

Mr. WALSH. Of course, ordinarily the registration is conducted by administrative officers. I do not think that it is ordinarily regarded as a judicial question unless it is put in controversy. Then it gets into a court.

I think what the chairman may have in mind is that the referee's proceeding is entirely embraced within the court, whereas the registrar is outside and free of it completely. And this is a matter of some significance, because even when this proceeding is set up and this order is issued by the Federal court, the State registrar is still a party to that primary action in the Federal court, and if at any time he wishes to assert that this entire proceeding before the referee should come to an end because the pattern of discrimination has ceased, he can come before the court in that primary proceeding and ask that the injunction be terminated and the referee be discharged.

So there is, it seems to me, an infinitely greater constitutional protection in the Attorney General's proposal than in the registrars proposal, where you have a Federal officer operating completely outside the court, with no supervision by the court unless someone starts an action against him.

The CHAIRMAN. What I was concerned about in the case of the Federal registrar's making a determination that an individual was qualified to vote and was refused registration is that if it is a justiciable question or a disputed question, there would have to be a confrontation of witnesses and cross-examination, and so forth; would there not?

Mr. WALSH. You would have to have due process, and it is harder to generalize about it.

I think the question that concerns you at the moment is this idea of letting a Federal officer be appointed without such a preliminary judicial finding that there is a pattern of discrimination. In other words, a pattern to permit a Federal officer to supplant a State officer merely upon the view of the committee proceeding along the lines of a congressional committee, in which there has been no cross-examination or confrontation extended to the State officer.

The CHAIRMAN. So there are difficulties presented there, at least.

Mr. WALSH. Yes, sir.

The CHAIRMAN. On the question of voting referees, would there be cross-examination, confrontation of witnesses?

Mr. WALSH. Well, before this underlying finding was made by the court that there was a pattern or practice of discrimination, there would be a full trial, as we know it, with confrontation, cross-examination, and all of the other incidents of judicial procedure. It would be tried by a judge the same as any other case tried by a judge.

The CHAIRMAN. If the referee did not comply with those requirements, the judge would send it back and make him comply with them?

Mr. WALSH. Well, the referee does not even come into being until there has been a judicial determination that there was a pattern or practice of discrimination. Then, when the referee comes into being, he is under the supervision of the judge from the beginning to the end.

The CHAIRMAN. Under the Federal registrar arrangement, the decision of the Federal registrar, of course, would be subject to judicial review if it were questioned.