IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1970

Nos. 43 Original, and 44 Original

STATE OF OREGON, *Plaintiff,*

—vs.—

JOHN N. MITCHELL, Attorney General of the United States, *Defendant.*

STATE OF TEXAS, *Plaintiff,*

—vs.—

JOHN N. MITCHELL, Attorney General of the United States, *Defendant.*

ANSWERS AND BRIEF FOR THE DEFENDANT

JOHN N. MITCHELL,
Attorney General,

ERWIN N. GRISWOLD,
Solicitor General,

JERRIS LEONARD,
Assistant Attorney General,

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Washington, D.C. 20530.

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OCTOBER TERM, 1970

No. 43, Original

STATE OF OREGON, PLAINTIFF

v.

JOHN N. MITCHELL, ATTORNEY GENERAL OF THE UNITED STATES, DEFENDANT

ANSWER

In answer to the Complaint, Defendant John N. Mitchell states as follows:

I. Admits that this Court has jurisdiction.

II. Admits the allegations of paragraph II.

III. Admits the allegations of paragraph III.

IV. To the extent that paragraph IV contains allegations of fact, those allegations are admitted.

V. Admits the allegations of the first sentence of paragraph V. The second sentence of paragraph V contains conclusions of law to which no response is required.

VI. Admits that the plaintiff has standing as a sovereign to bring this action, but not as *parens patriae.*

VII. Paragraph VII contains conclusions of law to which no answer is required.

VIII. Lacks information sufficient to form a belief as to the truth of the allegation that implementation of Title III of the Voting Rights Act as amended would entail considerable expense for the plaintiff, but otherwise admits the allegations of paragraph VIII.

IX. Admits the allegations of paragraph IX.

X. Lacks information sufficient to form a belief as to the truth of the allegations of paragraph X.

Defendant prays that the Court deny the relief sought by the plaintiff and enter judgment sustaining the constitutionality of Title III of the Voting Rights Act as amended.

JOHN N. MITCHELL,
Attorney General.
ERWIN N. GRISWOLD,
Solicitor General.
JERRIS LEONARD,
Assistant Attorney General.

OCTOBER 1970.

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 44, Original

STATE OF TEXAS, PLAINTIFF

v.

JOHN N. MITCHELL, ATTORNEY GENERAL OF THE UNITED STATES, DEFENDANT

ANSWER

In answer to the Complaint, Defendant John N. Mitchell states as follows:

I. Admits that this Court has jurisdiction.

II. Admits the allegations of paragraph II.

III. Admits that the plaintiff has adopted provisions in its Constitution and statutes prescribing election procedures for local, state and national elections; the remainder of the first sentence of paragraph III consists of conclusions of law to which no response is required. Admits the allegations of the second sentence of paragraph III.

IV. Admits the allegations of paragraph IV.

V. Admits the allegations of the first sentence of paragraph V. Admits that, with respect to all elections held after December 31, 1970, Title III of the Voting Rights Act as amended prohibits the plaintiff from

denying the right to vote, on account of age, to persons aged 18 and older.

VI. Paragraph VI consists of conclusions of law to which no response is required.

VII. Paragraph VII consists of conclusions of law to which no response is required.

VIII. Admits that the plaintiff and 45 other states have laws prescribing 21 as the minimum age for voting; the remainder of paragraph VIII consists of conclusions of law to which no response is required.

IX. Admits that Section 303(a) of Title III authorizes the Attorney General of the United States to institute actions to enforce the provisions of Title III, and that he will do so as required.

X. Admits that, with respect to all elections held after December 31, 1970, Title III prohibits the plaintiff from denying the right to vote, on account of age, to persons aged 18 or older and admits that this controversy is ripe for adjudication.

XI. Admits that the plaintiff is entitled to invoke the jurisdiction of this Court; the remainder of paragraph XI consists of conclusions of law to which no response is required.

Defendant prays that the Court deny the relief sought by the plaintiff and enter judgment sustaining the constitutionality of Title III of the Voting Rights Act as amended.

JOHN N. MITCHELL,
Attorney General.

