

from the office of

Senator Edward ~~Mansfield~~ ^{FILE COPY}
of Massachusetts

Senator Kennedy Testifies on Reducing
the Voting Age to 18 by Statute

For Immediate Release
March 9, 1970

Senator Edward Kennedy said today that 18 year-olds should be permitted to vote in Federal, State, and local elections, and that Congress has the power to make the change by statute, without the necessity of a constitutional amendment. The Senator's statements were contained in testimony before Senator Birch Bayh's Subcommittee on Constitutional Amendments. Last month, Senator Kennedy circulated a memorandum to other Senator's supporting action by Congress to lower the voting age by statute, and Senator Kennedy, Senator Mike Mansfield, Senator Bayh, Senator Jennings Randolph and a number of other Senators have proposed an amendment to the pending Voting Rights Act to accomplish the change.

In his testimony, Senator Kennedy emphasized four reasons for lowering the voting age to 18 in the United States.

--18 year-olds are far better educated than past generations of youth. Today's 18 year-old, he said, is at least the equal of a 21 year-old of his father's generation, or a 25 year-old of his grandfather's generation.

--Lowering the voting age will increase the social involvement and political participation of our youth. It will encourage political activity not only among the 18-21 year-olds actually enfranchised by the proposal, but also in the pre-18 and post-21 age groups as well.

--Since 18 year-olds are old enough to fight, work, marry, pay taxes, and exercise many other responsibilities in society, they are also old enough to vote. Senator Kennedy noted that historically, the age of maturity was fixed at 21, because that was the age at which a young man was thought to be capable of bearing armor "Strange as it may seem," he said, "the weight of armor in the 11th century governs the right to vote of Americans in the 20th century. The medieval justification has a bitter relevance today, when millions of our 18 year-olds are compelled to bear arms as soldiers, and thousands are dead in Vietnam."

--Experience in the four states (Georgia -18, Kentucky-18 (Alaska-19, Hawaii-20) and in many foreign nations where the voting age is lower than 21 shows that persons under 21 have the maturity for responsible exercise of the franchise

In the course of his discussion of the power of Congress to lower the voting age by statute, rather than by amending the Constitution, Senator Kennedy noted that two of the most eminent constitutional lawyers in the nation -- Professor Paul Freund and Professor Archibald Cox-- have stated their view that action by statute would be valid. The Senator also noted that the same constitutional arguments were relied upon by supporters of the House-passed Voting Rights bill, including the Administration, to justify the provisions banning literacy tests and changing residence requirements by statute.

The full text of Senator Kennedy's statement is attached.

TESTIMONY OF SENATOR KENNEDY ON LOWERING THE VOTING AGE TO 18

BEFORE SENATE SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS

For Release, 9:00 AM
Monday, March 9, 1970

Mr. Chairman, I am pleased to have the opportunity to testify before this distinguished Subcommittee, and to give my strong support to the movement to lower the voting age to 18.

I believe the time has come to lower the voting age in the United States, and thereby to bring American youth into the mainstream of our political process. To me, this is the most important single principle we can pursue as a nation if we are to succeed in bringing our youth into full and lasting participation in our institutions of democratic government.

In recent years, a large number of Senators -- now totalling 73, I believe -- have expressed their support for Federal action to lower the voting age. In particular, I commend Senator Jennings Randolph, Senator Mike Mansfield, and Senator Birch Bayh for their extraordinary success in bringing this issue to the forefront among our contemporary national priorities. For nearly three decades, Senator Randolph has taken the lead in the movement to extend the franchise to our youth. For many years, Senator Mansfield, the distinguished majority leader in the Senate, has been one of the most eloquent advocates of reform in this area. Senator Bayh's extensive hearings in 1968, at which Senator Mansfield was the lead-off witness, helped generate strong and far-reaching support for the movement to lower the voting age, and his current hearings are giving the issue even greater momentum. The prospect of success is great, and I hope that we can move forward to accomplish our goal.

In my testimony today, there are three general areas I would like to discuss. The first deals with what I believe are the strong policy arguments in favor of lowering the voting age to 18. The second deals with my view that it is appropriate for Congress to achieve its goal by statute, rather than follow the route of Constitutional amendment. The third deals with the constitutional power of Congress to act by statute in this area.

I. THE MINIMUM VOTING AGE IN THE UNITED STATES SHOULD BE LOWERED TO 18.

Members of the Senate are well aware of the many substantial considerations supporting the proposal to lower the voting age to 18 in the United States, and I shall do no more than summarize them briefly here.

