STATEMENT OF

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BEFORE THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

HOUSE COMMITTEE ON THE JUDICIARY

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Mr. Chairman and Members of the Subcommittee

I am Reverend Theodore M. Hesburgh, President of the University of Notre Dame. I was Chairman of the United States Commission on Civil Rights from 1969 - 1972 and was a member of the Commission from its beginning in 1957. I am accompanied today by Howard A. Glickstein, Director of the Notre Dame Center for Civil Rights and former General Counsel and Staff Director of the United States Commission on Civil Rights, who also has been invited to testify before you, and by Carmen Jones and Dennis Mulshine, Staff Assistants at the Notre Dame Center for Civil Rights.

I have a long and deep concern for the protection of the civil rights of all men, and I feel that it is a special responsibility of government to safeguard and preserve those rights. I sincerely appreciate the opportunity to testify before you today in strong support of legislation designed to continue to safeguard that right which is preservative of all other rights -- the right to vote. During my years on the Commission on Civil Rights, a series of investigations were conducted and a series of reports were issued dealing with the right to vote. Many recommendations were made by the Commission, including numerous proposals that were adopted by Congress in the various voting rights bills it enacted.

I vividly recall testifying some ten years ago before the House Judiciary Committee in support of the Voting Rights Act of 1965. In 1965, there was a consensus among most legislators that the Voting Rights Act was urgently needed, a consensus that had developed after years of vain efforts to remove the blight of voting discrimination by more traditional methods such as case by case litigation. I believe that today there is a consensus that the Voting Rights Act is one of the most important legislative enactments of all time. The 1965 Act was extended in 1970 and has sparked significant progress. Today, however, ten years after its enactment, we face the grave issue of its expiration.

Mr. Chairman, George Santayana has written that "Those who cannot remember the past are condemned to repeat it." I hope that the Congress will not forget the tortured history of our nation's struggle to provide the franchise to black Americans. We must remember that our first effort to reconstruct our politics free from racial discrimination was cut short. We must not let such a tragic mistake mark the end of the yet unfinished Second Reconstruction.

It was not until after the Civil War that black citizens were formally guaranteed enfranchisement when, in 1870, the 15th Amendment to the Constitution was ratified. During the period of Reconstruction, newly freed slaves began to play a major role in the politics of the South, as states adopted new constitutions

guaranteeing suffrage to black men. And Congress sought to ensure continued black political participation with laws specifically designed to protect the right to vote.

The Enforcement Act of 1870 guaranteed the right to vote in state and federal elections without regard to race, and punished as a federal offense any racially discriminatory action depriving a black citizen of the right to vote. The Act was vigorously enforced during the first few years of Reconstruction and remained in effect for some time after Reconstruction laws were repealed by the various states.

The Second Enforcement Act passed in 1871 was even more far reaching. It called for comprehensive supervision of Congressional elections and authorized the appointment of registration and election supervisors. The supervisors were empowered to compile lists of registered voters to insure that no voters were improperly removed from registration lists. The supervisors also had authority to attend the election and challenge the qualifications of suspected unauthorized voters. They were to guard the ballot box, insure the proper tabulation of votes and report any interference to a chief supervisor who reported to the Congress. The Act provided for the appointment of special marshalls to protect the supervisors and made it unlawful for anyone to interfere with either the supervisors or the marshals in the performance of their duties. As you can see, the provisions of the Second Enforcement Act are strikingly similar to the

procedures established in the Voting Rights Act of 1965. Unfortunately, they were eventually repealed by Congress. We must not repeat this error.

The strong enforcement of the civil rights laws during the years of Reconstruction protected black voters from the coercion and fraud of the controlling white society. And blacks were able to make substantial political progress.

During the Reconstruction period, blacks played a major role in the politics of the South. Two black Mississippians were elected to the United States Senate, and fourteen Southern black men were sent to the House of Representatives. There was a black majority in the legislature of South Carolina and many important state posts were filled by blacks throughout the South. Their contribution to the progress of the South during the approximately ten years of Reconstruction was significant. Blacks, however, never gained political control of any state, and their political participation was frequently hindered by harassment, intimidation, sporadic violence and exploitation by whites seeking to re-establish their absolute political power.

The period between 1876 and 1894 marked a decline in active participation by Southern blacks in the political process, particularly following the infamous Compromise of 1877. Efforts to eliminate the black franchise grew in the form of widespread use of violence, fraud and corruption. Whites resented the political effectiveness which black voters had attained and began

to devise an assortment of voting measures created for the purpose of limiting black voter participation by circumventing the civil rights laws existing at that time. Finally, in 1894, Congress repealed the Enforcement Acts and southerners no longer found it necessary to resort to extra-legal methods for rendering the black franchise meaningless. The states sought to totally disfranchise blacks by amending or repealing state Reconstruction laws. The schemes devised by the whites were sophisticated and highly effective.