ERWIN N. GRISWOLD,
Solicitor General.

JERRIS LEONARD,
Assistant Attorney General.

OCTOBER 1970.

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No. 43, Original

STATE OF OREGON, PLAINTIFF

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JOHN N. MITCHELL, ATTORNEY GENERAL OF THE UNITED STATES, DEFENDANT

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STATE OF TEXAS, PLAINTIFF

v.

JOHN N. MITCHELL, ATTORNEY GENERAL OF THE UNITED STATES, DEFENDANT

BRIEF FOR THE DEFENDANT

JURISDICTION

Motions for leave to file a complaint in each of these actions, together with related documents, were filed on August 3, 1970. Each is an action between a state and a citizen of another state.[1] The original jurisdiction of this Court is invoked under Article III, Section 2, Clauses 1 and 2 of the Constitution and 28 U.S.C. 1251(b)(3). Leave to file each complaint was granted by the Court in an order of October 6, 1970.

[1] Attorney General Mitchell is a citizen of New York.

QUESTION PRESENTED

Whether Title III of the Voting Rights Act Amendments of 1970 is constitutional insofar as it prohibits the states from denying the right to vote to any otherwise qualified person 18 years of age or older in any election.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment provides in pertinent part as follows:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> * * * * *
>
> Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Title III of the Voting Rights Act Amendments of 1970, P.L. 91–285, 84 Stat. 318, is set forth in Appendix B, *infra,* pp. 75–77.

The pertinent provisions of Article II, Section 2 of the Oregon Constitution, Article VI, Sections 1 and 2 of the Texas Constitution and Articles 5.01 and 5.02 of the Texas Election Code (Vernon's) are set forth in Appendix C, *infra,* pp. 79–80.

STATEMENT

These actions, essentially identical in nature, challenge the constitutionality of the federal statute which reduces the voting age to 18, Title III of the Voting Rights Act Amendments of 1970, P.L. 91–285, 84 Stat. 318. Each of the plaintiffs seek a decree enjoining the enforcement of Title III as being inconsistent with its own state constitutional and statutory provisions setting the minimum voting age at 21.

Title III prohibits a denial of the right to vote to any citizen of the United States 18 years of age or older who is otherwise qualified to vote in any state or political subdivision (Section 302). The provision is to take effect with respect to any election or primary held on or after January 1, 1971 (Section 305), and will result in lowering the voting age from 21 to 18 in forty-six states and the District of Columbia, and from 20 to 18 in the State of Hawaii. The States of Georgia, Kentucky and Alaska [2] will not be affected by this title since 18-year olds there already have the right to vote. It has been estimated that close to 10 million persons who would be eligible to vote under this title are presently disfranchised because of age alone. See Hearings on Amendments to the Voting Rights Act before the Senate Judiciary Committee, 91st Cong., 1st and 2d Sess., p. 328; 116 Cong. Rec. 3060 (daily ed., March 5, 1970; Sen. Kennedy).

[2] Alaskan voters approved a referendum reducing the voting age to 18 in an election held August 25, 1970.

ARGUMENT

I

INTRODUCTION AND SUMMARY

These original actions call into question both the scope of Congress' power under the Enforcement Clause of the Fourteenth Amendment and the standard of rationality by which Congress must measure state voting qualifications in connection with the exercise of that power. Specifically, the issue raised is whether Congress has the power under the Constitution to prohibit a denial of the vote to citizens between the ages of 18 and 21 on finding that there is today neither a sufficient basis for differentiating between these citizens and those who are 21 and over, nor any "compelling state interest" which would warrant excluding this age group from the franchise.

The identical question is before this Court in the original actions instituted by the United States against the States of Arizona and Idaho, respectively, Nos. 46 and 47 Original, which have been set down for argument at the same time as the present cases. In the Brief for the United States filed in those actions,[3] the various contentions raised here by the plaintiffs (and by certain other states, as *amicus curiae*) have been thoroughly analyzed and answered. The defendant respectfully refers the Court to pp. 23–39 and 63–76 of that brief for a full statement of the reasons for defendant's opposition to the instant complaints.

