

**SUPREME COURT OF UNITED STATES**

Nicholas de B. Katzenbach, Attorney General of the United States,

Vs.

John P. Morgan and Christine Morgan. New York City Board of Elections

Nos. 847, 877.

Argued April 18, 1966.

Decided June 13, 1966.

[Syllabus from pages 641-642 intentionally omitted]

Sol. Gen. Thurgood Marshall and J. Lee Rankin, New York City, for appellants.

Alfred Avins, Memphis, Tenn., for appellees.

Rafael Hernandez Colon, Ponce, P.R., for Commonwealth of Puerto Rico, as amicus curiae.

Jean M. Coon, Albany, N.Y., for State of New York, as amicus curiae.

Mr. Justice BRENNAN delivered the opinion of the Court.

These cases concern the constitutionality of § 4(e) of the Voting Rights Act of 1965.<sup>1</sup> That law, in the respects pertinent in these cases, provides that no person who has successfully completed the sixth primary grade in a public school in, or a private school accredited by, the Commonwealth of Puerto Rico in which the language of instruction was other than English shall be denied the right to vote in any election because of his inability to read or write English. Appellees, registered voters in New York City, brought this suit to challenge the constitutionality of § 4(e) insofar as it pro tanto prohibits the enforcement of the election laws of New York<sup>2</sup> requiring an ability to read and write English as a condition of voting. Under these laws many of the several hundred thousand New York City residents who have migrated there from the Commonwealth of Puerto Rico had previously been denied the right to vote, and appellees attack § 4(e) insofar as it would enable many of these

citizens to vote.<sup>3</sup> Pursuant to § 14(b) of the Voting Rights Act of 1965, appellees commenced this proceeding in the District Court for the District of Columbia seeking a declaration that § 4(e) is invalid and an injunction prohibiting appellants, the Attorney General of the United States and the New York City Board of Elections, from either enforcing or complying with s 4(e).<sup>4</sup> A three-judge district court was designated. 28 U.S.C. §§ 2282, 2284 (1964 ed.). Upon cross motions for summary judgment, that court, one judge dissenting, granted the declaratory and injunctive relief appellees sought. The court held that in enacting § 4(e) Congress exceeded the powers granted to it by the Constitution and therefore usurped powers reserved to the States by the Tenth Amendment. 247 F.Supp. 196. Appeals were taken directly to this Court, 28 U.S.C. §§ 1252, 1253 (1964 ed.) and we noted probable jurisdiction. 382 U.S. 1007, 86 S.Ct. 621, 15 L.Ed.2d 524. We reverse. We hold that, in the application challenged in these cases, § 4(e) is a proper exercise of the powers granted to Congress by § 5 of the Fourteenth Amendment<sup>5</sup> and that by force of the Supremacy Clause, Article VI, the New York English literacy requirement cannot be enforced to the extent that it is inconsistent with § 4(e).

Under the distribution of powers effected by the Constitution, the States establish qualifications for voting for state officers, and the qualifications established by the States for voting for members of the most numerous branch of the state legislature also determine who may vote for United States Representatives and Senators, Art. I, § 2; Seventeenth Amendment; *Ex parte Yarbrough*, [1884] USSC 81; 110 U.S. 651, 663[1884] USSC 81; , 4 S.Ct. 152, 28 L.Ed. 274. But, of course, the States have no power to grant or withhold the franchise on conditions that are forbidden by the Fourteenth Amendment, or any other provision of the Constitution. Such exercises of state power are no more immune to the limitations of the Fourteenth Amendment than any other state action. The Equal Protection Clause itself has been held to forbid some state laws that restrict the right to vote.

