot since, inter alia, the state statute under attack had been amended to reduce the residency requirement in presidential elections from six to two months. Dissenting Justices Marshall and Brennan would have reached the merits and declared the residency requirement unconstitutional:

> But if it was not clear in 1965 it is clear now that once a State has determined that a decision is to be made by popular vote, it may exclude persons from the franchise only upon showing a compelling interest, and even then only when the exclusion is the least restrictive method of achieving the desired purpose.
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> 369 US at ....., 24 L ed 2d at 220, 90 S Ct 203-204.

The argument is surely correct as far as it goes, and this court has often reaffirmed the power of the states to require their voters to be bona fide residents. Carrington v. Rash, 380 US 89, 93-94, 12 L ed 2d 675, 679, 85 S Ct at 775 (1965); Kramer v. Union School District, supra, at 625, 23 L ed 2d at 588: But this does not justify or explain the exclusion from the franchise of persons, not because their bona fide residency is questioned, but because they are recent rather than long-time residents.

369 US at ....., 24 L ed 2d 220-221, 90 S Ct at 204.

Amendment as forbidding the states from excluding from the franchise any group of its citizens, unless after exacting judicial scrutiny it is determined that such exclusion is necessary to promote a compelling state interest.

Katzenbach v. Morgan (1966) 384 US 641, 16 L ed 2d 828, 86 S Ct 1717 holds that under Section 5 of the Fourteenth Amendment, Congress has the power to grant the right to vote to any group of citizens, if a court can "perceive a basis" for a congressional conclusion that the Equal Protection Clause is violated. (384 US at 656, 16 L ed 2d at 838, 86 S Ct at 1726.)

Since the Equal Protection Clause is violated unless a compelling state interest is being promoted (*Kramer*) and Congress may act if a basis can be perceived for a conclusion that the Equal Protection Clause is being violated (*Katzenbach v. Morgan*), congressional action lowering the voting age to 18 years is constitutional if a basis can be perceived for a congressional finding that the exclusion of citizens aged 18 through 20 years is not necessary to promote a compelling state interest.

IV. AT THE VERY LEAST, A BASIS CAN BE PERCEIVED FOR A CONGRESSIONAL FINDING THAT THE DENIAL OF THE VOTE TO CITIZENS AGED EIGHTEEN THROUGH TWENTY YEARS IS NOT NECESSARY TO PROMOTE A COMPELLING STATE INTEREST.

An interest in denying the vote to 18-20 year olds because of the way 18-20 year olds may vote cannot be recognized as a legitimate state interest. The Supreme Court has stated:

> "Fencing out" from the franchise a sector of the population because of the way they may vote is constitutionally impermissible. "(T)he exercise of rights so vital to the maintenance of democratic institutions," Schneider v. State, 308 US 147, 161, 84 L ed 155, 165, 60 S Ct 146, cannot constitutionally be obliterated because of a fear of the political views of a particular group of bona fide residents.
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> *Carrington v. Rash* (1965) 380 US 89, 94, 13 L ed 2d 675, 679, 85 S Ct 775, 779.

Likewise, the possible interest of a few incumbent state officers and legislators in denying the vote to 18-20 year olds cannot be recognized. The Supreme Court has stated the following regarding its duty to declare that state voting restrictions violate the Equal Protection Clause:

> We are admonished not to restrict the power of the states to impose differing views as to political philosophy on their citizens. We are cautioned about the dangers of entering into political thickets and mathematical quagmires. Our answer is this: a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us.
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> *Reynolds v. Sims,* (1964) 377 US 533, 566, 12 L ed 2d 506, 530, 84 S Ct 1362, 1364.

The interest of incumbent state officials and legislators against the protection of voting rights has been a reason for Federal judicial protection of those rights. The court in *Reynolds v. Sims* realized that it

was required to order equal districting because "No effective political remedy to obtain relief against the alleged malapportionment of the Alabama Legislature appears to have been available." (377 US at 553, 12 L ed 2d at 522, 84 S Ct at 1377.) Likewise, the principle of the *Kramer* case that only a compelling state interest justifies denial of the right to vote may be based on the fact that those who do not have the vote have difficulty in exerting sufficient political pressure to obtain it.

Minors, idiots, insane persons, and those unable to read the Constitution and write their names are coupled together in the California Constitution. (*Otsuka v. Hite* (1966) 64 C. 2d 596, 602.) All those under the age of 21 years, like "mental defectives and illiterates are deemed unfit to vote because they are lacking in the minimal understanding and judgment necessary to exercise the franchise." (*Otsuka v. Hite,* 64 C. 2d at 602.) To classify those between the ages of 18 - 20 years with mental defectives and illiterates is unreasonable. Mental defectives and illiterates are not considered fit for military service. Eighteen through 20 year olds today bear the greater part of the national burden of compulsory military service and all 18 year old males must register for military service.

Elaborate qualifications for voters are incompatible with our nation's commitment to full and equal participation in political life. Only standards limited to insuring "a minimal degree of competence and capacity" are in furtherance of a permissible state

interest. (*Castro v. State of California* (1970) 2 C. 3d at 240.) The *Castro* case holds that the interest of the State of California in excluding those who, because of English illiteracy have no access to magazines, newspapers, and other materials written in English, although perhaps based on desirable state policy, is not sufficiently compelling to justify the denial of the vote to those literate in Spanish. (2 C. 3d at 240.)

The Equal Protection Clause stems from "our American idea of fairness" and is "a more explicit safeguard of prohibited unfairness than 'due process of law' ". (*Bolling v. Sharpe* (1954) 347 US 497, 499, 98 L ed 884, 886, 74 S Ct 693, 694.) What could be more unfair or undemocratic than the fact that the majority of those conscripted to fight our wars are not allowed to participate in the selection of the President or the Congress who decide whether the nation shall wage war and who determine the methods used to raise military forces. The "one man, one vote" principle should apply to the class of citizens who supply most of the nation's military manpower.

