IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

NO. 44 ORIGINAL

* * *

STATE OF TEXAS,

Plaintiff

v.

JOHN N. MITCHELL, ATTORNEY GENERAL
OF THE UNITED STATES

Defendant

* * *

BRIEF FOR THE PLAINTIFF

* * *

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JURISDICTION

This Court has original jurisdiction of this action under the provisions of Article III, Section 2, of the Constitution of the United States and Section 1251 (b)(3) of Title 28, United States Code.

STATUTE INVOLVED

Title III of Public Law 91-285, known as The Voting Rights Act Amendments of 1970, provides as follows:

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 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.

STATEMENT

Article VI, Sections 1 and 2, Constitution of Texas (Vernon's), and Articles 5.01 and 5.02, Texas Election Code (Vernon's), provide, as one of the qualifications for voting in the State of Texas, that a person shall have attained the age of twenty-one years. (See Appendix.) This qualification applies to all elections: federal, state and local.

Purporting to act pursuant to Section 5 of the Fourteenth Amendment of the Constitution of the United States, the Congress enacted, and the President approved, Public Law 91-285, known as The Voting

Rights Act Amendments of 1970 (hereinafter referred to as the Act). Title III of the Act provides that no citizen of the United States, otherwise qualified to vote in any state, shall be denied the right to vote in any election if the citizen is eighteen years of age or older. The Attorney General of the United States is authorized and directed by the Act to compel the various states of the Union to comply with Title III of the Act.

Because Section 302 of Title III of the Act purports to nullify and abolish the voting age qualification established by the above mentioned provisions of the Constitution and statutes of the State of Texas, Plaintiff brough this action seeking a judgment of this Court decreeing that the Congress, by enacting Title III of the Act, has exceeded its powers under the Constitution.

SUMMARY OF ARGUMENT

The power of Congress to legislate with regard to a particular subject must be founded upon a grant of authority under the Constitution of the United States. Neither Section 5 of the Fourteenth Amendment, nor any other provision of the Constitution, grants to Congress the power to impose upon the states its own arbitrary criteria for a minimum voting age and prescribe a penalty for those states that do not choose to follow that standard.

The decisions of this Court have long held that the states have a wide scope of authority with regard to the qualifications and standards necessary for voting. As long as the qualifications set by the states are reasonable and nondiscriminatory, they are permissible. Indeed, Article I, Section 2, of the Constitution and the Seventeenth Amendment specifically provide that

the qualifications for electors for members of the House of Representatives and the Senate shall be the same as is required for electors of the most numerous branch of the state legislature. Undoubtedly, from a constitutional standpoint and a historical standpoint, the several states have the right to prescribe the age at which a person becomes qualified to vote. Section 2 of the Fourteenth Amendment specifically recognizes the power of the states in this regard and imposes a penalty upon those states that set the limit above twenty-one years of age.

Title III of the Act must fall because it is beyond the power conferred upon Congress and effectuates a denial of a right which the Constitution specifically leaves to the various states. It is inconsistent with both the letter and the spirit of the Constitution.

ARGUMENT

I. The Power of Congress under Section 5 of the Fourteenth Amendment is Limited to Legislation That is Consistent with the Letter and Spirit of the Constitution.

By Section 302 of the Voting Rights Act Amendments of 1970, Pub.L. 91-285, Congress has undertaken to provide that, except as required by the Constitution, no citizen otherwise qualified to vote who is 18 or older shall be denied the right to vote in any election on account of age. If valid, this will supersede constitutional and statutory provisions in Texas, and in 45 other states, limiting the franchise to those 21 years of age or older, and in two other states that set 19 or 20 as the limit. The congressional power to make this drastic change, if it exists at all, must be based on Section 5 of the Fourteenth Amendment, giving Congress

"power to enforce, by appropriate legislation," the provisions of that amendment.

This Court has spoken only once on the meaning of Section 5. In *Katzenbach v. Morgan,* 384 U.S. 641 (1966), the Court upheld § 4(e) of the Voting Rights Act of 1965, Pub.L. 89-110, as a valid exercise of the power granted by that section of the Fourteenth Amendment. In the *Morgan* case the Court made two important pronouncements about Section 5.