First, our young people today are far better equipped -- intellectually, physically, and emotionally -- to make the type of choices involved in voting than were past generations of youth. Many experts believe that today's 18 year-old is at least the equal, physically and mentally, of a 21 year-old of his father's generation, or a 25 year-old of his grandfather's generation.

The contrast is clear in the case of education. Because of the enormous impact of modern communications, especially television, our youth are extremely well informed on all the crucial issues of our time, foreign and domestic, national and local, urban and rural.

Today's 18 year-olds, for example, have unparalleled opportunities for education at the high school level. Our 19 and 20 year-

-more-

olds have significant university experience, in addition to their high school training. Indeed, in many cases, 18 to 21 year-olds already possess a better education than a large proportion of adults among our general electorate. And, they also possess a far better education than the vast majority of the electorate in all previous periods of our history. The statistics are dramatic:

--In 1920, just fifty years ago, only 17% of Americans between the ages of 18 and 21 were high school graduates. Only 8% went on to college.

--Today, by contrast 79% of Americans in this age group are high school graduates. 47% go on to college.

--Even these figures, however, do not measure the enormous increase in the quality of education that has taken place in recent years, especially since World War II. We speak of the generation gap, the gap between the new politics and the old politics, but nowhere is the gap more clear than the gap we see as parents between our own education and the education of our children.

Only last week, we read that the winner of the annual Westinghouse high school science talent search was the son of a Pennsylvania pipefitter. His parents never went to college, and the prize he received was for the study of the interactions between two colliding beams of high-energy protons.

Equally significant, it is clear that the increased education of our youth is not measured merely by the quantitative amount of knowledge instilled. It is measured also by a corresponding increase in the priceless quality of judgment. Our 18 year-olds today are a great deal more mature and more sophisticated than former generations at the same stage of development. Their role in issues like civil rights, Vietnam and the environment is as current as today's headlines. Through their active social involvement and their participation in programs like the Peace Corps and Vista, our youth have taken the lead on many important questions at home and overseas. In hundreds of respects, they have set a far-reaching example of insight and commitment for us to emulate.

Second, by lowering the voting age to 18, we will encourage civic responsibility at an earlier age, and thereby promote lasting social involvement and political participation for our youth.

We know that there is already a high incidence of political activity today on campuses and among young people generally, even though they do not have the franchise. None of us who has visited a high school or college in recent years can fail to be impressed by their knowledge and dedication. By granting them the right to vote, we will demonstrate our recognition of their ability and our faith in their capacity for future growth within our political system.

In spite of the progress we have made in recent years, there can be no question that we must do more to improve the political participation of our youth, especially our young adults.

Studies of voting behavior in recent elections have consistently shown that persons under 30 vote less often than those who are older. In 1963, President Kennedy's Commission on Registration and Voting Participation expressed its deep concern over the low voting participation in the 21-30 year-old age bracket. It attributed this low participation to the fact that:

"by the time they have turned 21...many young people are so far removed from the stimulation of the educational process that their interest in public affairs has waned. Some may be lost as voters for the rest of their lives."

I believe that both the exercise of the franchise and the expectation of the franchise provide a strong incentive for greater political involvement and understanding. By lowering the minimum voting age to 18, we will encourage political activity not only in the 18 to 21 year-old age group, but also in the pre-18 year-old group and the post-21 year-old group as well. By lowering the voting age, therefore, we will extend the franchise both downward and up-

ward. We will enlarge the meaning of participatory democracy in our society. We will give our youth a new arena for their idealism, activism, and energy.

I do not agree with the basic objection raised by some that the recent participation of students in violent demonstrations shows that they lack the responsibility for mature exercise of the franchise. Those who have engaged in such demonstrations represent only a small percent of our students. It would be extremely unfair to penalize the vast majority of all students because of the reckless conduct of the few.

In recent years, there has been perhaps no more embattled institution of learning than San Francisco State University. Yet, as the president of the university, S.I. Hayakawa, eloquently testified in these hearings last month, no more than 1,000 of the 18,000 students on his campus--or about 5%-- participated in the disturbances. And, of those arrested, by the police, more than half were over 21, the present voting age in the State.

Obviously, the maturity of 18 to 21 year-olds varies from person to person, just as it varies for all age groups in our population. However, on the basis of our broad experience with 18 to 21 year-olds as a class, I believe they possess the requisite maturity, judgment, and stability for responsible exercise of the franchise. They deserve the right to vote and the stake in society it represents.