A concept of fairness important to most Americans was once expressed in the cry that taxation without representation is tyranny. Theodore Sorenson testified: "If taxation without representation was tyranny, then conscription without representation is slavery". (*Lowering the Voting Age to 18,* Hearings before the Subcommittee on Constitutional Amendments, Committee of the Judiciary, United States Senate, 91st, 2d, February 16, 1970, p. 15.) Dwight

Eisenhower opposed "sacrifice without representation." Abraham Lincoln said "I go for all sharing the privileges of the government who bear its burden."

Our nation imposes upon 18 - 20 year olds, not only the same burdens of citizenship and responsibilities as are imposed upon others, but the additional burden of compulsory military service. The national burden of compulsory military service—by far the heaviest burden of United States citizenship—now falls for the most part on those aged 18 through 20 years. It seems inconceivable in America that such a heavy burden could be placed by elected officials on a class of citizens who are not permitted to vote.

Prior to World War II, the burden of compulsory military service was placed almost entirely on those who had attained the age of 21 years.

The Conscription Act of 1863 constituted all able-bodied male citizens between 20 and 45 years of age as "the national forces" liable to military service. (Act of March 3, 1863, Sec. 1; 12 Stat. 731.) Eighteen and 19 year olds were not subject to the draft during the Civil War.

The Selective Draft Act of 1917 provided for liability for military service of all male citizens between the ages of 21 and 30. (Act of May 18, 1917; 40 Stat. 76.) It was not until less than two and one-half months before the end of World War I that the Act was amended providing, inter alia, that the age limit of liability for service be increased to 45 and that all males between 18 and 45 be registered. (Act of August 31, 1918; 40 Stat. 955-957; Joseph C.

Duggan, *The Legislative and Statutory Development of the Federal Concept of Conscription for Military Service,* The Catholic University of America Press, 1946, p. 85.)

The Selective Training and Service Act of September 16, 1940, (the first peacetime draft) imposed liability for military service upon males between the ages of 21 and 36. (Sec. 3; 54 Stat. 885-886.) The draft age was not lowered to 18 until the fall of 1942. During World War II, the burden of the draft was carried by men of many different ages. Although they carried part of the burden, 18 - 20 year olds were not required to assume a disproportionate share.

The tendency since the end of World War II has been to place an ever-increasing proportion of the burden on those under the age of 21 years. On November 26, 1969, the President established the present system of the random selection of 19 year olds by birthdate. (Proclamation No. 3945, 34 Fed.Reg. 19017.) In April of 1970, the President issued an executive order eliminating all future occupational and farm work deferments and all future fatherhood deferments except where a local draft board determines that extreme hardship exists. On the same date, the President sent a special message to Congress stating that student deferments "are no longer dictated by the national interest" and requesting authority to eliminate all future student deferments (San Francisco Chronicle, April 24, 1970, pp. 1, 26). The proportion of the military burden borne by those

under the age of 21 years will increase further as a result of these measures.

There is every reason to believe that the nation will continue to do what it is now doing. It will look primarily to its 18 - 20 year olds to satisfy its military manpower needs. No golden era of peace is at hand. It seems likely that the nation will continue to be involved in wars and that 18 - 20 years olds will be asked to carry most of the burden. Those aged 18 through 20 years have heretofore not been permitted to participate in the election of the Presidents of the United States, who, as Commanders in Chief of the Armed Forces, have involved this country in a war on the Asian mainland. Nor have they participated in the election of the Congressmen who have enacted the draft laws that have placed most of the burden of fighting this war on them. Since World War II the American concept of citizen soldiery has, for the most part, become conscription of those who lack full privileges of citizenship.

It is significant that the determination of Congress that 18 - 20 year olds are being denied the equal protection of the laws includes a specific finding that the denial of the vote to 18 - 20 year olds is "a particularly unfair treatment of such citizens in view of the national defense responsibilities imposed upon such citizens." (Title III, Sec. 301(a)(1).)

Since World War II, most of the military burden has been shifted to those under 21. During this period, the nation has involved itself in the Korean and Viet

Nam wars, which, unlike World War II, have been several steps removed from repelling an attack on this country. A progressively smaller sacrifice has been made by other age groups in these wars. According to the April 28, 1969 issue of U.S. News and World Report, 44% of the approximately 34,000 U.S. servicemen killed by hostile action from January 1, 1961 to January 1, 1969, were under the age of 21 years. Since 21-year-olds suffered another 15% of these deaths, it is reasonable to conclude that well over 50% of these deaths were incurred by those who entered the armed forces before reaching the age of 21 years. The following figures are given by U.S. News and World Report:

Age	Deaths	Age	Deaths
17	9	22	2507
18	1948	23	1929
19	5133	24	1447
20	8033	25	1073
21	4973	26	736
		27	440

The percentage of those killed in Southeast Asia under the age of 21 years has increased from 44% at the end of 1968 to 48% at the end of 1969. (Appendix, Section IV, p. ix).

The burden of military service is by its nature a burden of manhood to be carried by the strong and courageous. The Equal Protection Clause, stemming as it does from the American concept of fairness, must at the very least provide a basis for a Congressional determination to abolish a classification which

denies the full privileges of citizenship, on the claimed ground of immaturity, to the class of citizens who carry most of the nation's military burden.

Richard Poirier in his essay *The War Against The Young* says "We have used youth as a revenge upon history, as the sacrificial expression of our self-contempt . . . War, the slaughter of youth at the apparent behest of history, is the ultimate expression of this feeling" (*Natural Enemies?; Youth and the Clash of Generations,* a Collection of Essays, J. B. Lippincott & Company, 1969, p. 188). The shameful conscription and sacrifice of America's youth without representation has served to undermine the legitimacy of representative government in the United States.

The National Commission on the Causes and Prevention of Violence states as follows:

> We demand the ultimate service, the highest sacrifice, when we require them to perform military service. Many young men have become battle-tried veterans and some have died on the battlefield before they could vote. Their way of life—and, for some, even the duration of life itself—is dictated by laws made and enforced by men they do not elect. This is fundamentally unjust.
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> *Commission Statement On Challenging Our Youth;* reprinted in Lowering the Voting Age to 18, Hearings before the Subcommittee on Constitutional Amendments, Committee of the Judiciary, United States Senate, 91st 2d, 311, 314.