The Attorney General of the State of New York argues that an exercise of congressional power under § 5 of the Fourteenth Amendment that prohibits the enforcement of a state law can only be sustained if the judicial branch determines that the state law is prohibited by the provisions of the Amendment that Congress sought to enforce. More specifically, he urges that § 4(e) cannot be sustained as appropriate legislation to enforce the Equal Protection Clause unless the judiciary decides—even with the guidance of a congressional judgment—that the application of the English literacy requirement prohibited by § 4(e) is forbidden by the Equal Protection Clause itself. We disagree. Neither the language nor history of § 5 supports such a construction.<sup>7</sup> As was said with regard to § 5 in *Ex parte Com. of Virginia*, [1879] USSC 52; 100 U.S. 339, 345[1879] USSC 52; , 25 L.Ed. 676. 'It is the power of Congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective.' A construction of § 5 that would require a judicial determination that the enforcement of the state law precluded by Congress violated the Amendment, as a condition of sustaining the congressional enactment, would depreciate both congressional resourcefulness and congressional responsibility for implementing the Amendment.<sup>8</sup> It would confine the legislative power in this context to the insignificant role of abrogating only those state laws that the judicial branch was prepared to adjudge unconstitutional, or of merely informing the judgment of the judiciary by particularizing the 'majestic generalities' of § 1 of the Amendment. See *Fay v. People of State of New York*, [1947] USSC 113; 332 U.S. 261, 282—284[1947] USSC 113; , 67 S.Ct. 1613,

Thus our task in this case is not to determine whether the New York English literacy requirement as applied to deny the right to vote to a person who successfully completed the sixth grade in a Puerto Rican school violates the Equal Protection Clause. Accordingly, our decision in *Lassiter v. Northampton County Bd. of Election*, [1959] USSC 95; 360 U.S. 45, 79 S.Ct. 985, 3 L.Ed.2d 1072, sustaining the North Carolina English literacy requirement as not in all circumstances prohibited by the first sections of the Fourteenth and Fifteenth Amendments, is inapposite. Compare also *Guinn v. United States*, [1915] USSC 205; 238 U.S. 347, 366[1915] USSC 205; , 35 S.Ct. 926, 931[1915] USSC 205; , 59 L.Ed. 1340; *Camacho v. Doe*, 31 Misc.2d 692, 221 N.Y.S.2d 262 (1958), aff'd 7 N.Y.2d 762, 194 N.Y.S.2d 33, 163 N.E.2d 140 (1959); *Camacho v. Rogers*, 199 F.Supp. 155 (D.C.S.D.N.Y.1961). *Lassiter* did not present the question before us here: Without regard to whether the judiciary would find that the Equal Protection Clause itself nullifies New York's English literacy requirement as so applied, could Congress prohibit the enforcement of the state law by legislating under § 5 of the Fourteenth Amendment? In answering this question, our task is limited to determining whether such legislation is, as required by § 5, appropriate legislation to enforce the Equal Protection Clause.

By including § 5 the draftsmen sought to grant to Congress, by a specific provision applicable to the Fourteenth Amendment, the same broad powers expressed in the Necessary and Proper Clause, Art. I, § 8, cl. 18.9 The classic formulation of the reach of those powers was established by Chief Justice Marshall in *McCulloch v. Maryland*, [1819] USSC 5; 4 Wheat. 316, 421[1819] USSC 5; , 4 L.Ed. 579:

'Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

*Ex parte Com. of Virginia*, 100 U.S., at 345—346[1879] USSC 52; , 25 L.Ed. 676, decided 12 years after the adoption of the Fourteenth Amendment, held that congressional power under § 5 had this same broad scope:

'Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power.' *Strauder v. West Virginia*, [1879] USSC 165; 100 U.S. 303, 311[1879] USSC 165; , 25 L.Ed. 664; *Virginia v. Rives*, [1879] USSC 188; 100 U.S. 313, 318[1879] USSC 188; , 25 L.Ed. 667. Section 2 of the Fifteenth Amendment grants Congress a similar power to enforce by 'appropriate legislation' the provisions of that amendment; and we recently held in *State of South Carolina v. Katzenbach*, [1966] USSC 46; 383 U.S. 301, 326[1966] USSC 46; , 86 S.Ct. 803, 817[1966] USSC 46; , 15 L.Ed.2d 769, that '(t)he basic test to be applied in a case involving § 2 of the Fifteenth Amendment is the same as in all cases concerning the express powers of Congress with relation to the reserved powers of the States.' That test was identified as the one formulated in *McCulloch v. Maryland*. See also *James Everard's Breweries v. Day*, [1924] USSC 149; 265 U.S. 545, 558—559, 44 S.Ct. 628,

631[1924] USSC 149; , 68 L.Ed. 1174 (Eighteenth Amendment). Thus the *McCulloch v. Maryland* standard is the measure of what constitutes 'appropriate legislation' under § 5 of the Fourteenth Amendment. Correctly viewed, § 5 is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment.