Third, 18 year-olds already have many rights and responsibilities in our society comparable to voting. It does not automatically follow of course-- simply because an 18 year-old goes to war, or works, or marries, or makes a contract, or pays taxes, or drives a car, or owns a gun, or is held criminally responsible, like an adult--that he should thereby be entitled to vote. Each right or responsibility in our society presents unique questions dependent on the particular issue at stake.

Nonetheless, the examples I have cited demonstrate that in many important respects and for many years, we have conferred far-reaching rights on our youth, comparable in substance and responsibility to the right to vote. Can we really maintain that it is fair to grant them all these rights, and yet withhold the right that matters most, the right to participate in choosing the government under which they live?

The well-known proposition--"old enough to fight, old enough to vote"--deserves special mention. To me, this part of the argument for granting the vote to 18 year-olds has great appeal. At the very least, the opportunity to vote should be granted in recognition of the risks an 18 year-old is obliged to assume when he is sent off to fight and perhaps die for his country. About 30% of our forces in Vietnam are under 21. Over 19,000, or almost half, of those who have died in action there were under 21. Can we really maintain that these young men did not deserve the right to vote?

Long ago, according to historians, the age of maturity was fixed at 21 because that was the age at which a young man was thought to be capable of bearing armor. Strange as it may seem, the weight of armor in the 11th century governs the right to vote of Americans in the 20th century. The medieval justification has an especially bitter relevance today, when millions of our 18 year-olds are compelled to bear arms as soldiers, and thousand are dead in Vietnam.

To be sure, as many critics have pointed out, the abilities required for good soldiers are not the same abilities required for good voters. Nevertheless, I believe that we can accept the logic of the argument without making it dispositive. A society that imposes the extraordinary burden of war and death on its youth should also grant the benefit of full citizenship and representation, especially in sensitive and basic areas like the right to vote.

In the course of the recent hearings I conducted on the draft, I was deeply impressed by the conviction and insight that our young citizens demonstrated in their constructive criticism of our present draft laws. There are many issues in the 91st Congress and in our society at large with comparable relevance and impact on the nation's youth. They have the capacity to counsel us wisely, and they should be heard at the polls.

Fourth, our present experience with voting by persons under 21 justifies its extension to the entire nation. By lowering the voting age we will improve the overall quality of our electorate, and make it more truly representative of our society. By adding our youth to the electorate, we will gain a group of enthusiastic, sensitive, idealistic and vigorous new voters.

Today, four states -- Georgia since 1943, Kentucky since 1955, and Alaska and Hawaii since they entered the Union in 1959 -- grant the franchise to persons under 21. There is no evidence whatever that the reduced voting age has caused difficulty in the states where it is applicable. In fact, former governors Carl Sanders and Ellis Arnall of Georgia have testified in the past that giving the franchise to 18 year-olds in their states has been a highly successful experiment. Their views were strongly suggested by the present Governor of Georgia, Lester Maddox, who testified last month before the Senate Subcommittee on Constitutional Rights.

Moreover, a significant number of foreign nations now permit 18 year-olds to vote. This year, Great Britain lowered the voting age to 18. Even South Vietnam allows 18 year-olds to vote. I recognize that it may be difficult to rely on the experience of foreign nations, whose political conditions and experience may be quite different from our own. It is ironic, however, that at a time when a number of other countries, including Great Britain, have taken the lead in granting full political participation to 18 year-olds, the United States, a nation with one of the most well-developed traditions of democracy in the history of the world, continues to deny that participation.

I am aware that many arguments have been advanced to prevent the extension of the franchise to 18 year-olds. It may be that the issue is one -- like woman suffrage in the early nineteen hundreds -- that cannot be finally resolved by reason or logic alone. Attitudes on the question are more likely to be determined by an emotional or a political response. It is worth noting, however, that almost all of the arguments now made against extending the franchise to 18 year-olds were also made against the 19th Amendment, which granted suffrage to women. Yet, no one now seriously questions the wisdom of that Amendment.

There could, of course, be an important political dimension to 18 year-old voting. As the accompanying table indicates, enfranchisement of 18 year-olds would add approximately ten million persons to the voting age population in the United States. It would increase the eligible electorate in the nation by slightly more than 8%. If there were dominance of any one political party among this large new voting population, or among sub-groups within it, there might be an electoral advantage for that party or its candidates. As a result, 18 year-old voting would become a major partisan issue, and would probably not carry in the immediate future.

For my part, I believe that the risk is extremely small. Like their elders, the youth of America are all political persuasions. The nation as a whole would derive substantial benefits by granting them a meaningful voice in shaping their future within the established framework of our democracy.

