Cosponsor of S. 3025 prohibit racially restrictive covenants in deed records-------------------------------------------Dec. 15, 71

Equal Opportunities Enforcement Act of 1971 Cloture Motion--Feb. 18

Humphrey's article "Civil Rights & Executive Commitment--March 20
substantial portion of the economic backbone of our fishing industry, particularly along the East Coast, in New England, and in the Pacific Northwest, including, of course, Alaska, may become extinct for one reason, international fisheries conventions have sought to limit and control these high seas fishing activities. Several signatory nations to ICNAF, most importantly Canada, have failed to agree to all the provisions protecting Atlantic salmon. Although they have agreed in the future to limit catch levels to approximately the 1969 level, this is nothing but a beginning. It permits Denmark to continue fishing at an already dangerously high level. This life cycle of the Atlantic salmon is approximately 8 to 17 years. Therefore, the full impact of such exploitation will not be felt until 1975. At that time, it will be too late to save the fish and our fishing industries.

Such conventions, if they have no teeth, also adduced to the advantage of those nations which agree to abide by them. These nations are put at an economic disadvantage and can only sit by and helplessly watch while other nations which have not yet agreed continue to reap vast harvests completely unchecked.

It is apparent how vast the economic effect of such indiscriminate fishing practices is when the number of people employed not only as fishermen, but also in subsidiary industries throughout the coastal areas of this country and others is considered. And, as one witness before our committee pointed out, All this is being done by a Danish high seas salmon fleet of about ten trollers manned by less than 100 fishermen! And the landed value of the salmon is worth only about several million dollars.

To many expert sports fishermen, the salmon is the finest sports fish in the world. Unfortunately it is as good on the dinner table as it is on the end of the line. And therein lies the tragedy.

This bill is not limited to one species of fish or marine mammals. It applies equally to fishery conservation programs in all areas of the world to which this country has a fishing interest. It will, therefore, also put needed teeth into our Pacific fishing conventions, which are so vital to the fishing industry in my part of the country.

I therefore urge the passage of this legislation.

The PRESIDENT pro tempore. The bill is open to amendment. If there be no amendment to be proposed, the question is on third reading.

The bill was ordered to a third reading, was read the third time, and passed. Mr. STEVENS. Mr. President, I move that the consideration of S. 2191 be indefinitely postponed.

The PRESIDENT pro tempore. Without objection, the bill will be indefinitely postponed.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. STEVENSON (for himself, Mr. BAYH, Mr. CASE, Mr. Eagleton, Mr. HARRIS, Mr. HUGHES, Mr. HUMPHREY, Mr. KENNEDY, Mr. MAGNUSON, Mr. McGovern, Mr. Metcalf, Mr. Mondale, Mr. Packwood, Mr. Pell, Mr. Ribicoff, Mr. Scott, Mr. Tunney, and Mr. Williams):

S. 3025. A bill to prohibit records of deeds from being given implicit recognition to racially restrictive covenants, and for other purposes. Referred to the Committee on Government Operations.

S. 3072. A bill to designate certain lands in San Luis Obispo County, California, as wilderness. Referred to the Committee on Interior and Insular Affairs.

ADDITIONAL STATEMENTS ON BILLS AND JOINT RESOLUTIONS

By Mr. STEVENSON (for himself, Mr. BAYH, Mr. CASE, Mr. Eagleton, Mr. HARRIS, Mr. HUGHES, Mr. HUMPHREY, Mr. KENNEDY, Mr. MAGNUSON, Mr. McGovern, Mr. Metcalf, Mr. Mondale, Mr. Packwood, Mr. Pell, Mr. Ribicoff, Mr. Scott, Mr. Tunney, and Mr. Williams):

S. 3025. A bill to prohibit records of deeds from giving implicit recognition to racially restrictive covenants, and for other purposes. Referred to the Committee on Government Operations.

S. 3072. A bill to designate certain lands in San Luis Obispo County, California, as wilderness. Referred to the Committee on Interior and Insular Affairs.

Mr. STEVENSON. Mr. President, on behalf of myself and Senators BAYH, BROOKE, CASE, Eagleton, HARRIS, HUGHES, HUMPHREY, JAVITS, KENNEDY, MAGNUSON, McGovern, MONDALE, PACKWOOD, PELL, RIBICOFF, SCOTT, TUNNEY, and WILLIAMS, I introduce legislation which will strip racially restrictive covenants of the aura of legitimacy they have continued to enjoy, because they are unconstitutionally accepted for recordation by public officials.

Racially restrictive covenants are relics of an era when whites felt no need to disguise their intent to deny housing opportunities to blacks and other minorities. One such covenant, which was involved in a recent lawsuit, is typical:

No part of the land hereby conveyed shall ever be used, or occupied by, sold demised, transferred, conveyed unto, or in trust for, leased, or rented, or given, to Negroes, or any person of colored blood whatever, or to any person of Negro extraction, or to any person of the Semitic race, or of any other race, color, origin, or blood, which racial description shall be deemed to include Jews, Hebrews, Persians, and Syrians, except that this paragraph shall not be held to exclude partial occupancy of the premises by domestic servants.

Fully 23 years ago, the Supreme Court in the landmark case of Shelley against Kraemer unanimously ruled that racially restrictive covenants in real property deeds are void and unenforceable. Notwithstanding this clear ruling, only four States have passed legislation which might arguably restrict the recordation of deeds containing restrictive covenants. I ask unanimous consent that a memorandum on this subject prepared by the Library of Congress, be inserted at this point in the Record.

There being no objection, the memorandum was ordered to be printed in the Record as follows:


To: Hon. Adlai E. Stevenson III
From: American Law Division
Subject: State Laws Against Racially Restrictive Covenants

This is in response to your request for a survey of state laws which may bar recordation of a written instrument relating to real

By Mr. McCOLELLAN (by request):

S. 3025. A bill to establish a fund for activating authorized agencies, and to provide for other purposes. Referred to the Committee on Government Operations.

By Mr. CRANSTON (for himself and Mr. TUNNEY):

S. 3072. A bill to designate certain lands in San Luis Obispo County, California, as wilderness. Referred to the Committee on Interior and Insular Affairs.
spending and deficit be printed at this point in the Record. There being no objection, the tabulation was ordered to be printed in the Record, as follows:

FISCAL TABLES—OCTOBER 1971

<table>
<thead>
<tr>
<th>[Selected periods, in billions of dollars]</th>
<th>Gold holdings</th>
<th>Total assets</th>
<th>Liquid liabilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>End of World War II</td>
<td>20.1</td>
<td>20.1</td>
<td>6.9</td>
</tr>
<tr>
<td>1953</td>
<td>22.8</td>
<td>21.4</td>
<td>15.8</td>
</tr>
<tr>
<td>1957</td>
<td>15.7</td>
<td>14.5</td>
<td>43.3</td>
</tr>
<tr>
<td>August 1971</td>
<td>10.1</td>
<td>12.1</td>
<td>46.0</td>
</tr>
</tbody>
</table>

1 Estimated figure.
Source: U.S. Treasury Department.

TABLE 2—DEFICITS IN FEDERAL FUNDS AND INTEREST ON THE NATIONAL DEBT, 1963–2 INCLUSIVE

<table>
<thead>
<tr>
<th>(Billions of dollars)</th>
<th>Receipts</th>
<th>Outlays</th>
<th>Deficit (–)</th>
<th>Debt interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>1963</td>
<td>83.6</td>
<td>90.1</td>
<td>–6.5</td>
<td>10.0</td>
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<tr>
<td>1964</td>
<td>87.7</td>
<td>95.8</td>
<td>–8.1</td>
<td>10.6</td>
</tr>
<tr>
<td>1965</td>
<td>90.9</td>
<td>94.8</td>
<td>–5.9</td>
<td>11.4</td>
</tr>
<tr>
<td>1966</td>
<td>104.5</td>
<td>111.8</td>
<td>–7.3</td>
<td>12.1</td>
</tr>
<tr>
<td>1967</td>
<td>114.7</td>
<td>126.8</td>
<td>–12.1</td>
<td>13.5</td>
</tr>
<tr>
<td>1968</td>
<td>114.3</td>
<td>137.1</td>
<td>–12.8</td>
<td>14.1</td>
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<tr>
<td>1969</td>
<td>143.0</td>
<td>148.8</td>
<td>–5.5</td>
<td>16.6</td>
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<tr>
<td>1970</td>
<td>143.7</td>
<td>156.3</td>
<td>–13.1</td>
<td>19.3</td>
</tr>
<tr>
<td>1971</td>
<td>131.6</td>
<td>163.8</td>
<td>–30.2</td>
<td>20.8</td>
</tr>
<tr>
<td>1972</td>
<td>131.6</td>
<td>178.0</td>
<td>–45.0</td>
<td>21.3</td>
</tr>
<tr>
<td>10-year total</td>
<td>1,527.1</td>
<td>1,304.0</td>
<td>151.3</td>
<td>150.2</td>
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</tbody>
</table>

1 Estimated figure.

AMENDMENT OF THE FISHERMEN'S PROTECTIVE ACT OF 1967

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The President pro tempore. The quorum is heard.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that the call of the roll.