First, it held—as it had held shortly before with regard to the similar Section 2 of the Fifteenth Amendment, *South Carolina v. Katzenbach,* 383 U.S. 301, 326 (1966)—that the classic formulation by Chief Justice Marshall in *McCulloch v. Maryland,* 4 Wheat. 316, 421 (1819), of the meaning of the Necessary and Proper Clause is the measure also of the power to "enforce, by appropriate legislation" granted by Section 5.

> Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

384 U.S. at 650. Texas has no quarrel with that portion of the *Morgan* decision.

Second, the Court said in *Morgan,* 384 U.S., at 648-649, that under Section 5 Congress may strike down state laws where it deems this necessary in order to assure the equal protection of the laws even though those state laws would be valid if tested only against the Equal Protection Clause by itself. With respect, Texas is unpersuaded by this portion of the *Morgan* decision. The historical evidence with regard to Section 5 points in an opposite direction. Burt, *Miranda*

and Title II: A Morganatic Marriage, 1969 SUP.CT.REV. 81, 84-100; Bickel, *The Voting Rights Cases,* 1966 SUP.CT.REV. 79, 97. As a matter of logic it would seem that particular state action either does or does not deny to persons within its jurisdiction the equal protection of he laws. If it does, a court must hold the state action unconstitutional and Congress has power to enact legislation with regard to it. If it does not, then neither the courts nor Congress are authorized to act. Admittedly, it is often difficult to determine what is a denial of equal protection, and a declaration by Congress must be given great weight, but since *Marbury v. Madison,* 1 Cranch 137 (1803), it has been the central premise of our constitutional system that this Court is the ultimate arbiter of the meaning of the Constitution. Finally, to hold that Congress may decide for itself what is meant by Section 1 of the Fourteenth Amendment puts in jeopardy the cherished liberties thought safeguarded by that provision. Despite the assurance offered by footnote 10 of the *Morgan* opinion on this point, 384 U.S. at 651, even those sympathetic to the *Morgan* case generally have found it difficult to see how Section 5 gives Congress authority to expand equal protection but not to narrow it, and have suggested that "the footnote, therefore, may not be the end of he argument." Cox, *Constitutional Adjudication and the Promotion of Human Rights,* 80 HARV.L.REV. 91, 106 n. 86 (1966). See also Burt, *Miranda and Title II: A Morganatic Marriage,* 1969 SUP.CT.REV. 81, 118; 116 CONG. REC. H5649 (daily ed. June 17, 1970) (letter from Prof. Gerald Gunther).

The view we here put forward does not limit Congress to an insignificant role in implementing the Fourteenth Amendment. Under that amendment, as with others, it is often the case that the hardest problem is

not in deciding whether the constitutional command is being violated but in devising an adequate remedy to cure the situation. Here Congress has a wide area of choice and can provide effective remedies that would be beyond the power of the judiciary. Cf. *South Carolina v. Katzenbach,* 383 U.S. 301 (1966); *James Everard's Breweries v. Day,* 265 U.S. 545 (1924). On this view the Court and the Congress have complementary roles, with the Court deciding when the Constitution is being violated and Congress empowered to provide appropriate remedies to enforce the Constitution.

If we are right about this, it is the end of the matter. As will be developed in more detail in the following section, it is beyond belief that a court would hold that to require that voters be 21 or older is a denial of the Equal Protection Clause standing alone. If that is so, on the view we take of Section 5 Congress may not, by fiat, deal with laws so requiring as if they were a denial of equal protection.

But even if we are wrong in our understanding of Section 5, and of the relation of this Court to the Congress in enforcing the Fourteenth Amendment, this statute still must fall. Legislation adopted under Section 5, even if it may be regarded as an enactment to enforce the Equal Protection Clause, still must meet the test that it be consistent with "the letter and spirit of the constitution." 384 U.S. at 656. Section 302 of the Voting Rights Act Amendments of 1970 does not.

II. Section 302 of the Voting Rights Act Amendments of 1970 is Contrary to Both the Letter and the Spirit of the Constitution.

Voting qualifications are now referred to in terms at six different places in the Constitution. The original

document provided, in Article 1, Section 4, that in elections for the House of Representatives "the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." This provision was not inserted by happenstance.