We therefore proceed to the consideration whether § 4(e) is 'appropriate legislation' to enforce the Equal Protection Clause, that is, under the *McCulloch v. Maryland* standard, whether § 4(e) may be regarded as an enactment to enforce the Equal Protection Clause, whether it is 'plainly adapted to that end' and whether it is not prohibited by but is consistent with 'the letter and spirit of the constitution.'

There can be no doubt that § 4(e) may be regarded as an enactment to enforce the Equal Protection Clause. Congress explicitly declared that it enacted § 4(e) 'to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English.' The persons referred to include those who have migrated from the Commonwealth of Puerto Rico to New York and who have been denied the right to vote because of their inability to read and write English, and the Fourteenth Amendment rights referred to include those emanating from the Equal Protection Clause. More specifically, § 4(e) may be viewed as a measure to secure for the Puerto Rican community residing in New York nondiscriminatory treatment by government—both in the imposition of voting qualifications and the provision or administration of governmental services, such as public schools, public housing and law enforcement.

Section 4(e) may be readily seen as 'plainly adapted' to furthering these aims of the Equal Protection Clause. The practical effect of § 4(e) is to prohibit New York from denying the right to vote to large segments of its Puerto Rican community. Congress has thus prohibited the State from denying to that community the right that is 'preservative of all rights.' *Yick Wo v. Hopkins*, [1886] USSC 197; 118 U.S. 356, 370, 6 S.Ct. 1064, 1071[1886] USSC 197; , 30 L.Ed. 220. This enhanced political power will be helpful in gaining nondiscriminatory treatment in public services for the entire Puerto Rican community.<sup>11</sup> Section 4(e) thereby enables the Puerto Rican minority better to obtain 'perfect equality of civil rights and the equal protection of the laws.' It was well within congressional authority to say that this need of the Puerto Rican minority for the vote warranted federal intrusion upon any state interests served by the English literacy requirement. It was for Congress, as the branch that made this judgment, 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 by the nullification of the English literacy requirement as applied to residents who have successfully completed the sixth grade in a Puerto Rican school. 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. There plainly was such a basis to support § 4(e) in the application in question in this case. Any contrary conclusion would require us to be blind to the realities familiar to the legislators.

The result is no different if we confine our inquiry to the question whether § 4(e) was merely legislation aimed at the elimination of an invidious discrimination in establishing voter qualifications. We are told that New York's English literacy requirement originated in the desire to provide an incentive for non-English speaking immigrants to learn the English language and in order to assure the intelligent exercise of the franchise. Yet Congress might well have questioned, in light of the many exemptions provided, and some evidence suggesting that prejudice played a prominent role in the enactment of the requirement, whether these were actually the interests being served. Congress might have also questioned whether denial of a right deemed so precious and fundamental in our society was a necessary or appropriate means of encouraging persons to learn English, or of furthering the goal of an intelligent exercise of the franchise. Finally, Congress might well have concluded that as a means of furthering the intelligent exercise of the franchise, an ability to read or understand Spanish is as effective as ability to read English for those to whom Spanish-language newspapers and Spanish-language radio and television programs are available to inform them of election issues and governmental affairs. Since Congress undertook to legislate so as to preclude the enforcement of the state law, and did so in the context of a general appraisal of literacy requirements for voting, see *State of South Carolina v. Katzenbach*, supra, to which it brought a specially informed legislative competence, it was Congress' prerogative to weigh these competing considerations. Here again, it is enough that we perceive a basis upon which Congress might predicate a judgment that the application of New York's English literacy requirement to deny the right to vote to a person with a sixth grade education in Puerto Rican schools in which the language of instruction was other than English constituted an invidious discrimination in violation of the Equal Protection Clause.