The President pro tempore. The roll will be called.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The President pro tempore. The President pro tempore. Is there objection? The President pro tempore. Is there objection? The President pro tempore. Is there objection? The President pro tempore. Is there objection?

AMENDMENT OF THE FISHERMEN'S PROTECTIVE ACT OF 1967

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 557, H.R. 3304.

The President pro tempore. The bill will be stated by title.

The bill was read by title as follows:

Calendar No. 557, H.R. 3304, a bill to amend the Fisherman's Protective Act of 1967 to enhance the effectiveness of international fisheries conservation programs.

Section 8(a) provides that whenever the Secretary of Commerce determines foreign nationals are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, he must certify this fact to the President of the United States. The President is then authorized, but not required, to direct the Secretary of Commerce to prohibit the importation into the United States of any fish products so prohibited.

Section 8(b) subjects violators to a $10,000 fine for the first offense and a $20,000 fine for each subsequent offense. In addition, all fish products thus illegally imported are subject to forfeiture or the money value thereof must be paid to the U.S. Government and in general provisions have been made for issuance of international fishery permits, judicial forfeiture, and condemnation of cargo violations are applicable.

Section 8(e) vests enforcement responsibility in the Secretary of the Treasury who authorizes U.S. district courts and Commissioners to issue warrants and other services of process necessary for the enforcement of the act and regulations issued thereunder. It also provides that the persons authorized to enforce the provisions of the act may execute warrants and other processes, make arrests, conduct searches of vessels, and seize illegal fish products.

Section 8(f) defines the terms used in the act.

Mr. President, this bill has had extensive hearings both in the House and recently in the Senate. I would like to extend my personal thanks for their swift action on this legislation. Without them there would be no bill before us today.

Any member of Congress who appeared before our committee and was generally quite favorable to the bill. It also appeared that witnesses before the House Committee were similarly favorable and, when they did have any objection, the House bill was accordingly amended.

Mr. President, many arguments have been advanced for this legislation. If indiscriminately fished on the high seas, the great andrroid fish which form a
estate which contains a racially restrictive covenant.

Four states have passed laws which nullify the effect of, or restrict the use of racial covenants in deeds (Civen v. Civen, 62 Idaho 300 (1922); State ex rel. Credit Union v. Brown, 161 N.W. 23 (Supp. 1917)) provides that racially restrictive covenants are void and that they cannot be enforced by the courts. Such covenants may be removed by the court from the property if the court finds that they are unreasonable and discriminatory. (Civen v. Civen, 62 Idaho 300 (1922); State ex rel. Credit Union v. Brown, 161 N.W. 23 (Supp. 1917)).

Mr. STEVENSON. Mr. President, this issue has apparently been overlooked by Federal as well as State law. Last month the U.S. Court of Appeals for the District of Columbia Circuit held in the case of Mayers against Ridley that neither the Constitution nor Federal law was breached by the "ministerial" act of recording a deed containing a racially restrictive covenant. The Court decided that there were several elements of the restrictive covenant in the strongest terms, and it urged Congress to enact new legislation dealing with the problem.

The bill we offer today places two new restrictions on recorders of deeds. First, recorders may not henceforth record or copy any instrument containing a restrictive covenant. Second, recorders of deeds must cause a notice stating that restrictive covenants are void and unenforceable to be displayed on every liber volume or other journal in their custody which contains deeds or other real property instruments.

Mr. President, it is impossible to determine how many American home buyers are humiliated or discouraged by racially restrictive covenants. But even one is too many.

Introduction of this legislation does not constitute approval of the Mayers against Ridley ruling that section 804A(c) of the Civil Rights Act of 1968 does not reach the recordation of instruments containing restrictive covenants. Rather, the bill is designed to eliminate the existing uncertainty by providing a clear and certain remedy for a clear and specific problem.

Mr. President, I ask unanimous consent that the text of this bill be printed in the Record, as follows:

"Sec. 804A. Recordation of Instruments Containing Restrictive Covenants

(1) As used in this Section—

(a) the term 'Recorded Deeds' means any public officer's act or any State whose duties include the recording of instruments relating to the conveyance or ownership of real property.

(b) The term 'restrictive covenant' means any covenant, clause, provision, or other written or informal restriction which restricts the right of any person to possess real property on account of that person's race, color, or national or religious faith, race, creed, color, or national origin.

"(b) No Recorder of Deeds shall comply with any request to record or copy any instrument containing a restrictive covenant unless the instrument is void and unenforceable is imprinted on or affixed to the instrument.

"(c) Every Recorder of Deeds shall cause a notice stating that restrictive covenants are void and unenforceable to be displayed on every liber volume or other journal in its custody in which instruments relating to the conveyance or ownership of real property are kept.

Sec. 2. The provisions of this act shall take effect 90 days after the date of enactment.


(Decided November 30, 1971)

Mr. Michael J. Waggoner, with whom Messrs. Jack B. Owens and Ralph J. Temple were on the brief for appellants.

Mr. Ted D. Kuehmerling, Assistant Corporation Counsel for the District of Columbia, with whom Messrs. C. Francis Murphy, Corporation Counsel, and Richard W. Barlow, Assistant Corporation Counsel, were on the brief, for appellees.

Before WILBUR K. MILLER, Senior Circuit Judge, and WRIGHT and TAMM, Circuit Judges.

Opinion filed by TAMM, Circuit Judge. Dissenting opinion filed by WRIGHT, Circuit Judge.

TAMM, Circuit Judge: Appellants, home­owners in Washington, D.C., whose deeds contain racially restrictive covenants, brought a class action suit in the District Court against the Recorder of Deeds and the Commissioner of the District of Columbia on their own behalf and on behalf of all District of Columbia homeowners similarly situated.

They alleged that the Recorder's actions in accepting for filing, and maintaining public records of restrictive covenants was in violation of the Fifth Amendment and Title VIII of the Fair Housing Act of 1968, 42 U.S.C. § 3601 et seq.

They sought the following relief: (1) a declaration that their rights were infringed by the practice of the Recorder of Deeds in accepting for recording and filing public records containing restrictive covenants; (2) an injunction barring the Recorder from accepting for recording and filing any deed containing a racially restrictive covenant and from providing copies of such deeds or instruments without clearly and conspicuously displaying on its face a void and unenforceable racially restrictive covenant; and (3) an injunction requiring the Recorder to afford to every owner in his custody a notice that any racially restrictive covenants contained in the deeds or instruments there­in were void and unenforceable.

In denying the requested relief, the District Court granted appellees' motion to dismiss, whereupon this appeal was noted. We affirm.

First, we shall examine the nature of the office of the Recorder of Deeds and then proceed to a discussion of the statutory and constitutional issues.

Congress has provided that the Recorder of Deeds shall "... record all instruments and contracts, and other instruments in writing affecting the title or ownership of real estate or personal property... " D.C. Code § 45-701 (1967). He is further required to "perform all other duties connected with the duties prescribed for him by the provisions of this act relating to the recording of instruments and to "have charge and custody of all records, papers, and property belonging to his office." D.C. Code § 45-701 (3), (4) (1967).

Interpreting the statute shortly after enactment of this act, the Court of Appeals for the District of Columbia, in Dancy v. Clark, 24 App. D.C. 487, 499 (1905), stated:

"Undoubtedly, the recorder of deeds is in the category of ministerial officers, and he is not required to pass upon the validity of instruments of which he is the keeper for record. It requires no elaboration of law or of the authorities to sustain this contention. Dancy v. Clark, 24 App. D.C. 487, 499 (1905).