> The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the convention, therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress, would have been improper for the reason just mentioned. To have submitted it to the legislative discretion of the States, would have been improper for the same reason; and for the additional reason that it would have rendered too dependent on the State governments that branch of the federal government which ought to be dependent on the people alone. To have reduced the different qualifications in the different States to one uniform rule, would probably have been as dissatisfactory to some of the States as it would have been difficult to the convention. The provision made by the convention appears, therefore, to be the best that lay within their option.

THE FEDERALIST, No. 52, at 360 (Wright ed. 1961) (Madison).

The Seventeenth Amendment sets out precisely the same test for voters in Senate elections. Thus the states were left free to set their own qualifications for voters. Those that a state determined were qualified to vote for members of the most numerous branch of the state legislature were, by that fact, qualified to vote for Representatives and Senators.

Other amendments limited in terms the qualifica-

tions the states might impose on the right of suffrage. Qualifications based on race or sex are barred by the Fifteenth and Nineteenth Amendments. The Twenty-Fourth Amendment prohibits requiring a poll tax for a national election. Finally Section 2 of the Fourteenth Amendment reduces a state's representation in Congress if

> the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, 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 * * *.

There is one other limitation on the freedom of the states in this matter, though it is not stated as explicitly in the Constitution. Whatever the intention of the framers of the Fourteenth Amendment may have been—compare *Reynolds v. Sims,* 377 U.S. 533, 593-615 (1964) (dissenting opinion) with Van Alstyne, *The Fourteenth Amendment, The "Right" to Vote, and the Understanding of the Thirty-Ninth Congress,* 1965 SUP.CT.REV. 33—it is settled by recent decisions that invidious or irrational distinctions with regard to voting qualifications, as with all other matters, are prohibited by the Equal Protection Clause of the Fourteenth Amendment. *Carrington v. Rash,* 380 U.S. 89 (1965); *Harper v. Virginia State Board of Elections,* 383 U.S. 663 (1966); *Kramer v. Union Free School District,* 395 U.S. 621 (1969); *Evans v. Cornman,* 398 U.S. 419 (1970).

The overall pattern has a clarity that is lacking on many constitutional questions. The letter of the Con-

stitution leaves it to the states to set voting qualifications, subject only to broad limitations imposed by the Constitution itself. And it is specifically recognized in the letter of the Constitution that a state may require that voters be 21 years of age. If a state chooses to set a voting age higher than 21, it is subject to the penalties of Section 2 of the Fourteenth Amendment. It is subject to no penalties if it sets the age at 21 or some lower figure. In *Minor v. Happersett,* 21 Wall. 162, 174 (1874), the Court quoted Section 2 and said: "Why this, if it is not in the power of the legislature to deny the right of suffrage to some male inhabitants?" Equally, why this, if it is not in the power of the legislature to deny the right of suffrage to persons under 21?

This understanding of the constitutional pattern about voting qualifications has often been recognized by this Court. Thus in *Pope v. Williams,* 193 U.S. 621, 632 (1904), the Court said:

> In other words, the privilege to vote in a state is within the jurisdiction of the state itself, to be exercised as the state may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals, in violation of the Federal Constitution.

Only 11 years ago a unanimous Court said, in *Lassiter v. Northampton County Board of Elections,* 360 U.S. 45, 51 (1959):

> We do not suggest that any standards which a State desires to adopt may be required of voters. But there is a wide scope for exercise of its jurisdiction. Residence requirements, age, previous criminal record (Davis v. Beason, 133 U.S. 333, 345-347) are obvious examples indicating factors which a State may take into consideration in determining the qualifications of voters.

In the first case in which voting qualifications created by a state were held to violate the Equal Protection Clause, the Court was at pains to emphasize the broad area of choice still left open to the states. The Court said, in *Carrington v. Rash,* 380 U.S. 89, 91 (1965):

> Texas has unquestioned power to impose reasonable residence restrictions on the availability of the ballot. Pope v. Williams, 193 U.S. 621. There can be no doubt either of the historic function of the States to establish, on a nondiscriminatory basis, and in accordance with the Constitution, other qualifications for the exercise of the franchise.