There remains the question whether the congressional remedies adopted in § 4(e) constitute means which are not prohibited by, but are consistent 'with the letter and spirit of the constitution.' The only respect in which appellees contend that § 4(e) fails in this regard is that the section itself works an invidious discrimination in violation of the Fifth Amendment by prohibiting the enforcement of the English literacy requirement only for those educated in American-flag schools (schools located within United States jurisdiction) in which the language of instruction was other than English, and not for those educated in schools beyond the territorial limits of the United States in which the language of instruction was also other than English. This is not a complaint that Congress, in enacting § 4(e), has unconstitutionally denied or diluted anyone's right to vote but rather that Congress violated the Constitution by not extending the relief effected in § 4(e) to those educated in non-American-flag schools. We need not pause to determine whether appellees have a sufficient personal interest to have § 4(e) invalidated on this ground, see generally *United States v. Raines*, [1936] USSC 36; 362 U.S. 17, 80 S.Ct. 519, 4 L.Ed.2d 524, since the argument, in our view, falls on the merits.

Section 4(e) does not restrict or deny the franchise but in effect extends the franchise to persons who otherwise would be denied it by state law. Thus we need not decide whether a state literacy law conditioning the right to vote on achieving a certain level of education in an American-flag school (regardless of the language of instruction) discriminates invidiously against those educated in non-American-flag schools. We need only decide whether the challenged limitation on the relief effected in § 4(e) was permissible. In deciding that question, the principle that calls for the closest scrutiny of distinctions in laws denying fundamental rights, see n. 15, supra, is inapplicable; for the

distinction challenged by appellees is presented only as a limitation on a reform measure aimed at eliminating an existing barrier to the exercise of the franchise. Rather, in deciding the constitutional propriety of the limitations in such a reform measure we are guided by the familiar principles that a 'statute is not invalid under the Constitution because it might have gone farther than it did,' *Roschen v. Ward*, [1929] USSC 73; 279 U.S. 337, 339[1929] USSC 73; , 49 S.Ct. 336, 73 L.Ed. 722, that a legislature need not 'strike at all evils at the same time.' *Semler v. Oregon State Board of Dental Examiners*, [1935] USSC 79; 294 U.S. 608, 610[1935] USSC 79; , 55 S.Ct. 570, 571[1935] USSC 79; , 79 L.Ed. 1086 and that 'reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind,' *Williamson v. Lee Optical Co.*, [1955] USSC 46; 348 U.S. 483, 489[1955] USSC 46; , 75 S.Ct. 461, 465[1955] USSC 46; , 99 L.Ed. 563.

Guided by these principles, we are satisfied that appellees' challenge to this limitation in § 4(e) is without merit. In the context of the case before us, the congressional choice to limit the relief effected in § 4(e) may, for example, reflect Congress' greater familiarity with the quality of instruction in American-flag schools,<sup>18</sup> a recognition of the unique historic relationship between the Congress and the Commonwealth of Puerto Rico,<sup>19</sup> an awareness of the Federal Government's acceptance of the desirability of the use of Spanish as the language of instruction in Commonwealth schools,<sup>20</sup> and the fact that Congress has fostered policies encouraging migration from the Commonwealth to the States.<sup>21</sup> We have no occasion to determine in this case whether such factors would justify a similar distinction embodied in a voting-qualification law that denied the franchise to persons educated in non-American-flag schools. We hold only that the limitation on relief effected in § 4(e) does not constitute a forbidden discrimination since these factors might well have been the basis for the decision of Congress to go 'no farther than it did.'

We therefore conclude that § 4(e), in the application challenged in this case, is appropriate legislation to enforce the Equal Protection Clause and that the judgment of the District Court must be and hereby is reversed.

Reversed.

Mr. Justice DOUGLAS joins the Court's opinion except for the discussion, at pp. 656—658, of the question whether the congressional remedies adopted in § 4(e) constitute means which are not prohibited by, but are consistent with 'the letter and spirit of the constitution.' On that Mr. Justice HARLAN, whom Mr. Justice STEWART joins, dissenting.