The anachronistic voting age-limitation tends to alienate them from systematic political processes

> and to drive them into a search for alternative, sometimes violent, means to express their frustrations over the gap between the nation's ideals and actions. Lowering the voting age will not eliminate protest by the young. But it will provide them with a direct, constructive, and democratic channel for making their views felt and for giving them a responsible stake in the future of the nation.
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> id at 315.

The military origin of the age of 21 years as the age of majority is accepted by most historians. There is strong authority for the view that the age of 21 years was directly linked with the ability to hold up a heavy suit of armor and lift a lance at the same time (*Report of the Committee on the Age of Majority Presented to the English Parliament,* p. 21, para. 38). There is also a view that suits of armor were too expensive to be furnished to those under the age of 21 years who might grow out of them. Twenty-one years, the knightly age of majority, filtered down and became the universal age of all classes (T. E. James, *The Age of Majority,* The American Journal of Legal History, Vol. 4, 1960).

From a military standpoint, our nation has abandoned the knightly age of majority in favor of the age of 18 years. The age of 21 years lingers only as an excuse for withholding full citizenship rights from 18-20 year olds.

The age of knighthood was based on physical maturation. Scientific studies show that the age of physical

maturity has decreased from three to five years in the last one hundred years and that today's eighteen-year olds are physically and biologically older than the twenty-one years olds of most of America's history. (J. M. Tanner, *Earlier Maturation of Man,* Scientific American, Jan. 1968, Vol. 218, No. 1). The nation has expressed this conclusion in the enactment and administration of the draft laws as well as in the passage of Title III of the Voting Rights Act Amendments of 1970.

The State of California, like the Federal government, has recognized that 18 years is an age of majority under present social and economic conditions. (Appendix, Section I, p. i, "Legal Significance of Attaining the Age of Majority of Eighteen Years in the State of California.") Criminal responsibility in the adult courts at the age of 18 years without the right to sit on juries until the age of 21 years has unfortunately followed the discriminatory pattern of imposing burdens at age 18 without extending corresponding privileges until age 21.

The general power of the states to establish voting age qualifications is not questioned. However, the authority to establish any qualification upon the right to vote is subject to the Equal Protection Clause and the enforcement power of Congress. A voting age qualification, like any other voting qualification, is superseded by Congressional action if a basis can be perceived for a Congressional conclusion that such qualification is not necessary to promote a compelling state interest.

The exclusion of citizens between the ages of 40 to 50 or over the age of 65, 70 or even 80 years would be unconstitutional. In view of our nation's history, exclusion from the vote on the basis of age of any group of citizens who had reached the age of 21 years would probably be unconstitutional.

There is no case authority as to how low must be the age of voting to comply with the Equal Protection Clause. There is surely Constitutional protection and such protection, even in the absence of Congressional action, in all probability extends to all those who have reached the age of 21 years.[5] Congress has decided to extend that protection to all those who have reached the age of 18 years.

Under present conditions, Congress would not have the authority to establish a voting age below 18 years. Citizens below the age of 18 years are not required to assume any special burdens of citizenship. They are not yet subject to the draft and generally are not tried in the adult criminal courts. Most of them do not complete their high school education before they they reach the age of 18 years. The big jump in the percentages of those working full time, married, and in the armed forces does not come until age 18 (Appendix Section II, p. v).

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[5]No person who has attained the age of 21 years has ever been denied the vote on the basis of age by any state.

The Report of the Committee on the Age of Majority Presented to the English Parliament, July 1967, page 36, paragraph 116, discusses the case of raising the age of majority above 21 as follows: "we have received only one piece of evidence advocating this: its laconic splendor should not be lost to history. Written from a London club, signature indecipherable, it reads in its entirety, 'Sir, re Age of Majority. 21 is wrong. 50 is right. Verb. Sap. Yours faithfully.' "

The ages of 18 and 21 are the only logical minimum voting ages. The ages of 19 and 20 years have no particular legal significance under California or Federal law. It is at the age of 18 years that California citizens are liable for military service and are treated as adults in the criminal courts. A state legislature might compromise at a voting age of 20 or 19 years but these are only way stations on the road from tradition to justice. As a legal matter, those between the ages of 18-20 years are a distinct group upon whom has been imposed burdens without corresponding rights.

The California Supreme Court has declared that the interest which the State of California claims to be protecting in denying the vote to 18-20 year olds is to protect the ballot from persons "lacking in the *minimal* understanding and judgment necessary to exercise the franchise" (*Otsuka v. Hite* (1966) 64 C 2d 596, 602), and that the "only permissible purpose" which a literacy test serves is to limit the electorate to those "thought capable of *some* degree of intelligence and independence". (*Castro v. State of California* (1970) 2 C 3d at 237.) (Emphasis added.) The permissible state interest is limited to "establishing standards which tend to insure *a minimal* degree of competence and capacity." (Emphasis added.) (2 C 3d at 240.)

Certainly a basis can be perceived for a Congressional conclusion that 18-20 year olds do not lack the minimal understanding and judgment necessary to exercise the franchise. In fact, the case that today's 18-20 year olds have the necessary understanding and

intelligence is overwhelming. The following must be considered: (1) It is scientifically demonstrable that the age of maturity has decreased from three to five years within the last 100 years, and that today's 18 years olds are biologically older than the 21 year olds of most of America's history (J. M. Tanner, *Earlier Maturation of Man,* Scientific American, Jan. 1968, Vol. 218, No. 1), (2) large percentages of 18-20 year olds are in the labor force, married, pay taxes, have assumed the responsibilities of parenthood (Appendix, Section II, p. v); (3) approximately 87.7% of California youth and 81% of the nation's youth today complete high school whereas only 6% did so in 1900; (Senator Barry Goldwater, 116 Cong. Rec. 3216 (daily ed., March 9, 1970) Ap. p. 68); National Educational Association *Rankings of the States,* 1970, p. 28; United States Office of Education, *Digest of Educational Statistics,* 1968, p. 52); (4) In California, 18-20 year olds have a higher average level of schooling than any other age group (California Assembly Committee on Elections and Constitutional Amendments, *1969 Interim Report on Minimum Voting Age/Age of Majority,* p. 18); (5) According to many tests, today's 18-20 year olds are better informed concerning public affairs than are their elders. (Howell, Charles R., *Eighteen-to-Twenty-Year-Olds Surpass Adults in Political Quiz,* Cong. Rec., Vol. 100, 83rd, 2d March 5, 1954, p. A. 1777.)