The right to vote is the fundamental political right in our Constitutional system. It is the cornerstone of all our other basic rights. It guarantees that our democracy will be government of the people, and by the people, not just for the people. By securing the right to vote, we help to insure, in the historic words of the Massachusetts Bill of Rights, that our government "may be a government of laws, and not of men." Millions of young Americans have earned the right to vote, and we in Congress should respond.

II. THE FEDERAL GOVERNMENT SHOULD ACT TO REDUCE THE VOTING AGE TO 18 BY STATUTE, RATHER THAN BY CONSTITUTIONAL AMENDMENT.

I believe not only that the reduction of the voting age to 18 is desirable, but also that Federal action is the best route to accomplish the change, and that the preferred method of Federal change should be by statute, rather than by constitutional amendment.

In the past, I have leaned toward placing the initiative on the States in this important area, and I have strongly supported the efforts currently being made in many states, including Massachusetts, to lower the voting age by amending the state constitution.

Progress on the issue in the states has been significant, even though it has not been as rapid as many of us had hoped. The issue has been extensively debated in all parts of the nation. Public opinion polls in recent years demonstrate that a substantial and increasing majority of our citizens favor extension of the franchise to 18 year-olds. In light of these important developments, the time is ripe for Congress to play a greater role.

Perhaps the most beneficial advantage of action by Congress is that it would insure national uniformity on this basic political issue. Indeed, the possible discrepancies that may result if the issue is left to the states are illustrated by the fact that of the four states which have already lowered the voting age below 21, two -- Georgia and Kentucky -- have fixed the minimum voting age at 18. The other two -- Alaska and Hawaii -- have fixed the age at 19 and 20, respectively. Left to state initiative, therefore, the result is likely at best to be an uneven pattern of unjustifiable variation.

There is another reason, however, why I feel that action by Congress is appropriate with respect to changes in voting qualifications, a reason that applies equally to changes in literacy requirements, residency requirements, or age requirements. All of these issues are now being widely debated in all parts of the nation. Too often, Congress has neglected its responsibility in these sensitive areas. Too often, when change has come, it has come through the slow and painstaking process of constitutional litigation in the federal courts. In the past, the validity of state voting requirements has been continually subject to judicial challenge, and similar challenges will undoubtedly continue in the future.

In our constitutional system, however, the judicial branch is ill-suited to the sort of detailed fact-finding investigation that is necessary to weigh the many complex considerations underlying one or another requirement for voting. Only Congress is equipped to make a complete investigation of the facts and to resolve the national issues involved. Too often, when a federal district court attempts to sift such issues, there is danger that a parochial local interest will shape the future course of litigation, with the result that paramount national interests receive inadequate consideration.

In sum, the legislative process is far more conducive to balancing conflicting social, economic, and political interests than the judicial process. The more Congress addresses itself to these complex contemporary problems, instead of leaving them for resolution by the courts, the better it will be for the nation as a whole.

Congressional action on the voting age at this time is therefore both necessary and appropriate. The most obvious method of Federal action is by amending the Constitution, but it is not the only method. As I shall discuss in greater detail in the third part of my statement, I believe that Congress has the authority to act in this area by statute, and to enact legislation establishing a uniform minimum voting age applicable to all states and to all elections, Federal, State and local.

The decision whether to proceed by constitutional amendment or by statute is a difficult one. One of the most important considerations is the procedure involved in actually passing a constitutional amendment by two-thirds of the Congress and three-fourths of the State legislatures. The lengthy delay involved in the ratifi-

cation of a constitutional amendment to lower the voting age before many years have elapsed.

On the other hand, it is clear that Congress should be slow to act by statute on matters traditionally reserved to the primary jurisdiction of the States under the Constitution. Where sensitive issues of great political importance are concerned, the path of constitutional amendment tends to insure wide discussion and broad acceptance at all levels -- Federal, State and local -- of whatever change eventually takes place. Indeed, at earlier times in our nation's history, a number of basic changes in voting qualifications were accomplished by constitutional amendment.

At the same time, however, it is worth emphasizing that in more recent years, changes of significant magnitude have been made by statute, one of the most important of which was the Federal Voting Rights Act of 1965. Unlike the question of direct popular election of the President, which is also now pending before the Senate, lowering the voting age does not work the sort of deep and fundamental structural change in our system of government that would require us to make the change by pursuing the arduous route of constitutional amendment.