We pointed out that although the Recorder does not have jurisdiction to determine whether a document is of the type appropriate for filing, "... it is by law required to record a deed and file it with the Recorder, as if it has been duly executed, and which purport on their face to be of the nature of the instruments entitled to be filed... " Id. In the light of the nature of the office bars the relief which appellants seek.

The Recorder of Deeds is a ministerial officer. The authority of a ministerial officer is to be strictly construed as including only such powers as are expressly conferred or necessarily implied.

United States v. United States, 141 F. 2d 912 (6th Cir. 1944). A decision as to whether to file a deed containing a restrictive covenant involves discretion. Indeed, the Recorder is not even permitted to correct obvious typographical errors despite the consent of all the parties thereto.

Furthermore, the Recorder is not empowered by the statute to determine the legality, validity or enforceability of a document which should be filed. The existence of a racially restrictive covenant in a deed is a racially restrictive covenant demands a legal judgment. The discretion of the Recorder is not vested in the Recorder, but is vested in the court not the Recorder. Id.

The only respects the Recorder's function is similar to that of the clerk of a court. The clerk of a court, like the Recorder is required to accept documents filed. It is not incumbent upon him to judicially determine the legal significance of the tendered documents. Rinaldi v. Halliday, 174 F. 894 (C.C.Mass., 1909); United States v. Bell, 127 F. 1002 (C.C.E.D.Pa. 1904); State ex rel Kaufman v. Sutton, 231 Wis. 164, 283 N.W. 523 (Fla.App. 1938); Malinos v. Brody, 99 R.I. 277, 257 A.2d 205 (1969); State ex rel. Wanamaker v. Miller, 164 Ohio St. 176, 177, 128 N.E.2d 110 (1965), the court commented upon the function of its clerk in the following manner:

"It is the duty of the clerk of this court, in the absence of instructions from the court to the contrary, to accept for filing any paper presented to him, provided such paper is not frivolous or obscene and is accompanied by the requisite filing fee. The power to make any decision as to the propriety of any paper submitted or as to the right of a person or legal entity to present any paper is vested in the court, not the clerk."

The Recorder is a neutral conservator of records. The entire public interest in this office is that he preserves the precise documents presented to him. To give the Recorder the power to do what appellants ask would not only be in violation of the statute creat-
ing his office, but would functionally distort the office into a hydra-headed monster. Even though the acts of the Recorder are ministerial in nature, they may not violate the due process clause of the Fifth Amendment, nor may they contravene the constitution. We must therefore continue our inquiry. First, we turn to the relevancy of race.

II

Title VIII of the Fair Housing Act of 1968, 42 U.S.C. § 3604(c) (1970), makes it unlawful "to refuse to sell or rent a dwelling or to otherwise make available to purchase or to rent a dwelling, on the ground of race, color, religion, or national origin, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination because of race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination."

(Emphasis supplied.)

On its face the statute clearly does not apply to deeds containing racially restrictive covenants. However, the government is under no affirmative obligation to act and is merely neutral, there can be no due process violation. In a related area of the law courts have found inadmissible evidence of private discrimination to constitute a constitutional violation where the state merely played a neutral role. We find these cases most instructive.

The most developed area of law for our purpose is the area of racially restrictive covenants and trusts. If the state probates a discriminatory trust through the use of its probate power, the case is quite different. The state is actively acting in a nonneutral capacity which does not constitute a "neutral act." See Philadelphia Associates v. Prinzenheim, 379 F.2d 409 (3rd Cir. 1967), and for discussion on racially restrictive covenants, See U.S. National Bank v. Snodgrass, 203 Ore. 850, 275 P.2d 860 (en banc 1954); Gordon v. Gordon, 332 Mass. 197, 124 N.E.2d 236, cert. denied, 349 U.S. 947 (1955). See also Wilco v. Horan, 178 F.2d 162, 165 (10th Cir. 1949).

Speaking for the Court in Evans v. Newton, 392 U.S. 366, 300 (1968), Justice Douglas stated:

"If a testator wanted to leave a school or center for the use of one race only and in no way implicated the State in the supervision, control, or enforcement of the school, we assume arguendo that no constitutional difficulty would be encountered."

If, however, the enforcement of a racially discriminatory trust or covenant is with respect to race, the government takes an active nonneutral role by supervising, managing, or controlling. If the state acts in any manner with respect to a racially discriminatory trust or covenant, the state acts in an official capacity. See Village of Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252 (1976).

In Evans v. Abney, 395 U.S. 338 (1969), Justice Marshall in a dissenting opinion stated:

"...it is said that it is not a constitutional violation for the state to engage in private discriminatory acts. To this I reply, have we not seen such acts in the past? Is it not the case that these acts have caused enormous harm? Is it not the case that these acts are perpetuated in the name of a desirable social policy? And is it not the case that the social policy is in fact a cover for the perpetuation of private discrimination?"

Evans was a challenge to a racially restrictive covenant which was written into the trust estate of a property owner. The Court reached the following conclusions:

"First, the presence of the covenant in the property itself prevents the effective operation of the Fifth Amendment. The covenant denies the equal protection of the laws to a subclass of citizens. This denial of equal protection constitutes a "taking" of property for a public purpose, and as such may be compensated for under the Fifth Amendment. See Pennsylvania v. Board of Directors of City Trusts, 353 U.S. 330 (1957)." The doctrine of estoppel is given an expansive reading in this case to create the legal machinery which does not constitute a "neutral act." See Bryant v. Jones, 368 F.2d 190 (3rd Cir. 1966).

But, "...If, however, in the making of this political decision others may glean, from our decision, that the ministerial nature of the office of Recorder of Deeds bars the remedy sought, We urge our Federal brethren, who classify individuals by race, for restrictive covenants appear on deeds owned by persons of all races. Moreover, cases of those who fear the lists were compiled and maintained by affirmative action of the state. A situation we again do not have here."

We reach our decision somewhat reluctantly. Not reluctant in the law we expound, for we know it to be right; but, reluctant in the conclusion so arrived at, and interpretation others may glean, from our decision. We firmly believe the legal result in these cases is the result of a policy which does not constitute a constitutional violation, and which does not constitute a constitutional violation to the learned District Judge stated:

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We urge the Congress to gather together representatives from among the bankers, brokers, title insurance companies and land developers for a serious attempt at a solution. Restrictive covenants, born of a racist past, have had disastrous effects on the economic advancement of a not too distant past, do not find favor with this court. We exhort the Congress to come forward and remove those antithetical laws of inequality by excising those statutory anachronisms from the legends of our culture.

V

The vigor of our dissenting brother requires us, reluctantly, to pursue our recollection, respectfully, his unfortunate failure to distinguish between the facts in this record and the fluency of his self-created rhetoric upon which he bases his erroneous conclusion. By frequently inane stating "restrictive racial covenants are "illegal" and "individual rights," as if the mere mention of these words had some secret power to discredit an only conclusion, the dissent is servile and compliant. The factual situation to which the record confines us. There is no evidence of "government participation in... an illegal endeavor... maintenance of a segregated housing market... or of Government becoming an illegal discriminator." The Recorder.

The Recorder, as we point out, is neither "publishing nor circulating" racial covenants and trusts. The Recorder simply makes a "policy decision to consider illegal, racially discriminatory covenants and trusts as documents affecting the title or ownership of real property," nor is he giving "deliberate and manifest encouragement of private discriminatory." The Recorder does not put "Government's seal of approval on the
documents he accepts for filing. Obviously the filing of documents with the Recorder does not in any manner, means or way establish their legitimacy. These strained contentions of the meaning and nature of the record in this case, illustrate again the unfortunate practice of some members of this Congress to frustrate the important role of the Recorder from frustrating this purpose by placing the authority of government behind illegal housing discrimination, perfectly consistent with ordinary canons of statutory construction. It is well established that civil rights statutes should be read expansively in order to fulfill their purpose. See Griffin v. Breckenridge, 403 U.S. 88, 78 (1971); Daniel v. Paul, 385 U.S. 296 (1966). There is nothing in our precedent that § 1024(c) should not comport with this rule. Since the Recorder is presently in the business of maintaining records and understanding statements indicating a racial preference with respect to the sale of housing, his action should be enjoined.

The contrary reading of the statute adopted by the District Court leads to anomalous results. The Court recognizes governmental participation in what is now universally conceded to be an illegal endeavor—i.e., maintenance of a segregated housing market. It further holds that the strongest sort of public policy considerations argue against a construction which would permit a governmental entity to become a co-conspirator in this illegal scheme. See Eklis v. United States, 364 U.S. 296 (1960); C.F. Tank Truck Rentals, Inc. v. Commissioner of Internal Revenue, 355 U.S. 90 (1958).