The percentage of voters who have attained the age of 45 years has increased from below 25% in 1850 to in excess of 50% today. Lowering the voting age

to 18 years would still leave the electorate far older than during most of our nation's history:

The Department of Justice has stated:

> One of the clearest indications that 18 year olds are sufficiently mature to take part in and contribute to the electoral process is the experience in Georgia and Kentucky, where such persons have been eligible to vote for many years. Senator Cook described the experience in Kentucky, where the voting age has been 18 since 1955, as a "complete success." 116 Cong. Rec. 3215 (daily ed., March 9, 1970). Regarding the four states which permit persons below age 21 to vote, Senator Kennedy stated the following (Senate Const. Rights Hearings, p. 324; 116 Cong. Rec. 3058 (daily ed., March 5, 1970 (Ap. p. 64)):
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> "Today, four states—Georgia since 1943, Kentucky since 1955, and Alaska and Hawaii since they entered the Union in 1959—grant the franchise to persons under 21. There is no evidence that the reduced voting age has caused any difficulty whatever in the states where it is applicable. In fact, former Governors Carl Sanders and Ellis Arnall of Georgia have testified in the past that giving the franchise to 18 year olds in their states has been a highly successful experiment."
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> (Memorandum of Points and Authorities in support of Motion for Summary Judgment, *Christopher v. Mitchell,* Civil Action 1862-70, United States District Court for the District of Columbia, p. 62.)

The people of Alaska have recently voiced their satisfaction with their experience in permitting those

under 21 to vote. On August 25, 1970, they voted to lower the voting age in Alaska from 19 to 18.

Congress knew that in the last decade the voting age has been reduced to 18 years in Great Britain,[6] West Germany, Israel, Mexico, in many of the Canadian provinces and Swiss cantons throughout Latin America, and in many other countries, including even South Viet Nam.

The *Castro* decision notes that the use of judicial scrutiny, as applied to the denial of voting rights, requires the balancing of "the detriment imposed on those excluded from voting against the gain in the quality of the franchise to be expected from their exclusion." (2 C 3d at 233.) The state interest in denying the vote to English illiterates who were literate in Spanish was "hardly so compelling that it justifies denying the vote to a group of United States citizens who already face similar problems of discrimination and exclusion in other areas and need a political voice . . ." (2 C 3d at 240.) The dissent in the *Kramer* case points out that the reasoning of the

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[6]During the debate in the English Parliament, Mr. Richard said (774 H.C. Deb. (5th ser.) 341 (1968)):

> "If one attempts to equate maturity with the age of voting, one is bound to run into difficulties, because, clearly, there are sections of the adult population who would not be entitled to take part in an election if they first had to pass a maturity test of responsibility or intelligence. I therefore utterly reject this equation of maturity with age.
>
> What one ought to try to do is to arrive at a more sensible test as to the age at which people ought to be allowed to vote and I would suggest one very simple test. People ought to have the right to vote and to have a say about the way in which their lives are governed and in which their country is run, at the age at which society expects them to assume adult social responsibilities."

majority is not only applicable to age, residency and literacy qualifications but in such cases would "weigh the interest of the person excluded from the voting . . ." (Footnote 11, 395 US at 641, 23 L ed 597-598, 89 S Ct 1896-1897.) (See also *Katzenbach v. Morgan* (1966) 384 US at 653, 16 L ed 2d at 837, 86 S Ct 1724-1725.) Citing *Williams v. Rhodes* (1968) 393 US 23, 30, 21 L ed 2d 24, 31, 89 S Ct 5, 10, the majority opinion in the *Kramer* case notes that consideration must be given to "the interests of those who are disadvantaged by the classification." (395 US at 626, 23 L ed 2d at 589, 89 S Ct at 1889.) *Evans v. Cornman,* (June 16, 1970) 38 Law Week 4511, 4513, and *City of Phoenix v. Kolodziejski* (June 23, 1970) 38 Law Week 4596, conclude that judicial protection of a citizen's right to vote may depend on his "stake" and the burdens he is required to assume.

Certainly a basis can be perceived for a Congressional conclusion that the claimed immaturity of 18-20 year olds does not furnish a basis for a state interest sufficiently compelling to overcome the detriment imposed on them by the denial of the vote. Conscription without representation is an enormous detriment. Persons aged 18 through 20 years have a "stake" in participating in the election of the officials who decide whether our nation shall wage war and who determine the methods for raising manpower. This stake is so great that Congress on this basis alone could reasonably conclude that the states had no sufficiently compelling interest in denying them the vote.

Congress might also have considered that the interest of 18-20 year olds in compelling elected officials to act to preserve the environment is significantly greater than their elders. The following was noted regarding Governor Reagan's conference at Los Angeles on California's environment:

> Only the young seemed to feel any sense of urgency—for inaction now means they will watch their world being destroyed. The California media made it quite clear that those conferences would have been just further sessions of endless talk if it hadn't been for the youth who advanced specific proposals for action. (*The Environmental Handbook* prepared for the First National Environmental Teach-In, Ballantine Books, 1970, p. xiv of foreword by the Editor, Garrett DeBell.)