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[3] Hereafter references to this brief will appear as "Gov't Ariz. Br." A copy of this brief has been furnished to counsel for plaintiff in each of these actions.

It is helpful here to reiterate that while Texas and Oregon are concerned only with the matter of age qualifications, the constitutional issues raised may equally control on the issues of residence and literacy qualifications. Section 2 of the Fourteenth Amendment, on which Texas principally relies, lists a number of voting qualifications: citizenship, age, sex and inhabitance. No mention is made of literacy, nor of duration of residence. While we believe that the list is descriptive of conditions prevalent in the 1860's, rather than prescriptive, Gov't Ariz. Br. 74–75, if it has any greater effect that is significant for the other issues in these cases as well. And, as the quotations from this Court's cases presented in Texas' brief themselves show, Tex. Br. at 11–13, this Court has never referred to age qualifications for voting without in the same breath linking them with such matters as residence and literacy. Gov't Ariz. Br. 63–64. Seductive as the notion may appear, one may not deal with Title III as if, because it concerns age, it presents matters separate and apart from those which arise under the remainder of the statute.

There remains only the need to speak briefly to the threshold question presented by these actions—*i.e.*, the role of the judiciary in reviewing a congressional enactment under Section 5 of the Fourteenth Amendment. In our view, the importance of this question makes it deserving of separate comment here, even at the risk of some repetition. It is, then, to this fundamental consideration that we now turn.

II

TITLE III IS APPROPRIATE LEGISLATION UNDER THE FIFTH SECTION OF THE FOURTEENTH AMENDMENT

1. The Constitution of the United States makes reference to voting qualifications in seven separate places.[4] While these provisions have long been recognized as acknowledging the states' "broad powers to determine the conditions under which the right of suffrage may be exercised" (*Lassiter* v. *Northampton County Board of Elections,* 360 U.S. 45, 50; see *Minor* v. *Happersett,* 21 Wall. 162; *Pope* v. *Williams,* 193 U.S. 621), they have never been read as permitting unchecked power to fix voting eligibility. The authority vested in the states in this area, as in other areas of primary state responsibility, may be exercised only within the limitations prescribed by the Federal Constitution.[5] As this

[4] U.S. Const. Art. 1, Sec. 2, Cl. 1; Art. 1, Sec. 4, Cl. 1; Fourteenth, Fifteenth, Seventeenth, Nineteenth and Twenty-fourth Amendments.

[5] Article I, Section 4 of the Constitution grants states the power to prescribe "[t]he Times, Places and Manner of holding Elections for Senators and Representatives," but, in the immediately following words, it empowers the Congress to "make or alter such Regulations." See *United States* v. *Classic*, 313 U.S. 299; *Ex Parte Yarbrough*, 110 U.S. 651; *United States* v. *Mosley*, 238 U.S. 383; *Ex Parte Siebold*, 100 U.S. 371. A further restraint is the Twenty-fourth Amendment. See *Harman* v. *Forssenius*, 380 U.S. 528. Also, there are constitutional restrictions on state elections. The Nineteenth Amendment forbids disqualification on account of sex. The Fifteenth Amendment bans voting standards that discriminate on account of race or color. And the Fourteenth Amendment prohibits requirements inconsistent with equal protection of the laws (*infra*, p. 11).

Court stated more than three-quarters of a century ago (*Ex Parte Yarbrough,* 110 U.S. 651, 664):

> the right of suffrage was considered to be of supreme importance to the national government, and was not intended to be left within the exclusive control of the State. * * *

It is now settled that "once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." *Evans* v. *Cornman,* 398 U.S. 419, 422; see also *Carrington* v. *Rash,* 380 U.S. 89; *Louisiana* v. *United States,* 380 U.S. 145; *Harper* v. *Virginia Board of Elections,* 383 U.S. 663, 668. Since state voting qualifications are thus within the purview of Section 1 of the Amendment, Congress is specifically authorized under Section 5 to "enforce" the prohibition by appropriate legislation.[6] See, *e.g.,* 42 U.S.C. 1981; *Pollock* v. *Williams,* 322 U.S. 4; *Buchanan* v. *Warley,* 245 U.S. 60; *Fay* v. *New York,* 332 U.S. 261; *Monroe* v. *Pape,* 365 U.S. 167.