Moreover, the District Court's reading of the statute would carve out a narrow exception to the statutory provision for the benefit of government officials. If private individuals are prohibited from acting upon the basis of race in effectuating restrictive covenants, their activity would clearly violate Section 3004 (c). See, e.g., United States v. Luceño, 453 F.2d 388 (9th Cir. 1971); Civil Action No. 689-885, January 19, 1970 (complaint order). Yet the District Court would hold that a government official who violates the statutory command, his activity is somehow immune because he is acting in an official capacity. It thus turns the old "state action" controversy on its head. Ever since the Civil Rights Cases were decided almost a century ago, it has been thought necessary to show some degree of state involvement before private discriminatory decisions could be judicially considered. See Civil Rights Cases, 109 U.S. 3 (1883). Yet now the District Court seems ready to adopt a position on the constitutional rights of the powerless which is so clear that the most outrageous deprivations of equal rights are those perpetrated by the state itself. Surely Congress must have been aware of this principle—sustained by 100 years of "state action" litigation—when it enacted Section 3004 (c). I am unwilling to accept that this provision is for the Act intended to exempt the most serious offenses from its coverage.

II. Appellants' constitutional argument

In all these regard, the effect is to make Act of its "No Official Race Preference" provision. Thus, it would normally be unnecessary for me to rely on this section for any conclusion. However, since the majority has re-
bected by the statutory and the constitutional protections afforded by appellants, I think it appropriate for me to add a few words about the constitutional problems raised by the facts in this case. In the constitutional context, the question is whether the official registration of these racial covenants constitutes state action. I would hold that it does not, and that they are inoperative for that reason.

The common-law rule applicable to the present facts is well stated in Mulkey v. Brauns, 347 U.S. 369 (1954):

"...a covenant which has been recorded but is invalid under the law of the place of the property is a covenant void as against any party dealing with it, but it is not a title inure to it unless the party dealing with it is aware of the invalidity of the covenant. In the present case the covenant was recorded, but it is invalid because of the statute of the State of New Jersey and constitutes no title or interest in the land."

That holding, which has been uniformly followed, is consistent with the doctrine that presumptions are to be resolved in favor of property rights. The state's simple function is to put on public notice the facts of the case. 

In the present case, no judicial process can affect the rights of the parties unless they are made aware of it. Indeed, the whole purpose of a traditional “title” is to prevent prejudgment of rights. Absent prejudgment of rights, there is no basis for a legal action, and the registration of a covenant in court proceedings does not make it a title. Moreover, the very nature of the covenant indicates that prejudgment was being addressed: it was not made public by the state, but rather voluntarily by the party who registered it.

Indeed, it is arguable that when a covenant is registered, it is intended to be made public and not to act as a prejudgment of rights. If the covenant were registered for purposes of prejudgment, it would be ineffective. 

Therefore, the registration of a racial covenant does not constitute state action. It is clear that if the state acts at all, it acts as a mere registrar. If the state had taken any action beyond registration, it would have been considered state action. But registration is not an action that could be considered state action.

In conclusion, I would hold that the registration of a racial covenant does not constitute state action. It is not a legal action, and therefore cannot be considered state action. The state's function is simply to put on public notice the facts of the case.
have been judicially unenforceable and, hence, have had no effect on the "title or ownership of real estate." It follows that the Recorder's duty of keeping the Register updated properly is not suspended when he accepts these legal nullities for filing.

It is true that the ancient case of Dancy v. Clark, 24 App. D.C. 487 (1897), states that "the recorder of deeds is in the category of ministerial officers, and has no jurisdiction to determine the validity of the instrument writing presented to him for record." Id., at 499. But that case was decided years before it was decided that the task involved in recording restrictive covenants was a wrong of constitutional magnitude. It stretches credulity to believe that the purpose of this supposed Dancy was to have oversees the 65 years of constitutional history which have transpired since in this field. Nor is it in the record in Dancy to support the proposition that the Recorder is bound to accept a document even when, by doing so, he commits an injury of constitutional proportions. In deed, the Dancy court itself recognized that in extreme cases, where a document was facially invalid, the recorder would be justified in refusing to record it. 38

Of course, restrictive covenants have been facially invalid since Shapiro v. Kraemer, supra, was decided in 1948. Moreover, there is a more basic reason to appeal to the policy which from which I would have had to think so obviously to require elucidation. Even if we suppose that the Recorder is acting under statutory compulsion when he records such covenants, this fact alone does not insulate his conduct from constitutional review. Compare Strader v. West Virginia, 303 U.S. (10) 305 (1938), with Ed. part Virginia, 100 U.S. (10) 339 (1891).

There exists a statute which sets out the powers of the Recorder of Deeds can hardly be supposed to preempt the Fair Housing Act of 1968 and the Fifth Amendment of the United States Constitution. If a part of the District of Columbia Code really forces the Recorder to violate appellants' constitutional rights, then that portion of the Code is per se unconstitutional. It has been clear at least since Marbury v. Madison, 5 U.S. (1 L. Cranch) 177 (1803), that Congress lacks the power to direct executive officers to perform unconstitutional acts. Surely this salutary rule is not to be modified at this late date for the excessive benefit of the District's Recorder of Deeds.

C. Finally, appellants contend that it would be inequitable and unconstitutional to implement the relief requested and that full implementation might require employment of some unconstitutional means. We cannot, therefore, sincerely regretting the fact that recognition of appellants' constitutional rights may impose some additional burdens on the Recorder's office. But surely appellants do not mean to contend that they can go on violating the constitutional rights of black citizens because such visitations suit the Recorder's administrative convenience. Seventeen years of bitter and continuing struggle over school desegregation have shown that the implementation of constitutional rights is not always easy. But we do not have a constitutional system of government because that is the easiest or most efficient means of running a country. The guarantees of the Fifth and Fourteenth Amendments are incorporated into the Constitution for the very purpose of preventing some future government official from ignoring the demands of equality for the sake of short term expediency."--Cooper v. Aaron, supra, 358 U.S. at 16-17; Buchanan v. Warley, supra, 245 U.S. at 81.

It should be noted that the parade of horribles to which appellants point is largely imaginary. Appellants have scrupulously complied with all procedural requirements and have requested relief so as to minimize interference with the Recorder's normal routine. Appellees are not asking the Recorder to go through the thousands of deeds presently on file in a search for restrictive covenants. Nor is the habeas corpus color of the judgment on any recorded deed be changed. Instead, they ask only that in the future the Recorder be instructed not to record deeds containing such covenants in them. With respect to deeds already on file, appellants wish the Recorder to attack a notice indicating that restrictive covenants are included in such deed. Even if a restrictive covenant was found and to copies made of recorded deeds containing such covenants. In refusing it, a of these provisions is that recognition of this fact that recognition of restrictive covenants in the Recorder's office would be inconvenient and burdensome for the Recorder's office to implement a state supported or state involved in private discrimination. Here plaintiff is suing the state and asserting that the state is involved in discrimination. The case is certainly unusual in this sense. If, however, we were to ignore this factor and apply the traditional "state action" test, the government must have a duty to act and the failure to so act must result in state supported or encouraged discrimination. The instant case is clearly inapposite.

State action appears to exist here. This is not a case where a plaintiff brings suit against a private individual or alleged state involvement in private discrimination. Here plaintiff is suing the state and asserting that the state is involved in discrimination. The case is certainly unusual in this sense. If, however, we were to ignore this factor and apply the traditional "state action" test, the government must have a duty to act and the failure to so act must result in state supported or encouraged discrimination. The instant case is clearly inapposite.

It must be recalled that not all governmental action is state action within the purview of the Fifth Amendment. "Any governmental action must "significantly involve" the state in private racial discrimination. Burton v. Wilmingt. Housing Authority, 365 U.S. 715 (1961). This is a logical conclusion. Any other result would open unfathomable breaches, for surely it cannot be gainsaid today that the government is not to some extent involved in every facet of our lives. In Bellman v. Mulkey, 362 U.S. 369 (1966), the Court suggested three factors to consider in determining if government action is "state action." The first—immediate objective of the act—and the third—historical context in which the act was done—are clearly inapposite. The sole purpose of the statute creating the office of the Recorder was to establish a neutral branch of government to facilitate and the safe transfer of realty. The Recorder is a neutral repository. There is no evidence before us that the ultimate effect of the act—likewise indicates no state action to discriminate. Contrary to appellants' allegations no substantial harm is caused by the actions of the Recorder. See discussion in text.