Congressman McCloskey, of the Eleventh California Congressional District (San Mateo County) says that among his constituents, 18-20 year olds are far more informed, knowledgeable and concerned about environmental problems than their elders. Congress might have concluded that the vigor and idealism of youth were needed to counterbalance the apathy that has allowed our nation to drift into its present environmental crisis.

> For the first time in history, the future of the human race is now in serious question. This fact is hard to believe, or even think about—yet it is the message which a growing number of scientists are trying, almost frantically, to get across to us.

> Listen, for example, to Professor Richard A. Falk of Princeton and of the Center for Advanced Study in the Behavioral Sciences:
>
> The planet and mankind are in grave danger of irreversible catastrophe. . . . Man may be skeptical about following the flight of the dodo into extinction, but the evidence points increasingly to just such a pursuit. . . . There are four interconnected threats to the planet—wars of mass destruction, overpopulation, pollution, and the depletion of resources. They have a cumulative effect. A problem in one area renders it more difficult to solve the problems in any other area . . .
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> *The Environmental Handbook* at p. 138.

C. P. Snow thinks "our present unease may be a shadow thrown backwards from the future." (*The State of Siege,* 1968, Charles Scribner's Sons, p. 40).

The Voting Rights Act Amendments of 1970, Section 201 abolish all tests requiring a person to "demonstrate the ability to read, write, understand, or interpret any matter" as a prerequisite to voting in national or state elections. The fact that illiterates were to be permitted to vote in all elections must have been a factor causing Congress to question the exclusion from the vote of 18-20 year olds. Such exclusion could only be based on a claimed lack by 18-20 year olds of a "minimal degree of competence and capacity." (*Castro v. State of California* (1970) 2 C 3d 223, 240.) Yet no qualifications insuring any degree of competence or understanding were to be

required of those who had reached 21 years. Moreover, illiterates are deemed unfit for military service whereas 18-20 year olds today bear the greater part of that burden.

Congress was uniquely qualified to assess and weigh, not only the interests of the states and 18-20 year olds, but also the national interest in preserving the legitimacy of representative government throughout the United States. Senator Magnuson emphasized this point in a speech on the Senate floor (Cong. Rec., 91st, 2d, daily ed., March 11, 1970, S. 3476-3477).

Senator Barry M. Goldwater of Arizona states as follows:

> "[T]here simply is no compelling reason why a State has to deprive citizens who are between the ages of 18 to 21 of their right to vote. As I have discussed earlier in my statement, the only reason put forth to justify the present minimum of 21 is a distrust of the intelligence or maturity of young persons.
>
> "There is no rhyme or reason to either of these points in today's setting. They are based strictly on emotion rather than facts."
>
> *Lowering the Voting Age to 18,* Hearings before the Subcommittee on Constitutional Amendments, Committee of the Judiciary, United States Senate 91st, 2d, March 9, 1970, pp. 136-137.

Senator Goldwater's statement is in fact correct. However, the court need not decide its correctness in order to sustain the constitutionality of Title III. It

need only decide that a basis can be perceived for Senator Goldwater's conclusion that there is "no compelling reason why a State has to deprive citizens between the ages of 18 and 21 of their right to vote."

V. CONGRESSIONAL ACTION GRANTING THE RIGHT TO VOTE TO ANY GROUP OF CITIZENS MUST LIKEWISE BE UPHELD IF THE COURT CAN PERCEIVE A BASIS FOR A CONGRESSIONAL FINDING THAT THE INCREASED POLITICAL POWER RESULTING TO SUCH PERSONS FROM THE VOTE WILL BE HELPFUL IN OVERCOMING DISCRIMINATION AGAINST THEM AND THAT THIS NEED TO VOTE WARRANTS FEDERAL INTRUSION UPON STATE INTERESTS. HERE, AGAIN, THERE IS A PERCEIVABLE BASIS FOR SUCH A FINDING.

As noted in Section I of this argument, *Katzenbach v. Morgan* held that Section 4(e) of the 1965 Voting Rights Act was constitutional since it was "plainly adapted" to furthering the aim of overcoming discrimination in voting rights. *Katzenbach v. Morgan* also held that Section 4(e) was constitutional on the separate ground that it was "plainly adapted" to furthering the aid of overcoming discrimination in the provision and administration of governmental service. In this regard, the court states as follows:

> This enhanced political power will be helpful in gaining nondiscriminatory treatment in public services for the entire Puerto Rican community. Section 4(e) thereby enables the Puerto Rican minority better to obtain "perfect equality of civil rights and the equal protection of the laws." It was well within congressional authority to say

> that this need of the Puerto Rican minority for the vote warranted federal intrusion upon any state interests served by the English literacy requirement. It was for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations—the risk or pervasiveness of the discrimination in governmental services, the effectiveness of eliminating the state restriction on the right to vote as a means of dealing with the evil, the adequacy or availability of alternative remedies, and the nature and significance of the state interests that would be affected by the nullification of the English literacy requirement as applied to residents who have successfully completed the sixth grade in a Puerto Rican school. It is not for us to review the congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did. There plainly was such a basis to support Section 4(e) in the application in question in this case. Any contrary conclusion would require us to be blind to the realities familiar to the legislators.
>
> 384 US 652-653, 16 L ed 2d 836-837, 86 S Ct 1724-1725.

Under the reasoning of the *Katzenbach v. Morgan* and *Kramer* cases, the constitutionality of Title III of the Voting Rights Act Amendments of 1970, as legislation "plainly adapted" at the elimination of discrimination in the imposition of voting qualifications, is not open to serious doubt. At the very least, a basis can be perceived for a Congressional finding that there is no compelling reason why the states must deny the vote to persons aged 18-20 years.

The constitutionality of Title III can also be sustained as a measure to overcome discrimination "in the provision or administration of governmental service" (384 US at 652, 16 L ed 2d at 836, 86 S Ct at 1724). Here again, a basis can be perceived for a Congressional conclusion that 18-20 year olds need the vote to overcome discrimination against them and that this need outweighs any interest the states may have in denying them the vote. The court is not asked to consider whether there is in fact discrimination against youth, but whether it can perceive a basis for such a finding by Congress.