Because of the urgency of the issue, and because of its gathering momentum, I believe that there are overriding considerations in favor of federal action by statute to accomplish the goal. Ideally, it would be appropriate to incorporate the proposal as an amendment to the bill now pending on the floor of the Senate to extend the Voting Rights Act of 1965. Already, the debate in the Senate is centered on three of the great contemporary issues over the effect of state voting qualifications on the right to vote -- race, literacy, and residency. Surely, it is appropriate for Congress to consider the fourth great issue -- age. Indeed, if enough support can be generated, it could be possible for 18 year-olds to go to the polls for the first time this fall -- November 1970.

However, we must insure that no action we take on 18 year-old voting will interfere with the prompt consideration of the pending Voting Rights bill, or delay its enactment by the Senate or the House. We must guarantee that its many important provisions are enacted into law at the earliest opportunity.

We know that there is broad and bipartisan support for the principle of 18 year-old voting. Well over two-thirds of the Senate has joined in support of the principle. Last month, the Administration gave its firm support to the cause. I am hopeful that we can proceed to the rapid implementation of our goal.

III. CONGRESS HAS THE CONSTITUTIONAL POWER TO ACT BY STATUTE TO LOWER THE VOTING AGE TO 18.

As I have indicated, I believe that Congress has ample authority under the Constitution to reduce the voting age to 18 by statute, without the necessity for a constitutional amendment. The historic decision by the Supreme Court in the case of Katzenbach v. Morgan in June 1966 provides a solid constitutional basis for legislation by Congress in this area. And, it is clear that the power exists not only for Federal elections, but for state and local elections as well.

There can be no question, of course, that the Constitution grants to the states the primary authority to establish qualifications for voting. Article I, Section 2, of the Constitution and the Seventeenth Amendment specifically provide that the voting qualifications established by a State for members of the most numerous branch of the State legislature shall also determine who may vote for United States Representatives and Senators. Although the Constitution contains no specific reference to qualifications for voting in Presidential elections or state elections, it has traditionally been accepted that the States also have primary authority to set voting qualifications in these areas as well.

At the same time, however, these constitutional provisions are only the beginning, not the end, of the analysis. They must be read in the light of all the other specific provisions of the Constitution, including the Amendments that have been adopted at various periods throughout the nation's history. Many of the great amendments to the Constitution, like the Fourteenth Amendment and the other Civil War Amendments, have become an extremely important part of the basic fabric of the document. Merely because they were adopted at a later date than the original Constitution, they are no less significant. Clearly, they must be read as a gloss on the earlier text, so that the entire document is interpreted as a unified whole.

Thus, although a State may have primary authority under Article I of the Constitution to set voting qualifications, it has long been clear that it has no power to condition the right to vote on qualifications prohibited by other provisions of the Constitution, including the Fourteenth Amendment. No one believes, for example, that a State could deny the right to vote to a person because of his race or his religion.

Indeed, the Supreme Court has specifically held that the Equal Protection Clause of the Fourteenth Amendment itself prohibits certain unreasonable state restrictions on the franchise. In Carrington v. Rash in 1965, the Court held that a State could not withhold the franchise from residents merely because they were members of the armed forces. In Harper v. Virginia Board of Elections in 1966, the Court held that a State could not impose a poll tax as a condition of

voting. And, in Kramer v. Union School District in 1969, the court held that a State could not withhold the franchise from residents in school district elections merely because they owned no property or had no children attending the district schools.

As the text of the Fourteenth Amendment makes clear, however, the provisions of the Equal Protection Clause are not merely enforceable through litigation in the courts. They are also enforceable by Congress. Section 5 of the Fourteenth Amendment provides that:

'The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.'

In other words, Congress is given the power under Section 5 to enact legislation to enforce the Equal Protection Clause, the Due Process Clause, and all the other great provisions contained in Section 1 of the Amendment. It is Section 5 that gives Congress the power to legislate in the area of voting qualifications, as well as in many other areas affecting fundamental rights. Thus, the authority of Congress to reduce the voting age by statute is based on Congress' power to enforce the Equal protection clause by whatever legislation it believes is appropriate.

Historically, at the time the Fourteenth Amendment was enacted, the power conferred on Congress by Section 5 was viewed as the cardinal provision of the Amendment. Indeed, it was the original understanding at the time the amendment was adopted that Congress was being given far greater power under Section 5 than Congress has in fact exercised in subsequent years, and far greater power than it was thought the Supreme Court would have under the provisions of Section 1 of the Amendment. In other words, as a matter of history, it was originally expected that Congress would be the principal enforcer of the Fourteenth Amendment.