Clearly then, the relevant factors set forth in Burton strongly indicate that we do not have here, more, the neutral aspect of the governmental action which we have discussed in the text.
precludes a finding of state action within the terms of the Fourteenth Amendment. See Evans v. Abney, 396 U.S. 435, 444 (1970); foundation for further discussion.

4 Neutral state involvement in many other forms of discrimination have been placed outside the scope of the constitutional guaran­
tee of equal protection of the laws (Commissioners of the City of New York, 397 U.S. 604 (1970) (religious tax exemption); Black v. Cutter Labora­
tories, 333 U.S. 608 (1948) (state procurement enforcement of contract clause); Williams v. Howard Johnson's Restaurant, 362 F.2d 845 (4th Cir. 1966) (per­
formance contract clause)).

5 The homeowner need only file a corrective deed with the Recorder and pay a nominal fee.

6 One gets an impression of just how noxious these covenants are by perusing some of the examples provided in appelleants' com­

1969).

8 Thus it is not surprising that the few courts which have thus far dealt with § 3604 (c) have construed it broadly in its purpose. See United States v. Hunter, D. Md., 324 F. Supp. 27 (1971); United States v. Bob Lawrence Realty, Inc., N.D. Ga., 313 F. Supp. 870 (1970); United States v. Minites, D. Md., 343 F. Supp. 980 (1972).

9 Of course, this generalization does not apply to legislative or judicial action to remove the stigma by the majority such as the Thirteenth Amendment. See Jones v. Alfred H. Mayer Co., 392 U.S. 400 (1968).


11 The governing statute charges the Recorder with the duty of recording "all deeds, contracts, and other instruments in writing affecting the title or ownership of real estate or personal property which have been duly acknowledged and certified." 45 D.C. Code § 701 (1967).

12 See 42 U.S.C. § 3604 (a):


14 Banks, supra 334 U.S. 1, 144 (1948)

15 For a discussion of the courts' application of the equal protection clause to the exercise of state power in a discriminatory fashion, see, for example, New York State v. United National Bank, 320 Ore. 345, 275 P.2d 860 (1945) (en banc), and Gordon v. Gordon, 306 Ore. 247, 300 N.W.2d 197, 201 (1974) (denied, 349 U.S. 947 (1955), but are totally irrelevant to the issue here. These cases, de­
cided almost two decades ago, uphold the position that the courts would not interfere with state discrimination unless there is evidence that a provision has the object of depriving citizens of the equal protection of the laws without showing an intent to discriminate.

16 Whatever the law was once, it is a testament to our maturing concept of equality that, with the help of Supreme Court deci­
sions and an equal protection test, one may now recognize that the arbitrary quality of thought­
lessness can be as disastrous and unfair to the public interest as the public perversity of a willful scheme." Hobson v. Hansen, D. D.C., 269 F. Supp. 401, 497 (1967).

17 The examples provided in appelleants' complaint at 3. Another promises that "no part of the land hereby conveyed shall ever be used, or occupied by, sold, demised, transferred, conveyed unto, or in trust for, any negro, or rented, or given, to, or negroes, or any person or persons of negro blood or extraction, or to any person, or persons, of negro race, blood, or origin, which racial description shall be deemed to include Armenians, Jews, Hebrews, Per­
silans, and Gypsies, that, the charters and graph shall not be held to exclude partial occupancy of the premises by domestic serv­
ants." Ibid. These are not ancient documents unglued to their original undoers. They are contained in modern deeds involving land transactions occurring today in this city.

18 See 349 U.S. 947 (1955). are thus total­
ally irrelevant to the issue here. These cases, de­
cided almost two decades ago, uphold the position that the courts would not interfere with state discrimination unless there is evidence that a provision has the object of depriving citizens of the equal protection of the laws without showing an intent to discriminate.

19 On the other hand, if the present law, for, 21676

20 Mr. President, I hereby authorize the General Services Administration to establish a fund for activating authorized agencies, and for other purposes.

21 By Mr. McCLELLAN (by request): S. 3026. A bill to establish a fund for activating authorized agencies, and for other purposes. Referred to the Commit­
tee on Interior and Insular Affairs.

22 Mr. McCLELLAN. Mr. President, I introduce, by request, a bill to establish a fund for activating authorized agencies, and for other purposes.

23 This language was requested by the General Services Administration and I ask unanimous consent to have Inserted a letter from the Assistant Administra­
tor of the General Services Administra­
tion to the President of the Senate, ex­
plain the need for this legislation.

24 There being no objection, the letter was ordered to be printed in the Record, as follows:


26 HON. SPIRO T. AGNEW, President of the Senate, Washington, D.C.

27 DEAR MR. PRESIDENT: There is transmitted herewith, for reference to the appropriate committees and for other purposes, the follow­
ing bill, which has been deemed advisable to establish a fund for activating authorized agencies, and for other purposes.

28 The General Services Administration provides, on a reimbursable basis, administrative support services to a constantly increasing number of small federal agencies which are responsible for hundreds of advisory committees, task forces, boards, and small agencies, the funding of which is not other­
wise provided for.

29 The establishment of GSA with these entities involves a recurring problem—a lack of ac­
cess to an initial fund source to enable them, during the interim period immediately fol­
lowing their authorization and the time their appropriations become available, to begin carrying out their assigned mission.

30 I am delighted that my distinguished colleague
ity in our defenses and then proposed military systems to protect them.

This kind of "political signaling" with strategic military systems does not seem to make sense militarily, and it is certain-ly inconsistent with our stated objec-tives at SALT and with our supposed entry into an era of negotiations rather than confrontations. So many of our ac-tions are at variance with the objective of coming to a political settlement with the U.S.S.R.—we increase ULMS, we go ahead with a B-1 bomber, we stall enter-ting into MBFR negotiations, we ex-pand U.S. bases in Greece, we take the first step toward arms races in the In-dian Ocean and the Persian Gulf, and Radio Free Europe continues undis-turbed.

Even more startling is the Secretary of Defense's attitude toward China, which is hardly consistent with normal-ization of relations. The flimsy anti-Chinese rationalizations for continuing deployment of Safeguard is repeated, and the idea of reemergence of a Chinese strategic "threat" to this country is raised, en-tirely oblivious of the political realities of the relations between the two coun-tries.

America should buy military weapons for military purposes. If weapons are to be built for political purposes, perhaps they should be reviewed by the Foreign Relations Committee, as well as the Armed Services Committee.

The ABM bargaining chip has already cost several billion dollars—for what? The time has come to buy only what we need to keep our own deterrent strong and to meet the needs of our own people here at home, not to match the waste of the Soviets in what-ever ways they choose to waste. We will always be ahead in some ways, and they in others. We ought not let the tradi-tional alarums of the appropriations sea-son cloud our perception of these basic considerations.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The PRESIDING OFFICER. Under the previous order the Chair lays before the Senate for its consideration the unfin-ished business which will be stated.

The assistant legislative clerk read as follows:

Calendar No. 412, S. 2515, a bill to further promote equal employment opportunities for American workers.

MR. BYRD of West Virginia. Mr. Presi-dent, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

MR. WILLIAMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question before the Senate is amendment No. 609 to S. 2515.

CLOTURE MOTION

Mr. WILLIAMS. Mr. President, on be-half of myself and 50 other Senators I will in a moment offer a motion pursuant to rule XXII to invoke cloture on S. 2515 that is presently the pending business in this chamber. I am aware that both sides support this motion. A constitutional majority of the Senate signed the motion. We are now in the fifth week of debate on this measure. We have had more than 30 rolleall votes on amendments to this bill. We debated the enforcement pro-cedure for 4 weeks and finally resolved that issue on Tuesday last.

I think it is clear from the desul-tone of the debates since last Tues-day that the Senate is merely marking time until we can bring an end to debate on this important question. A large majority of the Senate wants this bill passed.

This motion for cloture will be voted on next Tuesday afternoon. I believe that it is incumbent upon each and every one of the Members of the Senate who believes in the cause of equal employ-ment opportunity to be present and to vote on this measure. It will be, I hope, a historic demonstration to our minori-ties and women that effective assistance can be provided to end job discrimina-tion in our society.