The California Assembly Committee on Elections and Constitutional Amendments notes that "in most cases 18 to 21 year olds are tried and punished (as adults) in superior and municipal court" and "that in practical operation the law and the court system may put limitations on an 18 to 21 year old's ability to protect and defend himself" (*1969 Interim Report on Minimum Voting Age/Age of Majority,* p. 11). Contrary to the American Tradition of trial by jury, as announced in *Thiel v. Southern Pacific Company* (1949) 328 US 217, 220, 90 L ed 1181, 1184-1185, 66 S Ct 984, 985-986, 18 - 20 year olds are tried by juries from which they are intentionally and systematically excluded as jurors.

Katzenbach v. Morgan refers specifically to "law enforcement" as one of the areas in which there might be discrimination which the right to vote might help to overcome (384 US at 652, 16 L ed 2d at 836, 86 S Ct at 1724).

Young people of this country have voiced the complaint of police and National Guard discrimination. To what extent there may be discrimination in law enforcement against young people in the various parts of the country is perhaps incapable of proof. Many claims of mistreatment are not justified. Nevertheless, enough substantial charges have been made, both in California and throughout the nation, to provide a basis for Congressional concern.

Senator Kennedy in his testimony before the Senate Subcommittee on Constitutional Amendments stated as follows:

> By reducing the voting age to 18, we can enable young Americans to improve their social and political circumstances, just as the Supreme Court in the Morgan case accepted the determination by Congress that the enfranchisement of Puerto Ricans in New York would give them a role in influencing the laws that protect and affect them.
>
> Although 18 - 20 year olds are not subject to the same sort of discrimination in public services confronting Puerto Ricans in New York, the discriminations, actual and potential, worked against millions of young Americans in our society are no less real.[7]
>
> Cong.Rec., daily ed., March 11, 1970, 91st, 2d, S. 3486.

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[7]"The view that the Equal Protection Clause of the Fourteenth Amendment was intended primarily to limit state restrictions on ethnic minorities, which was strongly urged by many, including some Justices of the Supreme Court, in the period immediately following its adoption, is a relic of the 19th Century. The Equal Protection Clause in recent years has been applied to many types

VI. FEDERAL LEGISLATION ESTABLISHING A UNIFORM NATIONAL VOTING AGE IS IN ANY EVENT CONSTITUTIONAL IN PRESIDENTIAL ELECTIONS AND PRIMARIES.

Section 202 of Title II of the 1970 Voting Rights Act Amendments provides for the elimination of durational residency requirements in presidential elections. Congress found that the imposition and application of durational residency requirements in presidential elections "denied and abridged the inherent constitutional right(s) of citizens to vote for their president and vice-president" and "to enjoy their free movement across state lines." (Title II, Sec. 202(a)).

Congress, in the enactment of Sec. 202 of Title II, recognized that there is no provision in the Constitution requiring that voters in presidential elections have the same qualifications as other voters. The Constitution is in fact silent as to the qualifications of voters in presidential elections.

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of state legislation having no relation to ethnic minorities. Therefore, to argue that the doctrine of *Katzenbach v. Morgan* should be contained in this way is to argue for a restriction that does not appear in the Court's statement of the doctrine, and more importantly, to suggest a limitation of at least one aspect of the Fourteenth Amendment by returning to a view that was rejected in the 19th century." 116 Cong. Rec. S. 7279 (daily ed., May 18, 1970) (letter of Prof. Kaufman).

> "Possibly, the [*Katzenbach v. Morgan*] case will be explained away upon the ground that the discrimination was invidious because it ran against Puerto Ricans. But that is not what the court held and if a Congressional finding that residency and literacy tests work a denial of equal protection would be binding upon the courts, then logically a finding that the present discrimination against 18-21 year olds is invidious should be equally conclusive." (Statement of Archibald Cox, *Lowering the Voting Age to 18*, Hearings before the Subcommittee on Constitutional Amendments, Committee of the Judiciary, United States Senate, 91st, 2d, pp. 177-178.)

Even if the court were to reject all arguments heretofore presented in this brief, there must still be determined the question of whether because of additional considerations, Title III is in any event constitutional as to presidential elections.

There are indeed significant additional considerations applicable to presidential elections. Senator Joseph Tydings states the following:

> Additional arguments can be made in favor of the constitutionality of congressional legislation lowering the voting age when the legislation is not applicable to the election of State and local officials. . . . Any interest which a State may have in denying the right to vote to a class of citizens would certainly be entitled to less consideration when only Federal elections are involved. The Court could not presume a national interest in denying the vote to a class of citizens if the Congress of the United States had concluded that the national interest lay in having that class vote in Federal elections.
>
> Cong. Rec., daily ed., 91st, 2d, March 11, 1970, S. 3498.

Whatever interest a state might claim in preventing 18-20 year olds from voting would certainly be entitled to far less consideration in presidential elections than in local, state, or even congressional elections. The Congress of the United States has concluded that the national interest requires that 18-20 year olds vote for the nation's chief executive officers. Accordingly, the states can have no compelling interest in preventing these United States citizens from voting for their president and vice president.

Congress could also consider that a uniform national voting age was "appropriate legislation" under Section 5 of the Fourteenth Amendment to do away with discrimination in voting rights in presidential elections among citizens of the same age who reside in different states. The minimum age for voters in presidential elections is 18 in Georgia, Kentucky, and Alaska, and 20 in Hawaii. It will be 18 years in the District of Columbia commencing January 1, 1971. (There is no dispute about Congressional power under Article I, Section 8, to establish voting qualifications in the District of Columbia).

Congress might also reasonably conclude that a national uniform voting age in presidential elections was needed to protect the inherent constitutional rights of citizens "to vote for their president and vice president" and "to enjoy their free movement across state lines". Legislation for this purpose is authorized by the Necessary and Proper Clause and is "appropriate legislation" to enforce the Privileges and Immunities Clause of the Fourteenth Amendment. In view of the abolition of durational residency requirements, were it not for the provisions of Title III, a United States citizen aged 18 through 20 years would gain or lose his right to vote for president and vice president by transferring his place of residence from certain states to others.