Prior to the Supreme Court's decision in Katzenbach v. Morgan in 1966, the scope of Congress' power under Section 5 to pre-empt State legislation was unclear. Obviously, if the State legislation was itself invalid under the Equal Protection Clause, Congress would have power under Section 5 to invalidate the legislation. But, if this were the limit of Congress' power, the authority would merely duplicate the power already possessed by the Supreme Court to declare the legislation invalid.

In Katzenbach v. Morgan, however, the Supreme Court explicitly recognized that Congress had broader power to legislate in the area of the Equal Protection Clause and state classifications for the suffrage.

The issue in the Morgan case was the constitutionality of Section 4 (e) of the Voting Rights Act of 1965. The section in question, which originated as a Senate amendment sponsored by Senator Robert Kennedy and Senator Jacob Javits, was designed to enfranchise Puerto Ricans living in New York. The section provided, in effect, that any person who had completed the sixth grade in a Puerto Rican school could not be denied the right to vote in a Federal, State or local election because of his inability to pass a literacy test in English.

By a strong 7-2 majority, the Supreme Court sustained the constitutionality of Section 4(e) of the Voting Rights Act as a valid exercise by Congress of its power to enforce the Fourteenth Amendment, even though, in the absence of a declaration by Congress, the Court would not have held that the English literacy test was unconstitutional. Indeed, as recently as 1959, in a North Carolina test case, the Court had declined to hold that literacy tests were unconstitutional on their face as a qualification for voting.

Seen in perspective, the Morgan case was not a new departure in American constitutional law. Rather, it was a decision characterized by clear judicial restraint and exhibiting generous deference by the Supreme Court toward the actions of Congress.

As we know, Congress in this century has twice chosen to proceed by constitutional amendment in the area of voting rights in the nation. The Nineteenth Amendment, ratified in 1920, provided that a citizen of the United States could not be denied the right to vote in any election on account of sex. The Twenty-Fourth Amendment,

ratified in 1964, provided that a citizen could not be denied the right to vote in Federal elections because of his failure to pay a poll tax.

Nevertheless, in spite of this past practice, Katzenbach v. Morgan and other decisions by the Supreme Court demonstrate that those particular amendments are in no way limitations on Congress' power under the Constitution to lower the voting age by statute, if Congress so chooses.

In essence, the Morgan case stands for the proposition that Congress has broad power to weigh the facts and make its own determination under the Equal Protection Clause. If the Supreme Court determines that there is a reasonable basis for legislation by Congress in this area, then the legislation will be sustained. As the Court itself stated in the Morgan case:

'It was for Congress...to assess and weigh the various conflicting considerations -- the risk or pervasiveness of the discrimination in governmental services, the effectiveness of eliminating the state restriction on the right to vote as a means of dealing with the evil, the adequacy or availability of alternative remedies, and the nature and significance of the state interests that would be affected...It is not for us to review the congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did.' (Emphasis added.)

In other words, with respect to granting the vote to 18 year-olds, it is enough for Congress to weigh the justifications for and against extending the franchise to this age-group. If Congress concludes that the justifications in favor of extending the franchise outweigh the justifications for restricting the franchise, then Congress has the power to change the law by statute and grant the vote to 18 year-olds, even though in the absence of action by Congress, the Supreme Court would have upheld state laws setting the voting age at 21.

The power of Congress to legislate in the area of voting qualifications is enhanced by the preferred position the Supreme Court has consistently accorded the right to vote. In numerous decisions throughout its history, the Court has recognized the importance of the right to vote in our constitutional democracy, and has made clear that any alleged infringement of the right must be carefully and meticulously scrutinized. As the Court stated only last June, in its decision in Kramer v. Union School District,

"Statutes distributing the franchise constitute the foundation of our representative society. Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government."

In fact, the Supreme Court's holding in the Morgan case is consistent with a long line of well-known decisions conferring broad authority on Congress to carry out its powers granted by the Constitution. Thus, in the Morgan case, the Court gave Section 5 the same construction given long ago to the Necessary and Proper Clause of the Constitution by Chief Justice John Marshall in the famous case of McCulloch v. Maryland, which was decided by the Supreme Court in 1819. In the historic words of Chief Justice Marshall in that case:

"Let the end be legitimate, let it be within the scope of the Constitution, and all means which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional."

In the Morgan case the Supreme Court applied the test of John Marshall and upheld Section 4(e) of the Voting Rights Act for two separate and independent reasons. First, the Court said, Congress could reasonably have found that Section 4(e) was well adapted to enable the Puerto Rican community in New York to gain more nearly equal treatment in such public services as schools, housing, and law enforcement.