Worthy as its purposes may be thought by many, I do not see how § 4(e) of the Voting Rights Act of 1965, 79 Stat. 439, 42 U.S.C. § 1973b(e) (1964 ed. Supp. I), can be sustained except at the sacrifice of fundamentals in the American constitutional system—the separation between the legislative and judicial function and the boundaries between federal and state political authority. By the same token I think that the validity of New York's literacy test, a question which the Court considers only in the context of the federal statute, must be upheld. It will conduce to analytical clarity if I discuss the second issue first.

I.

The Cardona Case (No. 673).

This case presents a straightforward Equal Protection problem. Appellant, a resident and citizen of

New York, sought to register to vote but was refused registration because she failed to meet the New York English literacy qualification respecting eligibility for the franchise.<sup>1</sup> She maintained that although she could not read or write English, she had been born and educated in Puerto Rico and was literate in Spanish. She alleges that New York's statute requiring satisfaction of an English literacy test is an arbitrary and irrational classification that violates the Equal Protection Clause at least as applied to someone who, like herself, is literate in Spanish.

Any analysis of this problem must begin with the established rule of law that the franchise is essentially a matter of state concern, *Minor v. Happersett*, [1874] USSC 109; 21 Wall. 162; *Lassiter v. Northampton Election Bd.*, [1959] USSC 95; 360 U.S. 45, 79 S.Ct. 985, 3 L.Ed.2d 1072, subject only to the overriding requirements of various federal constitutional provisions dealing with the franchise, e.g., the Fifteenth, Seventeenth, Nineteenth, and Twenty-fourth Amendments,<sup>2</sup> and, as more recently decided, to the general principles of the Fourteenth Amendment. *Reynolds v. Sims*, [1964] USSC 202; 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506; *Carrington v. Rash*, [1965] USSC 28; 380 U.S. 89, 85 S.Ct. 775, 13 L.Ed.2d 675.

The Equal Protection Clause of the Fourteenth Amendment, which alone concerns us here, forbids a State from arbitrarily discriminating among different classes of persons. Of course it has always been recognized that nearly all legislation involves some sort of classification, and the equal protection test applied by this Court is a narrow one: a state enactment or practice may be struck down under the clause only if it cannot be justified as founded upon a rational and permissible state policy. See, e.g., *Powell v. Commonwealth of Pennsylvania*, [1888] USSC 127; 127 U.S. 678, 8 S.Ct. 992, 32 L.Ed. 253; *Lindsley v. Natural Carbonic Gas Co.*, [1911] USSC 42; 220 U.S. 61, 31 S.Ct. 337, 55 L.Ed. 369; *Walters v. City of St. Louis*, [1954] USSC 26; 347 U.S. 231, 74 S.Ct. 505, 98 L.Ed. 660.

It is suggested that a different and broader equal protection standard applies in cases where 'fundamental liberties and rights are threatened,' see 384 U.S. p. 655, 86 S.Ct. p. 1726, 16 L.Ed.2d p. 838, note 15; dissenting opinion of Douglas, J., in *Cardona*, 384 U.S. pp. 676—677, 86 S.Ct. pp. 1730—1731, 16 L.Ed.2d pp. 851—852, which would require a State to show a need greater than mere rational policy to justify classifications in this area. No such dual-level test has ever been articulated by this Court, and I do not believe that any such approach is consistent with the purposes of the Equal Protection Clause, with the overwhelming weight of authority, or with well-established principles of federalism which underlie the Equal Protection Clause.

Thus for me, applying the basic equal protection standard, the issue in this case is whether New York has shown that its English-language literacy test is reasonably designed to serve a legitimate state interest. I think that it has.

In 1959, in *Lassiter v. Northampton Election Bd.*, *supra*, this Court dealt with substantially the same question and resolved it unanimously in favor of the legitimacy of a state literacy qualification. There a North Carolina English literacy test was challenged. We held that there was 'wide scope' for State qualifications of this sort. 360 U.S., at 51[1959] USSC 95; , 79 S.Ct. 985, 3 L.Ed.2d 1072. Dealing with literacy tests generally, the Court there held:

'The ability to read and write \* \* \* has some relation to standards designed to promote intelligent use of the ballot. \* \* \* Literacy and intelligence are obviously not synonymous. Illiterate people

may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. \* \* \* It was said last century in Massachusetts that a literacy test was designed to insure an 'independent and intelligent' exercise of the right of suffrage. *Stone v. Smith*, 159 Mass. 413—414, 34 N.E. 521. North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards.' 360 U.S., at 51 53, 79 S.Ct. at 990.