The American people had turned their backs to black political participation. The right to vote was effectively withdrawn from the southern black electorate and for more than a half century, virtually every disfranchising device used by the various states survived. It is this reversal of progress and subversion of democracy that we must not allow to occur again.

With the advent of the civil rights movement in the late 1950's, voting discrimination was outwardly challenged for the first time since the Reconstruction period. Congress passed the Civil Rights Act of 1957, under which the United States Attorney General was granted the authority to sue on behalf of blacks deprived of their voting rights. It was this Act that also provided for the establishment of the United States Commission on Civil Rights.

The few suits brought under the Civil Rights Act of 1957 exposed several weaknesses in the Act, and Congress adopted the

Civil Rights Act of 1960 in an attempt to streamline the legislation and make it more effective. The Civil Rights Act of 1964 later reinforced the rights and remedies of the earlier Acts.

Piecemeal litigation under the newly designed laws, however, proved to be cumbersome and frustrating and did not lead to a significant rise in black registration. For example, in Dallas County, of which Selma is the seat, there were four years of litigation by the Justice Department and two findings by the federal courts of widespread voting discrimination. Yet in those four years, black registration rose only from 16 to 383, although there were approximately 15,000 blacks of voting age in the county. The picture was equally dismal elsewhere. In Alabama, in 1964, only 19.4% of the blacks of voting age were registered to vote--an increase of only 9.2% since 1958. In Mississippi, the number of black registered voters increased by a meager 2% between 1954 and 1964. And in Louisiana, black registration increased only one tenth of 1% between 1958 and 1965. It was, therefore, apparent that the extensive litigation required under the Civil Rights Acts of 1957, 1960, and 1964 had failed to remedy denials of the right to vote to black citizens.

The chief obstacle denying the franchise to blacks during the 1950's and early 1960's was the discriminatory use of literacy tests. State laws vested wide discretion in local registrars in administering these and other qualification tests. While literacy tests were ostensibly intended to determine whether the

prospective voter was qualified to make an informed choice, the tests were applied in such a discriminatory manner that illiterate whites were registered to vote while educated blacks were denied registration. Too often in my years with the Civil Rights Commission we discovered that blacks with Ph.D's could not vote because of discriminatory literacy tests administered by local registrars.

As early as 1959, I was one of three Commissioners who recommended to the President and to Congress that all literacy tests be abolished as prerequisites to voting in federal elections because they were being used to disfranchise black citizens.

The United States Commission on Civil Rights recommended in 1959 that federal registrars be appointed to register applicants when local officials failed to do so. This recommendation, and similar ones in 1961 and 1963, was based upon findings of the Commission that substantial numbers of black citizens in the South were being denied the right to register and to vote simply because they were black. As a result of this denial, an estimated 2,843,000 blacks of voting age living in 11 Southern states were not registered to vote in November 1964.

In 1965, the American public witnessed on television the beating of demonstrators in Selma, Alabama. Those demonstrators were merely seeking to achieve for blacks the right to vote without discrimination. This experience demonstrated to Congress that a more effective assertion of its powers under the 15th

Amendment was required. Congress responded and adopted a more direct approach to dealing with disfranchisement.

On January 4, 1965, President Johnson proprosed in his State of the Union Message that "...we must eliminate every remaining obstacle to the right and opportunity to vote." In many respects, the Administration's proposal to eliminate barriers to the right to vote was similar to proposals previously made by the Commission on Civil Rights; it was designed to attack the problem of systematic discrimination by local voting officials.

The Voting Rights Act of 1965 was signed into law by the President on August 6, 1965. It departed from the pattern set by the 1957, 1960, and 1964 Civil Rights Acts in that it provided for direct Federal action to enable blacks to register and vote rather than rely upon often protracted litigation. The 1965 Act suspended literacy tests and other discriminatory voter registration tests and requirements in six Southern states and 40 counties in North Carolina. It also sought to deal with the abuse of the broad discretion vested in local registrars by providing for the assignment of Federal examiners to list persons qualified to vote. In addition, the 1965 Act provided for the assignment of Federal observers to monitor elections in counties covered by the Act when this was determined necessary by the Attorney General. Since passage of the Voting Rights Act of 1965, there has been a significant increase in the numbers of blacks registered, voting, and running for office in the Southern states.

In 1970, the Voting Rights Act was amended to provide for a nationwide suspension of literacy tests. For the past five years, therefore, we have been a nation without voting literacy tests, and I see no evidence that we have suffered in any way.