Second, the Court said, Congress could reasonably have found that Section 4(e) was well adapted to eliminate the unfairness against Spanish-speaking Americans caused by the mere existence of New York's literacy test as a voter qualification, even though there were legitimate state interests served by the test.

I believe that legislation by Congress to reduce the voting age can be justified on either ground of the Morgan decision. If Congress weighs the various interests and determines that a reasonable basis exists for granting the franchise to 18 year-olds, a statute reducing the voting age to 18 could not be successfully challenged as unconstitutional.

It is clear to me that such a basis exists. First, Congress could reasonably find that the reduction of the voting age to 18 is necessary in order to eliminate a very real discrimination that exists against the nation's youth in the public services they receive. By reducing the voting age to 18, we can enable young Americans to improve their social and political circumstances, just as the Supreme Court in the Morgan case accepted the determination by Congress that the enfranchisement of Puerto Ricans in New York would give them a role in influencing the laws and protect and affect them.

Although 18 - 21 year-olds are not subject to the same sort of discrimination in public services confronting Puerto Ricans in New York, the discriminations, actual and potential, worked against millions of young Americans in our society are no less real. We know that increasing numbers of Federal and State programs, especially in areas like education and manpower, are designed for the benefit of our youth. In connection with such approaches, we can no longer discriminate against our youth by denying them a voice in the political process that shapes these programs.

Equally important, a State's countervailing interest in denying the right to vote to 18-21 year-olds is not as substantial as its interest in requiring literacy in English, the language of the land. Yet, in the Morgan case, the Supreme Court made it unmistakably clear that Congress had the power to override the State interest. Surely, the power of Congress to reduce the voting age to 18 is as great.

Second, Congress could reasonably find that the disfranchisement of 18-21 year-olds constitutes on its face the sort of unfair treatment that outweighs any legitimate interest in maintaining a higher age limit, just as the Supreme Court in the Morgan case accepted the determination that the disfranchisement of Puerto Ricans was an unfair classification that outweighed New York's interest in maintaining its English literacy test.

There are obvious similarities between legislation to reduce the voting age and the enactment of Section 4(e) of the Voting Rights Act. Just as Congress has the power to find that an English literacy test discriminates against Spanish-speaking Americans, so Congress has the power to recognize the increased education and maturity of our youth, and to find discrimination in the fact that young Americans who fight, work, marry, and pay taxes like other citizens are denied the right to vote, the most basic right of all. The Morgan decision is thus a sound precedent for Congress to act by statute to eliminate this inequity in all elections -- Federal, State and local.

It is worth emphasizing that no issue is raised here concerning the power of Congress to reduce the voting age even lower than 18. Essentially the sole focus of the current debate over the voting age is on whether 18 year-olds should be entitled to vote. There is a growing national consensus that they deserve the franchise, and I feel that Congress has the power to act, and ought to act, on that consensus.

The legal position I have stated is supported by two of the most eminent constitutional authorities in America. Both Professor Archibald Cox of Harvard Law School, who served with distinction as Solicitor General of the United States under President Kennedy and President Johnson, and Professor Paul Freund of Harvard, the dean of the Nation's constitutional lawyers, have unequivocally stated their view that Congress has power under the Constitution to reduce the voting age by legislation, without the necessity of a constitutional amendment.

As long ago as 1966, in a lengthy and scholarly article in the Harvard Review, Professor Cox recognized and approved the breadth of the Supreme Court's decision in Katzenbach v. Morgan. As an example of Congress' power under the Morgan case, Professor Cox expressly wrote that Congress has the power to reduce the voting age to 18 by statute. As Professor Cox stated, the

"desire to expand the electorate by ... reducing the age for voting ... can probably be realized by legislation without constitutional amendment. If Congress can make a conclusive legislative finding that ability to read and write English as distinguished from Spanish is constitutionally irrelevant to voting, then ... Congress would seem to have power to make a similar finding about state laws denying the franchise to eighteen, nineteen, and twenty year-olds even though they work, pay taxes, raise families, and are subject to military service."

More recently in testimony last month before the Senate Subcommittee on Constitutional Rights, Professor Cox reaffirmed his view that Congress has power under the Constitution to reduce the voting age to 18 by statute. In the course of his testimony, Professor Cox emphasized that his views were not newly developed for the occasion of his testimony, since he had originally stated them in 1966.