I believe the same interests recounted in *Lassiter* indubitably point toward upholding the rationality of the New York voting test. It is true that the issue here is not so simply drawn between literacy is not so simply drawn between literacy per se and illiteracy. Appellant alleges that she is literate in Spanish, and that she studied American history and government in United States Spanish-speaking schools in Puerto Rico. She alleges further that she is 'a regular reader of the New York City Spanish-language daily newspapers and other periodicals, which \* \* \* provide proportionately more coverage of government and politics than do most English-language newspapers,' and that she listens to Spanish-language radio broadcasts in New York which provide full treatment of governmental and political news. It is thus maintained that whatever may be the validity of literacy tests per se as a condition of voting, application of such a test to one literate in Spanish, in the context of the large and politically significant Spanish-speaking community in New York, serves no legitimate state interest, and is thus an arbitrary classification that violates the Equal Protection Clause.

Although to be sure there is a difference between a totally illiterate person and one who is literate in a foreign tongue, I do not believe that this added factor vitiates the constitutionality of the New York statute. Accepting appellant's allegations as true, it is nevertheless also true that the range of material available to a resident of New York literate only in Spanish is much more limited than what is available to an English-speaking resident, that the business of national, state, and local government is conducted in English, and that propositions, amendments, and offices for which candidates are running listed on the ballot are likewise in English. It is also true that most candidates, certainly those campaigning on a national or statewide level make their speeches in English. New York may justifiably want its voters to be able to understand candidates directly rather than through possibly imprecise translations or summaries reported in a limited number of Spanish news media. It is noteworthy that the Federal Government requires literacy in English as a prerequisite to naturalization, 66 Stat. 239, 8 U.S.C. § 1423 (1964 ed.), attesting to the national view of its importance as a prerequisite to full integration into the American political community. Relevant too is the fact that the New York English test is not complex,<sup>3</sup> that it is fairly administered,<sup>4</sup> and that New York maintains free adult education classes which appellant and members of her class are encouraged to attend.<sup>5</sup> Given the State's legitimate concern with promoting and safeguarding the intelligent use of the ballot, and given also New York's long experience with the process of integrating non-English-speaking residents into the mainstream of American life, I do not see how it can be said that this qualification for suffrage is unconstitutional. I would uphold the validity of the New York statute, unless the federal statute prevents that result, the question to which I now turn.

II.

The Morgan Cases (Nos. 847 and 877).

These cases involve the same New York suffrage restriction discussed above, but the challenge here comes not in the form of a suit to enjoin enforcement of the state statute, but in a test of the constitutionality of a federal enactment which declares that 'to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.' Section 4(e) of the Voting Rights Act of 1965. Section 4(e) declares that anyone who has successfully completed six grades of schooling in an 'American-flag' school, in which the primary language is not English, shall not be denied the right to vote because of an inability to satisfy an English literacy test.<sup>6</sup> Although the statute is framed in general terms, so far as has been shown it applies in actual effect only to citizens of Puerto Rican background, and the Court so treats it.

The pivotal question in this instance is what effect the added factor of a congressional enactment has on the straight equal protection argument dealt with above. The Court declares that since § 5 of the Fourteenth Amendment<sup>7</sup> gives to the Congress power to 'enforce' the prohibitions of the Amendment by 'appropriate' legislation, the test for judicial review of any congressional determination in this area is simply one of rationality; that is, in effect, was Congress acting rationally in declaring that the New York statute is irrational? Although § 5 most certainly does give to the Congress wide powers in the field of devising remedial legislation to effectuate the Amendment's prohibition on arbitrary state action, *Ex parte Commonwealth of Virginia*, [1879] USSC 52; 100 U.S. 339, 25 L.Ed. 676. I believe the Court has confused the issue of how much enforcement power Congress possesses under § 5 with the distinct issue of what questions are appropriate for congressional determination and what questions are essentially judicial in nature.