It is worth noting at this point that it is not just the literacy test provision of the Act that is national in scope. The automatic triggering provisions of the Act reach Arizona, Wyoming, California, New York, Maine, New Hampshire, and Massachusetts. Even jurisdictions not covered under the automatic provisions of Section 4 can be designated for Federal examiners and observers and can be made subject to the clearance procedures of Section 5. This can be accomplished through appropriate litigation by the Attorney General under Section 3. Nor are black citizens the only beneficiaries of the Voting Rights Act. Protection has been accorded to Puerto Ricans in New York, Mexican Americans in California, and Native Americans in Arizona. It is also no small matter that the shame of voting discrimination has been somewhat alleviated for white Americans.

Has the Voting Rights Act, especially its provisions suspending literacy and similar tests, in any way debased our electorate?

I always have firmly believed that literacy tests do not operate to disqualify "unintelligent" voters or assure the registration of only "intelligent" voters. I have never agreed that only those who can read and write or have a sixth grade education should have a voice in determining their own future.

An informed electorate has many media available other than the printed word. In fact, it is now well established that the majority of Americans receive all of their information on current events from radio and television. I have encountered many people with little formal education who did not meet all of the traditional standards of literacy. Nonetheless, these individuals, by their interest and their awareness, were eminently qualified to participate in responsible democratic government.

I believe, moreover, that any test for voting which depends upon educational achievement or which tests literacy, understanding, or knowledge, is especially discriminatory against blacks and other minorities in those states where there has been a denial of equal educational opportunity. The Supreme Court, in 1969, corroborated this view in the Gaston County case. The Court held that where segregated, dual school systems had deprived blacks of equal educational opportunities, this unconstitutional conduct also deprived blacks of an equal chance to pass literacy tests.

Since the extension of the Voting Rights Act in 1970, numerous federal court decisions have found that de jure segregation exists in the schools of the North as well as those in the South. The Supreme Court's rationale in Gaston County clearly applies with equal force to literacy tests in the North. The return of literacy tests, even if impartially administered, would have the same discriminatory effect in Boston as in Richmond, in Hartford as in Selma. These circumstances require a nationwide permanent ban on literacy tests.

The Voting Rights Act of 1965 and its extension in 1970 has at last begun to remove the patterns of discrimination in voting imposed in the post Reconstruction era. But the blight of racial discrimination in voting has not yet been eradicated in spite of the genuine efforts of many men and women. To be sure, there has been considerable progress. When one speaks of progress, certain synonyms come to mind: advancement, development, improvement. If an elderly black man is able to register and vote for the first time in his 75 years, then surely this is progress. If a black woman is able to run for an elective office without intimidation or fear of losing her job or her life, this is progress. If a voting district increases its percentage of black registered voters from 1% to 60%, this is a significant development in black political participation. This, indeed, is progress--a step in the proper direction for people who heretofore were systematically excluded from effective and full participation in the American electoral process. The Voting Rights Act has brought about this progress.

In many places, however, the response to black enfranchisement resembles events of a century ago; attempts have been made to discourage black voter participation or limit its effectiveness. Without the Voting Rights Act, the voting situation for blacks is likely to replicate the period following Reconstruction. In many respects, the present mood of the country is comparable to the 1870's and 1880's, when civil rights laws were regarded as dispensable and unnecessary. Congress ignored the rights of

black citizens then and the instances of lawlessness went unchecked. The recurrence of the physical intimidation, economic threats and subtle means of voting discrimination characteristic of that period is not an impossibility. Congress must not ignore the rights of blacks now.

It is important, moreover, to keep in perspective the progress which has been achieved. Black citizens have had to "catch up" in the political arena. The gains they have made are limited and fragile and have not been translated into effective political representation. Mexican Americans, Native Americans and other minorities are, to our disgrace, even further behind in their struggle to achieve full political participation. The process of advancement, development and improvement will not be complete until all minorities have secured greater influence and representation in the American political process. To the extent that Mexican Americans and other language minorities face special barriers to full political participation, their needs may require separate legislative treatment. I commend the committee for hearing testimony on this issue. Mr. Glickstein, in his testimony, will have more to say about it.

Just as the gains made during the Reconstruction period were quickly obliterated, the progress made thus far may be destroyed entirely if the federal government decides to end its intervention and restore to the states control over the registration process and determination of election qualifications. Lasting gains will not be made without persistent efforts to

eradicate totally voting injustices. A ten year extension of the Voting Rights Act would assure continued protection of black voting rights, and a permanent nationwide ban on literacy tests may hasten the full political participation of all minorities. Hopefully, by 1985, the policies of the Voting Rights Act will be firmly embedded in the habits and practices of our people, and political equality for blacks and other minorities will no longer necessitate further extension of this Act. The Congress can make that determination. For now, we must act to ensure that the Second Reconstruction is carried forward to its completion.