This implementing provision, no less than the enforcement clauses of the Thirteenth and Fifteenth Amendments,[7] has long been recognized by the Court

[6] See Gov't Ariz. Br., pp. 24–27. See also Van Alstyne, *The Fourteenth Amendment, the "Right" to Vote, and the Understanding of the Thirty-Ninth Congress,* 1965 Sup. Ct. Rev. 33, 37–78.

[7] The Thirteenth, Fourteenth and Fifteenth Amendments each specifically grants Congress the power to enforce its provisions by appropriate legislation. Thirteenth Amendment, Section 2, Fourteenth Amendment, Section 5, Fifteenth Amendment, Section 2. In *South Carolina* v. *Katzenbach,* 383 U.S. 301, 326–327, the Court unanimously held that such grant of power under "§ 2 of the Fifteenth Amendment is the same as in all cases concerning the express powers of Congress with relation to the

as an enlargement of Congress' power—"[s]ome legislation is contemplated to make the amendments fully effective." *Ex Parte Virginia,* 100 U.S. 339, 345.[8] The view that this enlarged power is conditioned on an independent judicial determination that the state law is unconstitutional was laid to rest in *Katzenbach* v. *Morgan,* 384 U.S. 641, 648: "Neither the language nor history of § 5 supports such a construction."[9] Rather, the clear intent was to make Congress' authority under the Enforcement Clause coextensive with that which it enjoys under the Necessary and Proper Clause of the Constitution. Art 1, Sec. 8, para. 18; see 384 U.S. at 648–649; see also *South Carolina* v. *Katzenbach,* 383 U.S. 301, 326–327.[10] Thus, "it is primarily for Con-

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reserved powers of the States," citing *McCulloch* v. *Maryland,* 4 Wheat. 316, 421. See Gov't Ariz. Br., pp. 24–26. Similarly, with respect to Section 2 of the Thirteenth Amendment, the Court stated in *Jones* v. *Mayer Co.*, 392 U.S. 409, 439, that the enforcement clause "clothed 'Congress with the power to pass *all laws necessary and proper for abolishing all badges and incidents of slavery in the United States*,'" (Emphasis in original).

[8] See Gov't Ariz. Br. p. 24; and cases there cited.

[9] See, *e.g.*, Cong. Globe, 39th Cong., 1st Sess., p. 2459 (Cong. Stevens), p. 2961 (Sen. Poland), pp. 2765–2768 (Sen. Howard). And see *Katzenbach* v. *Morgan*, 384 U.S. at 648 nn. 7 and 8. As noted by this Court in *Ex Parte Virginia*, 100 U.S. at 345, with respect to the enforcement clauses: "It is not said the *judicial power* of the general government shall extend to enforcing the prohibitions and to protecting the rights and immunities guaranteed. It is not said that branch of the government shall be authorized to declare void any action of a State in violation of the prohibitions. It is the power of Congress which has been enlarged." See *Amicus* Brief of Youth Franchise Coalition and others, pp. 24–25; Brief of *Amicus* New York City Board of Elections, pp. 14–17.

[10] See Gov't Ariz. Br. pp. 24–26, and authorities there cited.

gress to consider and decide the fact of the danger and to meet it." *Stafford* v. *Wallace,* 258 U.S. 495, 521; cf. *Chicago Board of Trade* v. *Olsen,* 262 U.S. 1, 32; *Labor Board* v. *Jones & Laughlin Steel Corp.,* 301 U.S. 1, 37. Plainly, in this regard, the powers of the legislative branch are somewhat broader than those of the federal judiciary. See, *e.g., United States* v. *Darby,* 312 U.S. 100; *Heart of Atlanta Motel, Inc.* v. *United States,* 379 U.S. 241. As this Court observed in *Katzenbach* v. *McClung,* 379 U.S. 294, 303–304:

> Of course, the mere fact that Congress has said when particular activity shall be deemed to affect commerce does not preclude further examination by this Court. But where we find that the legislators, in light of the facts and testimony before them, have a rational basis for finding a chosen regulatory scheme necessary to the protection of commerce, our investigation is at an end. * * *

Just as Congress may give lead to the courts under the commerce clause in prohibiting certain kinds of state regulation (*Katzenbach* v. *McClung,* 379 U.S. 294), so, too, it is wholly proper for Congress to take the initiative in marking the limits of permissible state action under the Fourteenth Amendment with respect to voting qualifications. See *Katzenbach* v. *Morgan, supra;* cf. *South Carolina* v. *Katzenbach, supra; Fay* v. *New York, supra,* 332 U.S. at 282–284; and see Gov't Ariz. Br., pp. 35–37. Moreover, once the legislature has spoken, it is not for the judiciary to superimpose an independent evaluation. See *Katzenbach* v. *McClung,* 379 U.S. 294, 303–304. Rather, "[i]t is enough that [the Court] be able to perceive a basis

upon which the Congress might resolve the conflict as it did." *Katzenbach* v. *Morgan,* 384 U.S. at 653.

> It was for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations * * *. It is not for [this Court] to review the congressional resolution of the factors. * * * [*Ibid.*]

Such is the scope of judicial review in the instant case.

2. The plaintiff states' efforts to distinguish *Morgan,* like those which appear in the legislative history of Title III, rely heavily on the special facts of that case. There, illiterate Puerto Ricans were the excluded class. That class, it is argued, is self-identifying and perhaps a likely target of political reprisals or disadvantage; classifications according to ethnic background, like those according to race, are constitutionally suspect and, indeed, there is a special federal obligation of protection toward Puerto Ricans in particular. The 18-to-20-year-old group, it is argued, fits none of these particulars. Their exclusion from the vote is said not to be related to any established area of constitutional concern; nor, it is argued, do such persons constitute a clearly identified group against whom specific political reprisals are likely to be visited. Assuming they have not died in the interim, otherwise qualified 18-year olds automatically do get the vote by reaching the age of 21.

While the proposed distinction has apparent force, we believe it should be rejected. At the outset we remark that many of these supposed distinguishing factors were ignored by the Court in *Morgan.* Although

government counsel devoted much of its presentation to the argument that the statute could be sustained on the basis of Congress' special protective obligations regarding Puerto Ricans, that rationale is unmentioned in the Court's opinion. Further, as we develop in our Arizona brief, pp. 27–28, *Morgan* is not dependent on the notion that the class affected is one particularly likely to be the subject of improper, general discrimination. While part of the Court's discussion might be so read, 384 U.S. at 652–653, the decision is also based squarely on Congress' power to identify and eliminate "invidious discrimination in establishing voter qualifications." 384 U.S. at 654. In this regard, we also refer the Court to the persuasive reading of *Morgan* made in the recent decision of a three-judge district court in the District of Columbia, *Christopher* v. *Mitchell,* Civ. No. 1862–70, decided October 2, 1970, and reprinted as an appendix, *infra,* p. 23 ff., at pp. 35–44.

This Court has already rejected the notion that the protections of the Equal Protection Clause are limited to self-identifying groups likely to be the object of specific political reprisal, and against which it would be irrational or invidious to legislate directly.

It has held, clearly enough, that voting itself is a specially protected interest, from which no person may be excluded by state classifications unless those classifications are supported by a "compelling state interest." *Kramer* v. *Union Free School District, supra.*[11] There

[11] That this is the appropriate standard by which the Equal Protection Clause is to be applied in the area of voting qualifications has been fully analyzed in Gov't Ariz. Br. pp. 29–39.

was no claim, for example, in *Evans* v. *Cornman, supra,* that the residents of federal enclaves faced political reprisals or general discrimination because of their inability to vote, or which would be remedied by extending the vote to them. The issue in that case was the propriety of the classification which excluded them; this Court unanimously found that classification unsupported by sufficiently compelling state interests, and therefore held it invalid. Access to the vote, in itself, is a constitutional concern that this Court has voiced. Congressional action implementing such access thus presents no greater threat to the judicial function or to the constitutional structure of government generally than did the opinion in *Morgan.*