When recognized state violations of federal constitutional standards have occurred, Congress is of course empowered by § 5 to take appropriate remedial measures to redress and prevent the wrongs. See *Strauder v. West Virginia*, [1879] USSC 165; 100 U.S. 303, 310 [1879] USSC 165; , 25 L.Ed. 664. But it is a judicial question whether the condition with which Congress has thus sought to deal is in truth an infringement of the Constitution, something that is the necessary prerequisite to bringing the § 5 power into play at all. Thus, in *Ex parte Virginia*, *supra*, involving a federal statute making it a federal crime to disqualify anyone from jury service because of race, the Court first held as a matter of constitutional law that 'the Fourteenth Amendment secures, among other civil rights, to colored men, when charged with criminal offences against a State, an impartial jury trial, by jurors indifferently selected or chosen without discrimination against such jurors because of their color.' 100 U.S. at 345 [1879] USSC 52; , 25 L.Ed. 676. Only then did the Court hold that to enforce this prohibition upon state discrimination, Congress could enact a criminal statute of the type under consideration. See also *Clyatt v. United States*, [1905] USSC 67; 197 U.S. 207, 25 S.Ct. 429, 49 L.Ed. 726, sustaining the constitutionality of the antipeonage laws, 14 Stat. 546, now 42 U.S.C. § 1994 (1964 ed.), under the Enforcement Clause of the Thirteenth Amendment.

A more recent Fifteenth Amendment case also serves to illustrate this distinction. In *State of South Carolina v. Katzenbach*, [1966] USSC 46; 383 U.S. 301, 86 S.Ct. 803, 15 L.Ed.2d 769, decided earlier this Term, we held certain remedial sections of this Voting Rights Act of 1965 constitutional under the Fifteenth Amendment, which is directed against deprivations of the right to vote on account of race. In enacting those sections of the Voting Rights Act the Congress made a detailed investigation of various state practices that had been used to deprive Negroes of the franchise. See 383 U.S., at 308—315, 86 S.Ct. at 808—812. In passing upon the remedial provisions, we reviewed

first the 'voluminous legislative history' as well as judicial precedents supporting the basic congressional finding that the clear commands of the Fifteenth Amendment had been infringed by various state subterfuges. See 383 U.S., at 309, 329—330, 333—334, 86 S.Ct. at 808, 819, 821—822. Given the existence of the evil, we held the remedial steps taken by the legislature under the Enforcement Clause of the Fifteenth Amendment to be a justifiable exercise of congressional initiative.

Section 4(e), however, presents a significantly different type of congressional enactment. The question here is not whether the statute is appropriate remedial legislation to cure an established violation of a constitutional command, but whether there has in fact been an infringement of that constitutional command, that is, whether a particular state practice or, as here, a statute is so arbitrary or irrational as to offend the command of the Equal Protection Clause of the Fourteenth Amendment. That question is one for the judicial branch ultimately to determine. Were the rule otherwise, Congress would be able to qualify this Court's constitutional decisions under the Fourteenth and Fifteenth Amendments let alone those under other provisions of the Constitution, by resorting to congressional power under the Necessary and Proper Clause. In view of this Court's holding in *Lassiter*, supra, that an English literacy test is a permissible exercise of state supervision over its franchise, I do not think it is open to Congress to limit the effect of that decision as it has undertaken to do by § 4(e). In effect the Court reads § 5 of the Fourteenth Amendment as giving Congress the power to define the substantive scope of the Amendment. If that indeed be the true reach of § 5, then I do not see why Congress should not be able as well to exercise its § 5 'discretion' by enacting statutes so as in effect to dilute equal protection and due process decisions of this Court. In all such cases there is room for reasonable men to differ as to whether or not a denial of equal protection or due process has occurred, and the final decision is one of judgment. Until today this judgment has always been one for the judiciary to resolve.