The case which goes farthest in asserting a right in the judiciary to review the qualifications set by the states is *Kramer v. Union Free School District,* 395 U.S. 621 (1969). The Court there called for "exacting judicial scrutiny of statutes distributing the franchise," 395 U.S. at 628, and said that the general presumption of constitutionality does not apply to statutes denying some residents the right to vote. 395 U.S. at 627-628. Indeed there are those in Congress who have taken certain language from the *Kramer* opinion as demonstrating that the states may no longer require that voters be 21. 116 CONG.REC. H5643 (daily ed. June 17, 1970) (Rep. McCulloch). A full reading of the *Kramer* opinion shows that it will not support such an interpretation and indeed that it points strongly in a contrary direction. The Chief Justice began his opinion for the Court by saying:

> At the outset, it is important to note what is *not* at issue in his case. The requirements of §2012 that school district voters must (1) be citizens of the United States, (2) be bona fide residents of the school district, and (3) be at least 21 years of age are not challenged. Appellant agrees that the

> States have the power to impose reasonable citizenship, age, and residency requirements on the availability of the ballot. Cf. Carrington v. Rash, 380 U.S. 89, 91 (1965); Pope v. Williams, 193 U.S. 621 (1904).

The Chief Justice then referred to the close scrutiny given apportionment statutes that may dilute the effectiveness of votes, and continued:

> No less rigid an examination is applicable to statutes *denying* the franchise to citizens who are otherwise qualified by residence and age. 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. Therefore, if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest.

395 U.S. at 626-627. These repeated references recognize the power of the states to set reasonable qualifications with regard to age, citizenship, and residency. It is less familiar kinds of qualifications that arouse suspicion and can stand only if shown to be justified by a compelling state interest.

The Texas laws requiring that voters be 21 years old do not violate the Equal Protection Clause. There is here no "invidious discrimination" such as could be found in *Katzenbach v. Morgan,* 384 U.S. 641, 654-656 (1966). Texas has not introduced "a capricious or irrelevant factor," as Virginia was found to have done in *Harper v. Virginia State Board of Elections,* 383 U.S. 663, 668 (1966). As Professor Herbert Wechsler has commented,

> age is obviously not irrelevant to qualifications; and since any age criterion involves the drawing of an arbitrary line fixing the age at twenty-one most certainly is not "capricious."

116 CONG.REC. H5649 (daily ed. June 17, 1970).

This Court has specifically recognized in *Lassiter* and in *Kramer* that age is relevant to voting qualifications and that it is for the states to set the age. Texas treats each of its citizens alike. Each must achieve the age of 21 before he or she is permited to vote. Some age requirement is necessary in order to protect the state's interest in a mature and well-informed electorate. What is involved is not discrimination but only a legislative preference for one figure instead of another in an area in which a choice must be made. That 45 other states have drawn the line at the same place as Texas, and that Section 2 of the Fourteenth Amendment explicitly draws the line at the same place, shows that the choice by Texas is not an unreasonable one.

A line drawn at 21—or at 18 or at any other age—is necessarily arbitrary. "* * * [S]ome college students under 21 may be both better informed and more passionately interested in political affairs than many adults. But such discrepancies are the inevitable concomitant of the line drawn that is essential to law making." *Kramer v. Union Free School District,* 395 U.S. 621, 637 (1969) (dissenting opinion). "It surpasses belief that the Constitution authorizes Congress to define the 14th Amendment's equal-protection clause so as to outlaw what the Amendment's next section approves." 116 CONG.REC. H5648 (daily ed. June 17, 1970) (statement of Professors Bickel, Black, Bork, Ely, Pollak, and Rostow).

If Section 302 of the Voting Rights Act Amendments

of 1970 can stand, then Congress has plenary power under Section 5 of the Fourteenth Amendment to set voting qualifications. There is no argument that can be made for this statute that could not equally well be made for any other Act of Congress changing qualifications established by the states. This statute presupposes that on a matter of legislative preference, on which a choice must be made, Congress may substitute its preference for that of the states, despite express constitutional provisions leaving it with the states to make the choice.

On that view, the Fifteenth, Nineteenth, and Twenty-Fourth Amendments were wholly unnecessary. Congress could have achieved the goals to which those amendments were directed by simple legislation and did not need to set in motion the cumbersome machinery of constitutional amendment. It may be argued—though it turns somersaults with history to do so—that the method of constitutional amendment was chosen in each of those instances in order to assure that the change would be a permanent one, not subject to repeal by some future Congress. The Seventeenth Amendment, however, will not yield to even that sophistic analysis. Forty-five years after the Fourteenth Amendment was ratified Congress and the states determined that Senators should be elected by those persons qualified to vote for members of the most numerous branch of the state legislature. If Section 5 of the Fourteenth Amendment allows Congress to set qualifications, what reason could there have been to write again into the Constitution years later the familiar provision that it is for the state to set qualifications?