Mr. President, this issue has been fully and completely debated. I urge all of my colleagues to join with me on Tuesday to end this debate and pass S. 2515.

Mr. JAVITS. Mr. President, will the Senate yield?

Mr. WILLIAMS. I am happy to yield.

Mr. JAVITS. Mr. President, the Sena-tor from New Jersey (Mr. Williams) and I are presenting this cloture motion to the Senate with the feeling that every conceivable area in respect of this meas-ure has not been explored. The amend-ments have been dealt with in substance, not once but more than once in most in-stances, and the time has now come to vote. I believe that the constitutional system cannot be upset by actions of the Senate that are required for a cloture motion. Designedly the Senator from New Jersey and I set out to get 51 signatures of Sen-ators, a constitutional majority.

Also, Mr. President, we have gone far in the number of Senators who have signed the cloture motion. Only 16 Sen-ators are required for a cloture motion. Designedly the Senator from New Jersey and I set out to get 51 signatures of Sen-ators, a constitutional majority.

I know I express our joint gratitude to all who joined with us because we wanted to demonstrate how conclusively is this sentiment on the part of the Senate, the constitutional majority, that the time has come to vote.

Even now no amendment will be cut off. Any amendment at the desk would be qualified by a suitable unanimous con-sent up to the vote, and thereafter Mem-bers will have an opportunity to have amendments voted on, every Member having an hour.

The PRESIDING OFFICER. Mr. President, this issue has been fully and completely debated. I urge all of my colleagues to join with me on Tuesday to end this debate and pass S. 2515.

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Even now no amendment will be cut off. Any amendment at the desk would be qualified by a suitable unanimous con-sent up to the vote, and thereafter Mem-bers will have an opportunity to have amendments voted on, every Member having an hour.
The first sentence of the Committee report says:

The widespread and pervasive laws and practices against women are not only irrational, but also directly and seriously injurious to a substantial part of our society. Nor as I convinced that the far-reaching constitutional amendments proposed for new strategic initiative—"mandated, are not easily="

The broad reach of the proposed Constitutional amendment, as interpreted by the authors of the Committee report, can best be realized by a careful reading of the entire section of the report headed "The Military." The report unequivocally states that one of its purposes is that "when our forces are not only permitted but required to be treated on an exact parity with men for all purposes of military service—both for combat duty in the infantry, or as truck drivers, women must be similarly drafted. If men are assignable to the boiler room of a destroyer, women must be similarly assigned. Something, what not, the guard, the report concedes that "separate quarters for men and women would be provided under the constitutional right of privacy, even though this may involve building more toilet and sleeping facilities." How this is to be accomplished without rebuilding all our destroyers, whether segregated pup tents and foxholes for the infantry will be constitutionally mandated, are not elucidated in the report.

I respectfully dissent and recommend that the Committee report be rejected. In this connection I note that the Committee on Federal Legislation of this Association has submitted a report adverse to the proposed Constitutional Amendment:

SOVIET STRATEGIC WEAPONS BULDUP

Mr. FULLBRIGH, Mr. President, each year about this time, for as long as I can remember, the Senate along with the rest of the country has been afflicted with disclosures about new strategic threats which have, or will soon have materialized. This year the situation is both similar and different. As we hear the traditional refrain of Soviet strategic weapons buildup, we are told as always that the buildup has exceeded all our previous estimates. We are told that we are falling behind.

These statements are, of course, questionable. Just to give one example, the defense posture statement shows that the Soviet Union's nuclear force—production is growing, but at a slower rate than previously.

At this time of year it may be appropriate to stop and see what became of some old threats. I wonder if my colleagues remember the Soviet multiple warheads threat, the threat which was used to influence us into sending the ABM? I refer to page 56 of the defense posture statement where we learn that the Soviet Union has not even had a test of an MRV warhead—"multi-warhead"—ever since 1970. How can we have independent guidance since early 1970?

The new aspect of this year's posture statement is that we are being asked to invent new weapons systems for international purposes. This is, of course, a logical extension of the bargaining chip argument, and it represents a dangerous and expensive trend in defense planning. The initial billion dollar installment proposed for a ULMS submarine system which could ultimately cost $30 billion is a bad illustration.

The posture statement does not make a serious case that our Polaris submarines are threatened. The case for a new sea-based missile force is based simply on the need to spend the $30 billion that we can too spend money on sea-based systems, if they are unwilling to halt building submarines. The defense posture statement explains ULMS this way:

The continuing Soviet strategic offensive force buildup, with its long-term implications, convinced us that we need to undertake a major new strategic initiative. This step must signal to the Soviets and our allies that we have the will and the resources to maintain sufficient strategic forces in the face of a growing Soviet threat.

Secretary Laird went on to say that he had "carefully reviewed all alternatives for new strategic initiative" and had found "ULMS" a good illustration.
the Senators who signed the cloture motion on S. 2515 that was offered on that date, omitted listing the names of several Senators who had signed the cloture motion. It can be recalled that a total of 53 Senators signed the motion. It was submitted on two pages, and evidently the second page somehow got lost at the printers.

I therefore ask unanimous consent that the cloture motion and the complete list of signers be printed in theRecord.

There being no objection, the text of the motion and list of signers were ordered to be printed in the Record, as follows:

CLOTURE Motion

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the bill (S. 2515), a bill to further promote equal employment opportunities for American workers.

1. Mike Mansfield
2. Robert Griffin
3. Abraham Ribicoff
4. Edward Brooke
5. Thomas J. McIntyre
6. Jennings Randolph
7. Harold Hughes
8. Gaylord Nelson
9. Thomas Eagleton
10. Adal Stevenson
11. Walter P. Mondale
12. Lee Metcalf
13. Frank R. Moss
14. Len B. Jordan
15. O. J. astore
16. Robert T. Stafford
17. Mark O. Hatfield
18. Howard Metzenbaum
19. Harrison Williams
20. Richard S. Schweiker
21. Hugh Scott
22. Jacob K. Javits
23. J. Caleb Boggs
24. Charles H. Percy
25. James A. floors
26. Edward W. Brooke
27. Gordon Allott
28. Lowell P. Weicker
29. Clifford P. Case
30. Marlow W. Cook
31. Charles McC. Mathias, Jr.
32. Robert Dole
33. Henry Bellmon
34. B. Patriot
35. Ted Stevens
36. J. Glenn Beall
37. Vance Hartke
38. George McGovern
39. Frank Church
40. Alan Cranston
41. Claiborne Pell
42. Daniel K. Inouye
43. John V. Tunnicliff
44. Gale W. McGee
45. Joseph M. Montoya
46. Phil W. Archer
47. Stuart Symington
48. Lloyd Bentsen
49. William Proxmire
50. Birch Bayh
51. Fred R. Harris
52. Newton Chiles
53. Warren G. Magnuson

EQUAl EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The Senate continued with the consideration of the bill (S. 2515) a bill to further promote equal employment opportunities for American workers.

Mr. ALLEN. Mr. President, on behalf of myself and the distinguished Senator from North Carolina (Mr. Ervin) I call up an amendment which is at the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be read.

The assistant legislative clerk read as follows:

On page 50, between lines 19 and 20, to insert the following at the end of section 4 with a proper subsection designation:

"As used in this act, the term "charge" shall mean an accusation of discrimination supported by oath or affirmation."

Mr. ALLEN. Mr. President, by way of explanation of the clerk's difficulty in reading the amendment, it was drafted by the hand of the distinguished Senator from North Carolina (Mr. Ervin) who-

Mr. ERVIN. If the Senate will pardon me, if he tested me solely on my capacity to write rather than to read, I could not pass a literacy test.

Mr. ALLEN. Fortunately, or unfortunately, in the case may be, there is no literacy test any more, so that the distinguished Senator would have no difficulty getting any examination if he should appear before a board of registrars. (Laughter.)

Mr. President, the purpose of this amendment is to require that charges of discrimination filed with the Commission shall be in writing under oath or affirmation. For some reason unexplained, but apparently not intentional, the amendment as drafted and the committee substitute as reported, leave off the requirement that a charge be made under oath.

The present law and the committee report containing a copy of the present law, at page 55, section 706(a) points out:

Whenever it is charged in writing under oath by a person claiming to be aggrieved-

So all this amendment would do would be to go back to the present law and make no change in the requirement, meaning charges are to be filed and made under oath in writing.

I am advised that the sponsors of the bill have no objection to the amendment. I trust that they will so state.