I do not mean to suggest in what has been said that a legislative judgment of the type incorporated in § 4(e) is without any force whatsoever. Decisions on questions of equal protection and due process are based not on abstract logic, but on empirical foundations. To the extent 'legislative facts' are relevant to a judicial determination, Congress is well equipped to investigate them, and such determinations are of course entitled to due respect.<sup>8</sup> In *State of South Carolina v. Katzenbach*, supra, such legislative findings were made to show that racial discrimination in voting was actually occurring. Similarly, in *Heart of Atlanta Motel, Inc. v. United States*, [1964] USSC 230; 379 U.S. 241, 85 S.Ct. 348, 13 L.Ed.2d 258, and *Katzenbach v. McClung*, [1964] USSC 231; 379 U.S. 294, 85 S.Ct. 377, 13 L.Ed.2d 290, this Court upheld Title II of the Civil Rights Act of 1964 under the Commerce Clause. There again the congressional determination that racial discrimination in a clearly defined group of public accommodations did effectively impede interstate commerce was based on 'voluminous testimony,' 379 U.S., at 253, 85 S.Ct. at 355, which had been put before the Congress and in the context of which it passed remedial legislation.

But no such factual data provide a legislative record supporting § 4(e)<sup>9</sup> by way of showing that Spanish-speaking citizens are fully as capable of making informed decisions in a New York election as are English-speaking citizens. Nor was there any showing whatever to support the Court's alternative argument that § 4(e) should be viewed as but a remedial measure designed to cure or assure against unconstitutional discrimination of other varieties, e.g., in 'public schools, public housing and law enforcement,' 384 U.S., p. 652, 86 S.Ct., p. 1724, to which Puerto Rican minorities might be subject in such communities as New York. There is simply no legislative record supporting

such hypothesized discrimination of the sort we have hitherto insisted upon when congressional power is brought to bear on constitutionally reserved state concerns. See *Heart of Atlanta Motel, supra*; *State of South Carolina v. Katzenbach, supra*.

Thus, we have here not a matter of giving deference to a congressional estimate, based on its determination of legislative facts, bearing upon the validity *vel non* of a statute, but rather what can at most be called a legislative announcement that Congress believes a state law to entail an unconstitutional deprivation of equal protection. Although this kind of declaration is of course entitled to the most respectful consideration, coming as it does from a concurrent branch and one that is knowledgeable in matters of popular political participation, I do not believe it lessens our responsibility to decide the fundamental issue of whether in fact the state enactment violates federal constitutional rights.

In assessing the deference we should give to this kind of congressional expression of policy, it is relevant that the judiciary has always given to congressional enactments a presumption of validity. The Propeller *Genesee Chief v. Fitzhugh*, 12 How. 443, 457—458, 53 U.S. 443, 13 L.Ed. 1058. However, it is also a canon of judicial review that state statutes are given a similar presumption, *Butler v. Commonwealth of Pennsylvania* 10 How. 402, 415, 51 U.S. 402, 13 L.Ed. 472. Whichever way this case is decided, one statute will be rendered inoperative in whole or in part, and although it has been suggested that this Court should give somewhat more deference to Congress than to a state legislature,<sup>10</sup> such a simple weighing of presumptions is hardly a satisfying way of resolving a matter that touches the distribution of state and federal power in an area so sensitive as that of the regulation of the franchise. Rather it should be recognized that while the Fourteenth Amendment is a 'brooding omnipresence' over all state legislation, the substantive matters which it touches are all within the primary legislative competence of the States. Federal authority, legislative no less than judicial, does not intrude unless there has been a denial by state action of Fourteenth Amendment limitations, in this instance a denial of equal protection. At least in the area of primary state concern a state statute that passes constitutional muster under the judicial standard of rationality should not be permitted to be set at naught by a mere contrary congressional pronouncement unsupported by a legislative record justifying that conclusion.

To deny the effectiveness of this congressional enactment is not of course to disparage Congress' exertion of authority in the field of civil rights; it is simply to recognize that the Legislative Branch like the other branches of federal authority is subject to the governmental boundaries set by the Constitution. To hold, on this record, that § 4(e) overrides the New York literacy requirement seems to me tantamount to allowing the Fourteenth Amendment to swallow the State's constitutionally ordained primary authority in this field. For if Congress by what, as here, amounts to mere *ipse dixit* can set that otherwise permissible requirement partially at naught I see no reason why it could not also substitute its judgment for that of the States in other fields of their exclusive primary competence as well.

I would affirm the judgments in each of these cases.