Moreover, even assuming that there ought to be some identifiable group, subject to improper discrimination or political reprisal, Congress properly made the judgment that such a group is present here. Whether or not the class of 18-to-20-year olds, in itself, constitutes a discrete entity, it is evident that there is a class of young adults, including the members of that group, against whom voices are frequently being raised in today's political arena. If, as Congress found, 18-to-20-year olds are otherwise qualified to vote and no compelling state interest supports denying them the vote, it is no better argument to say to them that they must wait and let their elders represent them than it would be to inform an excluded racial minority that the eldest 50% of its number will alone be permitted to vote. Contemporary youth over the age of 18 are as much en-

titled to represent their own interests as members of the electorate as any other class of voters. To deny these young adults this privilege at the very least causes them to be underrepresented relative to other classes of the voting population; it is self-evident that as they become older, and thus qualify for the vote, youth will experience changes in perspective which make them increasingly unrepresentative of the interests of the class they have outgrown.[12]

In sum, the issue remains as stated in our Arizona brief—whether Congress properly found, or had a basis for finding, that state laws excluding 18- 19- and 20-year olds from the franchise are unsupported by a compelling state interest and violate the equal protection concept. That Congress is empowered to make such an assessment has been amply demonstrated (*supra,* pp. 11–13; and see Gov't Ariz. Br. pp. 73–74). The fact that the fixing of one rather than another age qualification unavoidably embodies a certain element of arbitrariness does not immunize the particular age chosen from the Fourteenth Amendment's requirements—it, too, is subject to congressional scrutiny (see Gov't Ariz. Br. pp. 35–37). Disfranchised youth, as much as the enclave residents of *Evans* v. *Corman,* are "locked into [a] self-perpetuating status of exclusion from the electoral process." *Kramer* v. *Union Free School District,* 395

[12] Assuming youth have the necessary maturity, any special perspective they may have affords no proper basis for fencing them out from the franchise. *Carrington* v. *Rash, supra,* 380 U.S. at 94; Gov't Ariz. Br. at 35 n. 24.

U.S. 621, 640 (Stewart, Black and Harlan, JJ., dissenting); and see Gov't Ariz. Br., pp. 33–34. Nor is it relevant that most state legislatures earlier voiced a preference for a higher age. (Texas Br. p. 14.) Since Congress has determined for itself a need to legislate in this specific area under Section 5, it remains only for the Court to examine the facts and testimony on which Congress rested its conclusion to ascertain whether it can "perceive a basis" for the congressional enactment.

The legislative history of Title III has already been thoroughly documented for the Court,[13] and it serves no purpose to detail the findings yet another time. In sum, the record reflects, much more so than in *Katzenbach* v. *Morgan, supra,* a full congressional analysis of the factors relevant to the constitutional question, careful evaluation of conflicting interests, and virtual unanimity on the underlying issue of the readiness of 18 to 20-year olds for the vote. It amply supports Congress' conclusion that denial of the franchise to this age group is no longer warranted by any "compelling state interest."[13] On the basis of the evidence before it, Congress had ample authority to find the exclusion to be a denial of equal protection subject to remedial legislation under Section 5 of the Fourteenth Amendment *Christopher* v. *Mitchell,* App. A *infra,* pp. 54–55.[14]

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[13] See Gov't Ariz. Br., pp. 66–73; *Amicus* Brief of Youth Franchise Coalition and others, pp. 7–23; *a micus* Brief of New York City Board of Elections, pp. 24–27, 29–31, 36–38.

[14] See *Amicus* Brief of Youth Franchise Coalition and others, pp. 32–35; *Amicus* Brief of the American Civil Liberties Union, pp. 17–19.

