

would be applicable if such person or persons had been registered or otherwise qualified under State law.

Bear in mind, this scheme doesn't apply only to Negroes. It applies to white people as well.

What has any Federal court to do with whether a person is qualified to vote at any election unless he has been deprived of the right on account of his race, color, or previous conditions of servitude? The phrase "any election" embraces municipal and State elections as well as congressional elections. The Federal power as to congressional elections is quite different from the Federal power as to elections of State officers. At page 37 of the hearing of February 9, Judge Walsh is quoted as saying:

* * * there has been no holding that Federal electors are Federal officers. I think there is a high likelihood that that would be the ultimate determination. I call attention to *Ray v. Blair*, 343 U.S. 214, 224-225 in which the Supreme Court said:

The Presidential electors exercise a Federal function in balloting for President and Vice President but they are not Federal officers or agents any more than the State elector who votes for Congressmen. See also, *In re Green*, 134 U.S. 377; *Walker v. United States*, 93 F. 2d 383(3), and *McPherson v. Blacker*, 146 U.S. 1.

What Congress may have the power to regulate and what it definitely has not are so intermingled in this bill as to render it totally unconstitutional.

Even if it should be held that subsection (c) of section 1971 of title 42 United States Code is valid, and that in a proceeding instituted pursuant to it there may be a decree granting to the United States of America the preventive relief or injunction sought by it, it would not follow that Congress had the power to grant authority to the court to appoint voting referees to receive applications from any person claiming deprivation of his right to vote, and to empower the court, or judge thereof, then to sit as chairman of a superboard of registrars, issue voting certificates, and punish violations of them.

Even if it be assumed that the proceeding now authorized by subsection (c), if it is valid, constitutes a case or controversy within the meaning of article 3, section 2, clause 1 of the Constitution, Congress has no constitutional power to confer on a Federal district court the hermaphroditic powers it would seek to confer by this bill.

The judicial power extends to the "cases" described in the said clause, and to controversies to which the United States is a party.

The so-called proceeding which would follow the decree or finding of the court would not be a case or controversy within the meaning of the Constitution. In the first place, it would not even be confined to alleged deprivations committed by the defendants in the case. It would not be confined to adjudicating the rights of those for whose benefit the United States had brought the suit. It would convert the case or controversy into a universal registration proceeding in which there were no named plaintiffs and no named defendants.

A case is defined as a suit instituted according to the regular course of judicial procedure (*Muskrat v. United States*, 219 U.S. 346).