The doctrine of reserved powers expressed in the Tenth Amendment is limited to those powers which the states possessed before the establishment of the Constitution. (*United States v. Curtis Wright Export*

Corporation (1936) 299 US 304, 316, 81 L ed 255, 260, 57 S Ct 216, 219.) The doctrine of reserved power has no application to legislation regulating congressional elections. (*Ex Parte Yarborough* (1884) 110 US 651, 666, 28 L ed 274, 279). In *Ex Parte Yarborough* it was held to be "a waste of time to seek for specific sources of power" to pass laws to protect congressional elections from violence and corruption (110 US 651, 666, 28 L ed 274, 279). *Burroughs v. United States of America* (1933) 290 US 534, 78 L ed 484, 54 S Ct 287 applied the same doctrine to presidential elections.

Because the doctrine of reserved powers is inapplicable to presidential elections, the general power to establish qualification for voters in presidential elections and primaries necessarily resides in the Congress of the United States (regardless of any specific source of power such as Section 5 of the Fourteenth Amendment) unless there can be found a specific contrary provision in the Constitution. The Constitution, however, is silent as to the qualification of voters in presidential elections or primaries. The Constitution merely provides for the election of the president by members of an Electoral College consisting of delegations from each state appointed "in such manner as the Legislature thereof may direct." (Art. II, Sec. 1, par. 2).

The practices of direct presidential elections and presidential primaries grew up despite the Constitution. The Twenty-Fourth Amendment contains the only language in the Constitution referring to either

direct presidential elections or presidential primaries. It provides that the "right of citizens of the United States to vote in any primary or other election for president or vice president, for electors for president or vice president . . ." shall not be abridged by reason of failure to pay any poll tax or other tax.

In California, as in most other states, the candidates for election to the Electoral College are appointed by state political party conventions. Their names do not appear on the ballot. Only the names of the candidates for president and vice president appear on the ballot. The members of the Electoral College perform only mandatory ministerial acts since California law directs that they must vote for the candidates of the political party they represent (Election Code Sec. 25105).

The power of the state legislatures to determine the "Manner" of selection of the members of the Electoral College authorizes a determination that popular election shall be the manner of selection. (*McPherson v. Blacker* (1892) 146 US 1, 36 L ed 869.) Once this determination has been made, however, Congress has the authority to establish voter qualifications.

The authority of Congress under Article I, Section 4, to make or alter regulations regarding the "Manner" of holding congressional election has not been interpreted as including a power to alter state voter qualifications. Likewise, the authority of state legislatures under Section 1 of Article II to appoint members of the Electoral College in such "Manner"

as they shall direct, need not be interpreted as precluding Congress from establishing uniform voting qualifications in presidential elections and primaries. Congressional power to establish voter qualifications in presidential elections and primaries need not be based on Section 5 of the Fourteenth Amendment or any specific provision of the Constitution.

CONCLUSION

For the foregoing reasons, it is requested that Title III of the Voting Rights Act Amendments of 1970 be declared constitutional.

Dated, September 8, 1970.

Respectfully submitted,
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(Appendix Follows)

Appendix

Appendix

SECTION I

LEGAL SIGNIFICANCE OF ATTAINING THE AGE OF MAJORITY OF EIGHTEEN YEARS IN THE STATE OF CALIFORNIA.[1]

1. Although proceedings may be commenced in the juvenile court if the alleged offender was between the ages of 18 and 20 years at the time of the offense, such proceedings are usually commenced and prosecuted to completion in the adult courts. Proceedings must be commenced in the juvenile court only if the alleged offender was below the age of 18 years at the time of the alleged offense. (California Juvenile Court Practice, California Continuing Education of the Bar, pp. 35-36).

2. Registration for the draft is required by Federal law at the age of 18 years. (50 USC 453).

3. Any married person who has attained the age of 18 years is of the age of majority for all purposes of the Civil Code, Probate Code and the Code of Civil Procedure and for the purpose of entering into any engagement or transaction respecting property or his estate, or for the purpose of entering into any contract, the same as if he or she had reached 21 years, (Civil Code 25). Judgment of dissolution or nullity of the marriage prior to the age of 21 does not deprive the person of adult station once obtained under this provision.

[1]There are two ages of majority in California. These are 18 and 21 years. There is no legal significance in attaining the ages of 19 or 20 years under Federal or California laws.

4. Any woman who has reached the age of 18 years is capable of consenting to and consummating marriage. No parental consent or court approval is required. (Civil Code, Sec. 4101).

5. Any man who has reached the age of 18 years is capable of consenting to and consummating marriage with the consent in writing of his parents or one of his parents. No court approval is required (Civil Code, Sec. 4101).

6. No person who has reached the age of 18 years may disaffirm any contract on the ground of age unless he restores all consideration received by him. (Civil Code, Sec. 35). The consideration which must be restored includes a sum equal to the value of the use or deterioration of the article while it was in his possession. (26 Cal. Jur. 2d 664-665).

7. Any person who has reached the age of 18 years may give consent to the donation of blood. (Civil Code, Sec. 25.5).

8. Any married person or serviceman may consent to medical care. (Civil Code Sec. 25.6 and 25.7), and any unmarried pregnant woman may consent to medical care relating to her pregnancy. (Civil Code, Sec. 34.5).

9. Those who have attained the age of 18 years may purchase tobacco. (Penal Code, Sec. 308).

10. Persons who have reached the age of 16 years have full legal capacity to purchase life and disability insurance and annuity contracts. (Ins. Code, Sec. 10112).

11. Persons who have reached the age of 18 years may drive motor vehicles for compensation and may drive school buses. (V. C. Sec. 12515, 12516).

12. Persons who have reached the age of 18 years have the capacity to make valid wills and exercise testamentary powers of appointment. (Probate Code, Sec. 20 and Civil Code, Sec. 1384.1).