Mr. WILLIAMS. Mr. President, I gather that one copy has been taken from the Chamber. Does the Senator have another copy of the amendment?

Mr. ALLEN. No, sir. The amendment adds a new section at the end of section 4, and it is between lines 19 and 20 on page 50 of the bill. It merely states that the word "charge" as used in the act shall be a charge supported by oath or affirmation.
tion for the Commission, but might not be able to protect the Commission's interest in a case where private litigant is involved.

No. 899 is a technical amendment read before the Chair's operational authority to eliminate references to the cease-and-desist powers.

No. 900 is a technical and conforming amendment to the provision of S. 3515 that created a general counsel. It makes clear the general counsel authority is to handle the filing of complaints under the new adopted court enforcement procedures rather than the issuance and prosecution of complaints before the Commission under cease and desist.

The amendment also strikes the provision prohibiting the Commission employees engaged in prosecutorial functions from participating in other decisional functions at the Commission since there is no administrative hearing process any longer, as a result of the amendment.

Amendment No. 901 is a technical amendment eliminating the investigatory powers of the Commission which eliminates a sentence relating to the use of the subpoena powers in relation to cease and desist, which again has been struck.

Amendment No. 902 is a technical amendment, eliminating the reference in the pattern and practice transfer to the Federal district courts.

The PRESIDING OFFICER (Mr. Moss). The question is on agreeing to the amendments numbered 896, 897, 899, 900, 901, and 902.

The amendments were agreed to en bloc.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. WILLIAMS. Mr. President, I have nine other technical amendments which have been printed, I have reviewed them with the Senator from North Carolina and believe that, as they are of a technical nature only, they will be accepted.

I send the amendments to the desk and ask unanimous consent that they not be read but printed in the Record, and I will explain each one at this time.

The PRESIDING OFFICER. Is there objection to consideration of the perfecting amendments en bloc and to suspend the reading of the amendments? The Chair hears none, and it is so ordered; and without objection, the amendments will be printed in the Record.

The text of the amendments is as follows:

On page 33, in the matter to be inserted by amendment after line 13, strike out the word "religions" and insert in lieu thereof the word "religion".

On page 33, in the matter to be inserted by amendment after line 13, strike out the word "in" and insert in lieu thereof the word "to".

On page 38, in the matter to be inserted by amendment numbered 884, insert on page 2, line 15, after the words "Agreement General" the following: "has not filed a civil action".

On page 38, in the matter to be inserted by amendment numbered 884, insert on page 3, line 11, strike out "subsection (c)" and insert in lieu thereof "subsections (c) or (d)".

On page 38, in the matter to be inserted by amendment numbered 884, insert on page 5, line 6, after the word "Commission" the following: "or the Attorney General in a case involving a government, governmental agency, or political subdivision."

On page 38, in the matter to be inserted by amendment numbered 884, insert on page 5, line 12, strike out the word "plaintiff" and insert in lieu thereof the words "aggrieved person".

On page 38, in the matter to be inserted by amendment numbered 884, insert on page 5, line 38, strike out the word "plaintiff" and insert in lieu thereof the words "aggrieved person".

The second change is a grammatical change relating to hardship of religious practice to the conduct of "the employer's business rather than "in" the conduct of the employer's business.

Mr. ERVIN. Mr. President, I would like to ask the Senator from New Jersey if that affects the amendment which was adopted in an earlier part of the bill.

Mr. WILLIAMS. No. This does not deal with the amendment offered by the Senator from North Carolina. This deals with the amendment offered by the Senator from West Virginia, not the Senator's amendment.

The PRESIDING OFFICER. Does the Senator from New Jersey wish these amendments to be considered en bloc or separately?

Mr. WILLIAMS. I ask unanimous consent that they be considered en bloc, Mr. President.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. WILLIAMS. The second amendment replaces language that was in the original bill making it clear that the right of an aggrieved party to intervene in a civil suit brought by the Attorney General or Attorney General in cases involving a governmental agency or political subdivision. It is likely that such individual would have the right of intervention under Federal rules in civil procedures which this amendment is designed to make clear.

Mr. GRIFFIN. If the Senator from New Jersey will yield for a question, are these several amendments also cleared with the ranking Members on this side; is that correct?

Mr. WILLIAMS. Yes.

Mr. GRIFFIN. I thank the Senator.

Mr. WILLIAMS. There were all cleared with the Senators from New York and Colorado.

Mr. President, the third amendment is intended to make clear the provision under which a private action may have been filed in a case involving a governmental agency and political subdivision. Preliminary injunctions can be filed if the Attorney General, on certification within the requisite period of time. The words "has not filed a civil action" were left out of the amendment on court enforcement.

The fourth amendment is intended to correct a typographical error which allowed for the deferred under State and local proceedings under 706(c). It should have read 706(c) or (d), since there are two deferral procedures.

The fifth amendment is intended to make clear that preliminary injunctions involving a governmental agency or political subdivision are to be sought by the Attorney General.

The sixth amendment is intended to conform to language in the bill relating to an "aggrieved person" rather than the term "plaintiff," since civil actions would be in the name of the commission or the United States.

The seventh amendment is in the nature of a technical amendment, to make clear the provisions under which civil actions are to be brought.

The eighth amendment is intended to correct a grammatical error in the redesignation of several subsections. This amendment, which is No. 898, is a technical amendment, intended to reflect the fact that the bill would be passed in 1972 rather than in 1971, as it is in the bill as introduced.

That concludes this group of technical amendments.

The PRESIDING OFFICER (Mr. Moss). The nine technical amendments of the Senator from New Jersey have been explained and the motion to consider them en bloc having been granted, the question is on agreeing to the amendments en bloc.

The amendments were agreed to en bloc.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. ALLEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. Moss). Without objection, it is so ordered.

OMISSION OF NAMES OF SIGNERS OF CLOTURE MOTION

Mr. WILLIAMS. Mr. President, I note that the Congressional Record of February 18, 1972, at page 32107, in listing...
line is going to pick up the fight for the freedom of professional baseball players to contract.

I want to say that in this analogy what we have here is, or what it is my prayer we are doing here, is saying to the employers of this Nation, be they governments or private employers, that they cannot have a right to the exclusive right to hire because of a person's religion, race, sex, or national origin.

That reserve clause opportunity, I think, is one of the first fundamental principles of the United States of America.

Mr. President, I yield to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. Mr. President, I think that the very eloquent argument of the Senator from New Jersey brings the matter home to every American.

I believe that what is involved at this point is the capability of the Senate to operate. It is true that we may get to this point—and I have recounted the major issues we have already debated and re-debated in this debate—where democracy itself is challenged by the question of whether a legislative body can operate. The thing that is often overlooked is the rule in the Senate by which a cloture motion must be agreed to by two-thirds in the event of a filibuster against the bill. That gives one-third of the membership present and voting the ability to immobilize the Government.

We hope and pray that there is never a day when this right will be used to jeopardize the security of this Nation. However, it could be.

We should all realize that nothing in the Constitution makes the Government work. If money is not appropriated, if authority is not given, if a law expires and is not renewed, the U.S. Government itself literally can come to a halt, not by affirmative action, but by unwillingness to act. And that is what is at stake. Therefore, we have a question here of a really major bill that the capability of the Senate to act and, therefore, the ability of the Government to act.

The President cannot spend money unless Congress appropriates it. The President cannot do anything if one side in the Senate were to say, "No. We will not do anything in a given aspect concerning the general law."

At long last when the Senate does gird its loins, it can invoke cloture, as I believe it will do today. It represents, if inadequate a vindication of the process of our constitutional form of government, that we are not in the position where we will collapse because our own institutions have trapped us in this quagmire so that we cannot act.

I hope very much that we realize the Senate must act. Democracy has to have vitality some time. That is why we have a Supreme Court of the United States. That is why we have a Congress. And that is why—notwithstanding the usefulness of a filibuster in giving the side that wants to do so a law, the opportunity to say, for whatever reason, that they will use this rule that permits the Senate to act only by a majority of two-thirds—the Senate will act.

Mr. President, I hope that the vote on cloture will be successful today.

Mr. WILLIAMS. Mr. President, do we have any time remaining. Have we run out of time?

The PRESIDING OFFICER. The Senator from New Jersey has 5 seconds remaining.

Mr. ERVIN. Mr. President, at long last I believe the Senator from New York and I agree that the rule requires a majority of two-thirds.