An alternative argument was presented in the *Morgan* case that may seem to lend support to the legis-

lation now in question. Even though requiring voters to be 21 is not in itself an invidious discrimination nor a denial of equal protection, it may be argued that the enhanced political power purportedly given to those between 18 and 21 "will be helpful in gaining nondiscriminatory treatment in public services" for those in that age bracket. 384 U.S. at 652. This argument could be used whenever Congress undertakes to allow those not previously qualified by state law to vote.

> If Congress may freely bestow the vote as a means of curing other discriminations, which it fears may be practiced against groups deprived of the vote, essentially because of this deprivation and on the basis of no other evidence, then there is nothing left of state autonomy in setting qualifications for voting. The argument proves too much.

Bickel, *The Voting Rights Case,* 1966 SUP.CT.REV. 79, 100.

From 1868 to 1966 no one supposed that the bland words of Section 5 of the Fourteenth Amendment had transferred from the states to Congress the power to make reasonable and nondiscriminatory choices about voting qualifications. The presumption is powerful that such a far-reaching, dislocating construction as the United States now asks the Court to find in that constitutional provision was not uncovered by Congress, the courts, lawyers, or scholars for almost a century because it was not there.

Indeed the distinguished counsel for the successful appellants in *Morgan* disclaimed any reliance on such a novel doctrine.

> * * * [W]e freely concede the primary responsibilities of the States in this area and assert no general power in the national legislature to sub-

stitute its own mere preferences for the reasonable qualifications fixed by State law.

Brief for Appellants at 43, *Katzenbach v. Morgan,* 384 U.S. 641 (1966). That statement is consistent with what the Constitution says. It is consistent with what the Constitution has always been understood to mean.

The *Morgan* case differs in so many imporant respects from the present case that it cannot be regarded as decisive here or as establishing the doctrine that the then-Solicitor General disclaimed in that case. The differences have been well summarized by Professor Paul G. Kauper, and it is simpler to quote, rather than to paraphrase, his statement.

> In summary, there are very substantial differences between the English literacy test problem presented in *Morgan* and the voting age problem. In its legislation at issue in *Morgan,* Congress was directing its attention to a voting qualification, namely, the English literacy test, which has had a limited history in this country, which Congress found to be an unwarranted discrimination against a discrete ethnic group, and which for all practical purposes was limited in its operation to one state in the country. Moreover, Congress has a special federal concern with protection of Puerto Ricans against discrimination in view of the historic relationship between the United States and Puerto Rico, and the Congressional policies which have encouraged migration from Puerto Rico to the United States. Also it is not clear that the Supreme Court would not have invalidated the New York literacy test required as to Puerto Ricans even without the federal statute as an invidious discrimination violating the equal voting clause had it proceeded to face this question in the *Cardona* case. The voting age question, on the other hand, presents no factor of this kind. On the contrary, state voting age limits have a long unbroken his-

> tory, they deal with a qualification which does not enter into the sensitive area of race, nationality, ethnic affiliations or economic status, they present no distinctive aspects related to matters of federal authority and concern, and, indeed, the authority of the state to fix an age limit is confirmed in the very language of the Fourteenth Amendment. Here the factors are so heavily weighted in favor of the state power and the basis for Congressional intrusion into this area is so tenuous, that I cannot regard *Morgan* as determinative of the constitutional issue raised by the proposed legislation.

116 CONG.REC. H5653 (daily ed. June 17, 1970).

Nothing that we have argued here goes at all to the question whether it is wise or unwise to require that voters be 21. The wisdom of legislation is no concern of this Court. Nor, we submit, is the wisdom of state legislation fixing reasonable qualifications for voting any concern of the Congress. The Constitution vests in the states the power to decide what is wise in this regard.