13. The provisions of Fair Labor Standards Act regarding "oppressive child labor" apply only to those under the age of 16 years or between the ages of 16 and 18 years. (29 USC 203(1) and 212).

14. The Department of Labor of the State of California has no authority to fix minimum wages or maximum hours for males between 18 and 21 years of age. (Labor Code, Sec. 1172).

15. Vehicle licenses issued to persons under the age of 18 years are governed by special provisions requiring satisfactory completion of driver education courses. (V. C. Sec. 12507).

16. Eighteen years is the minimum age for employment by the United States Government.

17. Those who have attained the age of 16 years have capacity to enter into apprentice agreements under the Apprentice Labor Standards Act. (Labor Code, Sec. 3077).

18. Females who have reached the age of 18 years are not protected by statutory rape laws, (Penal Code, Sec. 261) or the laws relating to the abduction of females for purposes of prostitution. (Penal Code. Sec. 267).

19. Those who have reached the age of 18 years may purchase automobile insurance with the same effect as though they had reached the age of 21 years. (Ins. Code Sec. 152).

20. The penal laws relating to sending minors to immoral places are inapplicable unless the minor is below the age of 18 years. (Penal Code, Sec. 273(f).)

21. One who has reached the age of 18 years may receive a tattoo. (Penal Code, Sec. 653.)

22. Hunting licenses issued to persons under the age of 18 years are governed by special provisions requiring a Certificate of Competency. (Fish and Game Code, Sec. 3032).

23. Minors under the age of 18 years cannot make contracts relating to real property, or any interest therein, or relating to personal property not in the minor's immediate possession or control. (Civil Code, Sec. 33).

24. Persons who have reached the age of 18 years may serve California civil process. (C. C. P. Sec. 410).

SECTION II

EMPLOYMENT, MARITAL AND MILITARY STATUS AND SCHOOL ENROLLMENT, BY AGE AND SEX FOR UNITED STATES

Male	17	18	19	20	21
Population	1,449,801	1,249,225	1,107,977	1,065,814	1,083,261
Working Full-time, %	9.3	25.2	36.8	45.4	52.9
Working Part-time, %	25.6	20.4	15.2	12.9	11.7
Unemployed, %	5.6	7.2	7.6	7.7	7.6
Not in Labor Force, %	56.5	39.3	27.2	20.4	16.6
Enrolled in School, %	76.3	54.6	37.3	27.9	23.6
In Armed Forces, %	3.0	8.9	13.1	13.6	11.2
Married, %	1.9	5.3	12.6	23.6	35.8
Female					
Population	1,415,107	1,243,837	1,162,821	1,119,089	1,114,569
Working Full-time, %	5.9	24.6	33.4	34.6	34.0
Working Part-time, %	16.3	13.4	10.9	9.5	8.4
Unemployed, %	3.7	4.9	5.1	4.8	3.2
Not in Labor Force, %	74.1	56.9	50.3	50.8	52.9
Enrolled in School, %	74.9	46.6	28.4	19.3	13.9
In Armed Forces, %	0.0	0.2	0.3	0.3	0.2
Married, %	11.9	23.8	39.3	52.6	63.5

Reference: 1960 Census

SECTION III

TITLE III OF VOTING RIGHTS ACT AMENDMENTS OF 1970

Public Law 91-285
91st Congress, H. R. 4249
June 22, 1970

"TITLE III—REDUCING VOTING AGE TO EIGHTEEN IN FEDERAL, STATE, AND LOCAL ELECTIONS

"DECLARATION AND FINDINGS

"Sec. 301. (a) The Congress finds and declares that the imposition and application of the requirement that a citizen be twenty-one years of age as a precondition to voting in any primary or in any election—

"(1) denies and abridges the inherent constitutional rights of citizens eighteen years of age but not yet twenty-one years of age to vote—a particularly unfair treatment of such citizens in view of the national defense responsibilities imposed upon such citizens;

"(2) has the effect of denying to citizens eighteen years of age but not yet twenty-one years of age the due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment of the Constitution; and

"(3) does not bear a reasonable relationship to any compelling State interest.

"b) In order to secure the constitutional rights set forth in subsection (a), the Congress declares that it is necessary to prohibit the denial of the right to vote to citizens of the United States eighteen years of age or over.

"PROHIBITION

"Sec. 302. Except as required by the Constitution, no citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any primary or in any election shall be denied the right to vote in any such primary or election on account of age if such citizen is eighteen years of age or older.

"ENFORCEMENT

"Sec. 303. (a) (1) In the exercise of the powers of the Congress under the necessary and proper clause of section 8, article I of the Constitution, and section 5 of the fourteenth amendment of the Constitution, the Attorney General is authorized and directed to institute in the name of the United States such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the purposes of this title.

"(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title, which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

"(b) Whoever shall deny or attempt to deny any person of any right secured by this title shall be fined

not more than $5,000 or imprisoned not more than five years, or both.

"DEFINITION

"Sec. 304. As used in this title the term 'State' includes the District of Columbia.

"EFFECTIVE DATE

"Sec. 305. The provisions of title III shall take effect with respect to any primary or election held on or after January 1, 1971."

SECTION IV

U.S. CASUALTIES IN SOUTHEAST ASIA BY AGE

Those aged 18 through 20 years have suffered 48.1% of United States casualties in Southeast Asia. (*Lowering the Voting Age to 18,* Hearings Before the Subcommittee on Constitutional Amendments, Committee of the Judiciary, United States Senate, 91st, 2d, p. 69 (Source: Directorate for Information Operations Office of Secretary of Defense, December 16, 1969).)

According to the Department of Defense Statistics cited by Senator Cook, as of December 31, 1969, 19,202 out of the 40,028 (48%) of the men killed in Southeast Asia were 18, 19 or 20 years of age when killed. (Cong. Rec., daily ed., March 11, 1970, 91st, 2d, 3499.)

The percentage of those killed in Southeast Asia under the age of 21 years has increased from 44% at the end of 1968, to 48% at the end of 1969.