3. This is not to say that Congress can supplant the states' prerogative in setting voting qualifications. Except as circumscribed by the Constitution (*supra,* n. 5), it still remains entirely the responsibility of the states to initiate legislation in this area. But where that legislation excludes otherwise qualified citizens from the vote on the basis of a distinction which cannot be sustained by any compelling state interest, Congress, on so finding, has constitutional power to impose restrictions which enforce the Equal Protection Clause and the Fifteenth Amendment (*supra,* pp. 11–14). See Gov't Ariz. Br., pp. 37–39; and see Alfange, *Congressional Power and Constitutional Limitations,* 18 J. Pub. L. 103, 126–127 (1969). That it chose in this instance to proceed by statute rather than constitutional amendment reflects no more than a congressional recognition of this Court's most recent pronouncements that Congress was, indeed, invested with the power to do so.[15] See *Katzenbach* v. *Morgan, supra; South Carolina* v. *Katzenbach supra.*[16] We thus find no merit in the contention that the Fifteenth, Nineteenth and Twenty-fourth Amendments dictate a different course.

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[15] See *Amicus* Brief of Youth Franchise Coalition, pp. 21–23.

[16] Although earlier decisions foreshadowed the result (see *Nixon* v. *Herndon,* 273 U.S. 536; *Nixon* v. *Condon,* 286 U.S. 73; *Breedlove* v. *Suttles,* 302 U.S. 277; *Schnell* v. *Davis,* 336 U.S. 933, affirming *per curiam* 81 F. Supp. 872, 876 (S.D. Ala.); *Lassiter* v. *Northampton County Board of Elections,* 360 U.S. 45; *Reynolds* v. *Sims,* 377 U.S. 533, 554), it was not made explicit until this Court's decision in *Carrington* v. *Rash,* 380 U.S. 89, and *Louisiana* v. *United States,* 380 U.S. 145, that the validity of

The Equal Protection Clause, under which Congress acted here, is, as a recognized restraint on state voting qualifications, sufficient constitutional basis for restricting the voting age provisions by statute. See *Lassiter* v. *Northampton County Board of Elections,* 360 U.S. 45, 51; see also Gov't Ariz. Br., pp. 73–74.

Nor does Section 2 of the Fourteenth Amendment foreclose the judgment Congress has made. In his concurring opinion in the recent district court decision in *Christopher* v. *Mitchell,* App. A, *infra,* pp. 55, 61–73, Judge MacKinnon has set out the history of that provision to make clear that it is too ambiguous to sustain such an argument. The most that can be said of it is that it was intended—although it has never been used—to provide a remedy against exclusion of the newly freed slaves from the vote. That remedy was wholly internal and administrative, and the description of voting qualifications it contains was at best descriptive of the existing qualifications commonly required of voters. It was not thought to have, and should not now be given, a prescriptive effect that might freeze state as well as federal standards to the limited qualifications it mentions. Gov't Ariz. Br. 74–75; Van Alstyne, *op. cit. supra* n. 6.

We emphasize that Title III of the Voting Rights Act Amendments does not require a certain level of

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State-imposed voting qualifications could be challenged not only under the Suffrage Amendments, but under the Due Process and Equal Protection Clauses of the Fourteenth Amendment as well.

age for voting;[17] nor does it in any way restrict the franchise. Plainly, Congress has no such power under the Equal Protection Clause. See *Katzenbach* v. *Morgan, supra*, 384 U.S. at 651–652 n. 10. What Title III does do, however, and properly so, is to set a minimum standard which is consistent with the congressional findings on which the statute is based and within which the states are free to legislate. See Gov't Ariz. Br., pp. 36–39. Thus, it conforms with both the letter and spirit of the Constitution and is "appropriate legislation" to enforce the Equal Protection Clause of the Fourteenth Amendment.

CONCLUSION

For the reasons given, and in the absence of any material issue of fact, this Court should enter judgment in favor of the defendant, sustaining the validity of Title III of the Voting Rights Act Amendments of 1970, and should deny the relief requested in the complaints.

Respectfully submitted.

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Assistants to the Solicitor General.

OCTOBER 1970.

[17] The fact that Congress drew the line at 18, rather than at some lower age, does not preclude the states from choosing to adopt the ages of 17 or 16, for example. And see Gov't Ariz. Br., p. 37 n. 27, p. 73 n. 78.