The Fourteenth Amendment was a momentous step to preserve equality of rights and to prevent discrimination as between citizens. It was not intended to change radically the whole theory of the relations of the state and federal governments to each other, *McPherson v. Blacker,* 146 U.S. 1, 39, (1892), nor to supplant constitutional federalism with congressional federalism. If it is thought desirable to limit the freedom of the states in choosing a voting age, there is a constitutional way to accomplish this, just as was done in 1870 and 1920 and in 1964. Impatience with the process of constitutional amendment is no justification for a shortcut that ignores both the letter and the spirit of the constitution and that disregards both the pur-

poses of a written constitution and the position of the states in the constitutional scheme.

More than 50 years ago Harold Laski spoke of those "who are convinced that where national thought is, generally speaking, superior in quality to State thought, where it is temporally in advance, national, that is to say centralised action should follow. The sovereign, in fact, should show his powers of self-assertion. Where he is in possession of a progressive idea which fails to obtain sanction in a backward state, then he should use his reserve power in compensation for its reactionary character." Laski, STUDIES IN THE PROBLEMS OF SOVEREIGNTY 281 (1917). He was unpersuaded by those who took that view and concluded that the nation gains more from the slow and often painful struggle of states to accept the new wisdom than from the irritating imposition from without of a belief to which they have not been converted. *Id.* at 282. So it is here. If the arguments for lowering the voting age to 18 are as compelling as the supporters of this legislation believe, then they should have no difficulty in persuading the states to make this change on their own, or to ratify a constitutional amendment making the change for the entire republic. The Constitution of the United States does not allow them to achieve the change by congressional *ipse dixit.*

CONCLUSION

For all of the foregoing reasons, this Court should grant Texas the relief prayed for in the complaint.

Respectfully submitted,

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PROOF OF SERVICE

I, Crawford C. Martin, Attorney General of Texas, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of _____, 1970, I served the foregoing Brief for the Plaintiff upon the Defendant by depositing a copy in the United States mail, postage prepaid, and addressed to Honorable John N. Mitchell, Attorney General of the United States, Department of Justice, Tenth and Constitution Avenue, Washington, D. C. 20530.

CRAWFORD C. MARTIN

APPENDIX

Relevant Provisions of the Constitution of Texas and Texas Statutes

ARTICLE VI, CONSTITUTION OF TEXAS

§1. Classes of persons not allowed to vote

Section 1. The following classes of persons shall not be allowed to vote in this State, to wit:

First: Persons under twenty-one (21) years of age.

Second: Idiots and lunatics.

Third: All paupers supported by any county.

Fourth: All persons convicted of any felony, subject to such exceptions as the Legislature may make.

§2. Qualified elector; registration; absentee voting

Sec. 2. Every person subject to none of the foregoing disqualifications who shall have attained the age of twenty-one (21) years and who shall be a citizen of the United States and who shall have resided in this State one (1) year next preceding an election and the last six (6) months within the district or county in which such person offers to vote, shall be deemed a qualified elector; provided, however, that before offering to vote at an election a voter shall have registered annually, but such requirement for registration shall not be considered a qualification of an elector within the meaning of the term "qualified elector" as used in any other Article of this Constitution in respect to any matter except qualification and eligibility to vote at an election. Any legislation enacted in anticipation of the adoption of this Amendment shall not be invalid because of its anticipatory

nature. The Legislature may authorize absentee voting. And this provision of the Constitution shall be self-enacting without the necessity of further legislation.

TEXAS ELECTION CODE

Article 5.01. Classes of persons not qualified to vote

The following classes of persons shall not be allowed to vote in this state:

1. Persons under twenty-one years of age.

2. Idots and lunatics.

3. All paupers supported by the county.

4. All persons convicted of any felony except those restored to full citizenship and right of suffrage or pardoned.

Art. 5.02. Qualification and requirements for voting

Every person subject to none of the foregoing disqualifications who shall have attained the age of twenty-one years and who shall be a citizen of the United States and who shall have resided in this state one year next preceding an election and the last six months within the district or county in which such person offers to vote, and who shall have registered as a voter, shall be deemed a qualified elector. No person shall be permitted to vote unless he has registered in accordance with the provisions of this code. The provisions of this section, as modified by Sections 35 and 39 of this code, shall apply to all elections, including general, special, and primary elections, whether held by the state, by a county, municipality, or other political subdivision of the state, or by a political party.