

Mr. BLOCH. Yes, and I called attention to that in my original statement and that was just what I was about to point out to Mr. McCulloch when I said I was troubled, apprehensive about the presumption that was created before you ever got to lines 14 and 15, up at the top of the page.

I called attention in my written statement to that language on pages 45 and 46 of the mimeographed copy and it is on page 21 of the printed record where Judge Walsh said:

Well, if you found a pattern and a practice against Negroes, and he is a Negro, I think Congress is justified in jumping the gap and establishing a conclusive presumption that that is the reason for his trouble.

The Chairman said:

You mean the Congress can justify that presumption?

Mr. Walsh said:

Yes, sir. I think it is a reasonable presumption. I think if you have had a pattern and found the likelihood of any other reason for refusing to let him register even though he is qualified, I think there is a reasonable basis for such a presumption.

Then he goes further and says:

"Not only is it reasonable but it is necessary because for an individual to prove in each case that he had been a victim of prejudice is very difficult. Therefore, I think he needs Congress' help in that regard."

Now I say that that presumption as construed by Judge Walsh violates the due process clause of the Constitution.

Mr. MEADER. Will you yield for just a minute?

Let me ask you if you wouldn't add it is a judicial determination and not a legislative determination.

Article III says the judicial power of the United States shall be vested in the Supreme Court and such inferior courts as Congress may ordain and establish. The finding that a particular act or practice has occurred is a judicial function, not a lawmaking, legislative, policymaking function.

Mr. BLOCH. That should be for the judiciary to determine.

There is another subparagraph of that article, a little below that, that refers to cases and controversies (we are going back to the supplemental proceeding now and getting away from the presumption) and I contend that that supplemental proceeding would not be a case or controversy and I say further that a registration proceeding is not a case or controversy under the judiciary clause of the Constitution. (See app. A.).

But to go back to the presumption section, I further contend in response to Mr. Willis' suggestion that that presumption that is created there, an irrebuttable presumption or if rebuttable, nothing in the acts give anybody the right to rebut it, giving nobody the right to introduce evidence to rebut it, giving nobody the right to appeal to the court, is a violation of the due process clause. (See cases cited in my prepared statement, pp. 28-29, supra.).

Now, as I said to Congressman Forrester at lunchtime, it seems to me that it is akin to this other situation.

Suppose that the registrars in my county were about to register a group of people of any race, white, colored, or red from the lower 20th district, we will say. I will say the lower 20th because there isn't any such and I don't want to step on anybody's toes.