

end. You prove a pattern of discrimination. You prove that you personally are a victim of that pattern of discrimination." Is that going to get him a chance to vote? We don't make the white people do that. Why do we make the Negroes do it?

So we began to think: What can Congress do to be fair about this, to minimize the amount of intrusion into the State administration and yet make effective the 15th amendment in these sections?

And this was the very best we could do. We would require the Negro to prove every step of his qualification to vote: his age, his residence; if the literacy is required, to prove his literacy; if he was to understand the Constitution, let him answer the question as to the Constitution, it is a valid State provision. And if he has to have somebody identify him—some States, like Louisiana, require that two registered voters identify the new applicant—let him be identified by two registered voters. But here let me point out the referee will have the subpoena power to help this man get his two witnesses if he needs them.

We thought that all over, and we came to this one hurdle: Should he be required to prove in each individual case he personally was discriminated against? And we concluded that burden of proof was too difficult under all these circumstances; and indeed the answer to that link and proof was so obvious from the previous pattern of discrimination that we could ask Congress to enact this conclusive presumption at the benefit of the applicant.

Mr. WILLIS. Judge, I appreciate your concern and your sincerity.

Mr. WALSH. I just appreciate the pressure of time, and if I talk rapidly, that is the only reason for it.

Mr. WILLIS. That is all right, and if I seem to be firm in my questions, it is because I have strong feelings on the constitutional point.

Mr. WALSH. I respect you as a constitutional teacher and as a student of jurisprudence.

Mr. WILLIS. Thank you very much.

But now you have talked about a pattern that has been established. Now, the question that comes to my mind is this: You want Congress to embrace the fact that once the pattern has been established—and that is going to be a law on the books for a long time—people can individually indicate their rights to vote without proving individual discrimination. Suppose the pattern changes?

Mr. WALSH. The court can stop this the next day. As a matter of fact, that is the beauty of this proceeding. It is all in the hands of the judge. I think it is a very well thought out bill.

The State registrar, the moment he claims that that pattern no longer exists, can move before the court for the termination of this entire proceeding. It never gets out of the hands of the court. Suppose this pattern comes to an end. I certainly don't think the court is going to run up the expense of maintaining a voting referee, or that we are going to keep voting referees around when State registrars can perform this function. Indeed, if the State registrars will register these applicants, none of them will ever get to the voting referee.

Mr. WILLIS. Would not a wise improvement be—I am thinking out loud—to have the court decree itself, saying that it would be in existence for 6 months or 1 year, and that proof or showing of continuation of the pattern—