The constitutional power of Congress to reduce the voting age by statute was approved by Professor Freund in 1968 in the course of an address at Cornell College in Iowa. In a brief but forceful passage emphasizing his belief that the voting age should be reduced, and that Congress has the power to do so by statute, Professor Freund stated:

"Not only the younger generation, but all of us, will be better if the vote is conferred below the age of twenty-one; we need to channel the idealism, honesty, and open-hearted sympathies of these young men and women, and their informed judgments into responsible political influences. In my judgement, as a lawyer, this uniform extension of the suffrage could be conferred by Congress under its power to enforce the equal protection guarantee of the Fourteenth Amendment, without having to go through the process of a Constitutional amendment." (Emphasis added.)

If a statute to reduce the voting age is enacted, it should include a specific provision to insure rapid judicial determination of its validity, in order that litigation challenging the legislation may be completed at the earliest possible date. Similar expediting procedures were incorporated in the Voting Rights Act of 1965. In addition, to insure that litigation under the statute does not cloud the outcome of any election, it might be desirable to include a provision limiting the time within which a legal challenge could be initiated, or postponing the effective date of the statute for a period sufficient to guarantee that a final judgment of the Supreme Court as to its validity will be obtained before an election.

In closing, it is worth calling attention to the fact that essentially the same constitutional arguments I have made here for action by statute to lower the voting age must also be made by supporters, including the Administration, of the House-passed Voting Rights bill, if they are to justify two of the most important provisions in the bill:

--First, the bill proposes a nationwide ban on the use of state literacy tests as a qualification for voting.

--Second, the bill proposes to reduce the length of state residence requirements as a qualification for voting in Presidential elections.

Surely, the constitutional power of Congress to override State voting qualifications is as great in the case of age requirements as in the case of literacy requirements or residence requirements. With respect to both literacy and residence, the Supreme Court's decision in Katzenbach v. Morgan is the major constitutional justification for the power of Congress to act by statute in these areas. To be sure, it is possible to invoke additional constitutional arguments in each of these areas, but the distinctions are small, and the Morgan case must necessarily be the principal justification.

With respect to literacy, it can be argued that such tests would be held unconstitutional by the Supreme Court even in the absence of action by Congress, because they unfairly discriminate against black citizens and other minority groups who have received an inferior education. But, this position is not yet the law, even though the Supreme Court's decision last June in Gaston County v. United States points in that direction.

In any event, if constitutional justifications based on racial discrimination are invoked to support the power of Congress to bar literacy tests by statute, similar justifications ~~can~~ be invoked in the case of age. For example, Congress could reasonably find that reducing the voting age to 18 would bring black Americans and other minorities into fuller participation in the political process, and thereby promote the more rapid elimination of racial discrimination.

With respect to residency, as in the case of literacy, it can be argued that lengthy residence requirements for voting, at least in Presidential elections, would be held unconstitutional by the Supreme Court even in the absence of action by Congress. According to this argument, the issues in Presidential elections are national, and no substantial State interest is served by lengthy residence requirements. Also, it is argued, such requirements infringe upon a separate constitutional right, the right to move freely from State to State.

It is not clear to me, however, that no State interests are served by residence requirements in Presidential elections. In general, residence requirements for voting are justified on the ground that a State may reasonably require its voters to be familiar with the local interests affected by the election. Although the issues in Presidential elections may be national in large part, their resolution will inevitably have a substantial impact on local interests, so that a residence requirement for voting would not necessarily be declared unconstitutional by the Supreme Court. The issue was raised in the Supreme Court last year in Hall v. Beals, a case challenging a six month residence requirement imposed by Colorado. The majority of the Court disposed of the case on a procedural ground, without ruling on the constitutionality of the residence requirement. However, two of the Justices wrote a separate opinion stating their view that the requirement violated the Equal Protection Clause.

Nor is it clear that the Supreme Court would invalidate lengthy residence requirements because they infringe the right to move freely from State to State. The question was squarely raised in the Hall case, but the Court declined to decide it. Significantly, the two Justices who discussed the question and stated that the residence requirement was unconstitutional based their view solely on the Equal Protection Clause, and did not mention the right to move from State to State.

In sum, I believe that the basic constitutional arguments supporting the power of Congress to change voting qualifications by statute are the same in the case of literacy, residence, or age. So far as I am aware, the Administration proposals in the area of literacy and residence have encountered no substantial opposition on constitutional grounds. Both proposals were incorporated as amendments to the Voting Rights Act in the bill passed by the House of Representatives late last year, and they are now pending before the Senate. If Congress has the authority to act by statute in these areas, as it must if the Administration bill passed by the House is constitutional, then Congress also has the authority to act by statute to lower the voting age to 18.

I am hopeful, therefore, that we can achieve broad and bipartisan agreement on the statutory route to reach our vital goal of enlarging the franchise to include 18 year-olds.