

the only reason for not letting Negroes register, that it may be assumed a conclusive presumption or statutory rule, and therefore need not be found in each individual case.

The CHAIRMAN. Would it be necessary for the judge to issue a separate order in each individual case.

Mr. WALSH. I would assume he would issue a supplementary list which would list the applicants who have been before the referee, every so often, and then he would give each individual applicant a certificate of voting qualification so the applicant has this to show and identify himself before the board of elections and before the State registrar or anybody else.

The CHAIRMAN. You use the phrase "clearly erroneous." How do you compare that with the substantial evidence rule?

Mr. WALSH. We took "clearly erroneous" because that is the test now; it is in the rules of civil procedure.

The CHAIRMAN. In other words, one requires more evidence than the other?

Mr. WALSH. Well, that would get over on one of these metaphysical discussions. I guess it does require more evidence than the other, yes.

The CHAIRMAN. In the case of Federal registrars, as I understand it, there must be nine substantiated complaints. Do you know why they selected nine?

Mr. WALSH. No, I don't. I think it was just a figure that came out of some discussion without much scientific basis. I am not saying that critically, but just as a matter of fact.

The CHAIRMAN. Is it conceivable that the Federal registrar plan could apply to both State and Federal?

Mr. WALSH. I think the difficulties which we have indicated where it applies only to Federal elections would be compounded and made infinitely more complex if you extended it to State elections. There, it has no basis in article I. It depends entirely on the 15th amendment.

The CHAIRMAN. Would not the charge be made if the Federal registrar interfered with State elections, that there was undue interference with States rights?

Mr. WALSH. I think so, Mr. Chairman.

The CHAIRMAN. Which is more or less absent in the case of voting referees.

Mr. WALSH. I think it would be less effective, of less practical value, and it would there be supplanting a State officer with a Federal officer. In the Attorney General's proposal there is no supplanting of a State officer by a Federal officer, as long as the State registrar will proceed in accord with the law the applicant has to go before. The applicant only comes back into the Federal court where his case is tried, after an injunction to get registered before the State registrar, and he has been turned down even though he is qualified. Only then does he come back before a Federal officer.

The CHAIRMAN. Is there not another objection to the Federal registrar, at the point that the Federal registrar would determine an adjudicative problem, whether a man shall have a right to register? And should a purely administrative body, like the Commission or a Federal registrar, determine something that is akin to a judiciable question?