In this very case, it compels the Senate to listen, to stop, and to think long enough to recover its senses.

Mr. JAVITS. Mr. President, I think that we have argued and reargued this thing enough. There are some things, notwithstanding my great respect for the Constitution, that distinguish us from the Constitution of the Republic of North Carolina, that we cannot agree on. So, I think we had better vote.

CLOTURE MOTION

The PRESIDING OFFICER. The hour of 12:15 has arrived. Under the unanimous consent agreement and pursuant to rule XXII the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the bill (S. 2515), a bill to further promote equal employment opportunities for American workers.


CALL OF THE ROLL

The PRESIDING OFFICER. Under rule XXII the Chair directs the clerk to call the roll to ascertain the presence of a quorum.

The second assistant legislative clerk called the roll and the following Senators answered to their names:

[No. 51 Leg.]

Aiken Field Fannin Muskie
Allott Fulbright Packwood
Anderson Gamble Parchman
Bailey Goodwin Peake
Ballon Griffin Purnell
Bennett Harris Proxmire
Boxer Harris Randolph
Bible Hart Ribicoff
Boggs Hartke Roth
Brooke Hatfield Saxby
Brooke Hollings Schuette
Byrd, Va. Humphrey Scott
Byrd, W. Va., Inouye Stadium
Cannon Jalits Stafford
Case Jordan, N.C. Stevens
Chiles Jordan, Idaho Stevens
Church Kennedy Stevenson
Cook Long Symington
Cotter Magnuson Taft
Cotton Mansfield Talmadge
Cranton Mathias Thurmond
Curtis McGee Tower
Dole McIntyre Tunney
Dominick Metcalf Wheeler
EDA. Miller Williams
Edhelton Miller Young
Elkus Mondale Young
Endicott Montoya Young
Ervin Moss

Mr. BYRD of West Virginia. I announce that the Senator from Arkansas (Mr. McCLELLAN), the Senator from South Dakota (Mr. McGovern), and the Senator from Washington (Mr. JACKSON) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BARKES) is absent by leave of the Senate on official committee business.

The Senator from Wyoming (Mr. HARRSEN) is necessarily absent.

The Senator from South Dakota (Mr. MURSEN) is absent because of illness.

The PRESIDING OFFICER. A quorum is present.

The question before the Senate now is: Is it the sense of the Senate that debate on S. 2515, a bill to further promote equal employment opportunities for American workers, shall be brought to a close?

The yeas and nays are mandatory under the rule, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Washington (Mr. JACKSON), the Senator from
Arkansas (Mr. McCLELLAN) and the Senator from South Dakota (Mr. McGovern) are necessarily absent. 

On this vote, the Senator from Washington (Mr. BAXTER) and the Senator from South Dakota (Mr. MCGovern) are paired with the Senator from Arkansas (Mr. McCLELLAN).

If present and voting, the Senator from Washington and the Senator from South Dakota would vote "yea," and the Senator from Arkansas would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER) is absent by leave of the Senate on official committee business.

The Senator from Wyoming (Mr. HANSEN) is necessarily absent.

The Senator from South Dakota (Mr. MUNDY) is absent because of illness.

The yeas and nays resulted—yeas 73, nays 21, as follows:

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[No. 52 Leg.]

YEAS—73

Alton
Allen
Anderson
Baxh
Bea1
Bellmon
Bennett
Boggs
Brooke
Buckley
Burdick
Byrd, W. Va.
Cannon
Case
Church
Cochrane
Cooper
Copp
Curtis
Dole
Dombeck
Eagleton
Foster
Gambrell
Nelson

NAY—21

Allen
Bennett
Bible
Brook
Byrd, Va.
Cooper
Copp
Curtis
Dole
Dombeck
Eagleton
Foster
Hammett
Hammill

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The PRESIDING OFFICER. On this vote the yeas are 73 and the nays 21.

Two-thirds of the Senators present and voting having voted in the affirmative, the motion is agreed to.

Cloture has now been invoked on S. 2515, and all debate is limited to a total of 1 hour, in all, for each Senator.

The question is on agreeing to amendment No. 850 to the pending measure.

Mr. SCOTT. Mr. President, on my hour, I rise first to comment briefly that I understand that not all of this time will be used. I believe the distinguished Senator from North Carolina has four amendments, and I understand from him that he does not plan to ask for rollover votes on them. I am not sure of the intention of the Senator from New York, but it is hoped that we can bring this bill to an early conclusion. Does the majority leader have any comment?

Mr. MANSFIELD. No; I just want to echo the sentiments expressed by the distinguished Republican leader. The sooner we can dispose of this measure, the sooner we will be prepared to lay down the bill on higher education and get embarked on that journey.

Mr. SCOTT. Does the Senator from New York have the yeas and nays on his amendment?

Mr. JAVITS. Mr. President, I think it will depend upon the nature and extent of the opposition we may encounter. We really do not know. I have no desire for rollover calls just for the sake of rollover calls, but if opposition develops to amendments in this bill, the Senator from New York (Mr. WILLIAMS) and I consider important to the bill, they may be necessary. From what I already know, I do not believe that our amendments should require more than 2 rollovers at the most.

Mr. CRANSTON. Mr. President, will the Senator from Pennsylvania yield?

Mr. SCOTT. I yield.

Mr. CRANSTON. I wish to advise him that the Senator from Colorado (Mr. DOMINICK) and I have an amendment, submitted this morning, which we wish to bring to the Senate, shall not necessarily require a rollover or take much time.

Mr. SCOTT. I thank the distinguished Senator from California.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 850. Who yields time?

Mr. JAVITS. Mr. President, I yield myself 3 minutes.

Mr. JAVITS. Mr. President, the questions is on agreeing to amendment No. 850. Who yields time?

Mr. DOMINICK. Mr. President, in my time, I should like to make a parliamentary inquiry.

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMINICK. Therefore, if changes need to be made, could they be made by consent of the Senator who is offering the amendment—by unanimous consent or otherwise?

The PRESIDING OFFICER. It would require the consent of the Senate to make such a change.

Mr. DOMINICK. I thank the Chair.

Mr. JAVITS. Mr. President, if there is no opposition to this amendment, I am prepared to vote it. Does the Chair have any comment?

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. MANSFIELD. Mr. President, if I may have the attention of the leadership on the Republican side and the members of the Senate, a situation has come up which may call for the laying before the Senate of another cloture motion this afternoon, with the vote to come on Thursday.

Mr. President, I ask that immediately after the third reading of the pending bill, the Senate proceed to the consideration of H.R. 1746, the House companion bill; that the text of the Senate bill as amended be substituted for the House passed bill; that the House bill as amended progress through third reading, and that the final vote occur on the House bill as amended.

Mr. ALLEN. Reserving the right to object, Mr. President, rule XXII has been invoked.

The PRESIDING OFFICER. The Senator asks that rule XXII be suspended? Mr. MANSFIELD. Yes.

The PRESIDING OFFICER. Is there objection?

Mr. ALLEN. I am reserving the right to object.

Rule XXII, to stop debate on the Senate bill, S. 2515, has been invoked. Under the provisions of rule XXII, S. 2515 shall be the pending business until disposed of. Disposition of would mean either killed or passed.

I raise the point. I do not at this time object to the unanimous-consent request. I merely at this time raise the point that the Senator's request is out of order, under rule XXII.

Mr. MANSFIELD. Mr. President, if I may be heard, I did ask unanimous consent, and it is my belief that I am in order. I was unaware that the point might arise, and I would be prepared to hear the ruling of the Chair.
account in future disarmament negotiations. The report underlined that the growing arms race is driving nations to spend more on defense than on education, health care, and social services. The report comes at a most opportune time. There is increasing evidence of a trend towards détente in international relations. The current geopolitical climate presents greater opportunities than ever before for additional agreements in the disarmament field. In this context, it would seem that nations can now at long last, make a beginning in reordering their national and international priorities. In other words, energy can be concentrated on the betterment rather than the possible destruction of life and society on this planet. The delegations present at this Conference have a most important function to perform in the fulfillment of this noble task.

I feel sure that all participants in this Conference will, in the year of its tenth anniversary, put forward their utmost efforts to deal successfully with the problems referred to the Conference by the General Assembly. I extend to all participants my most cordial greetings and every possible good wishes for the fullest success in their common endeavours.

A. THE CHAIRMAN (Morocco) (translation from French). I think I am interpreting your feelings when I say that the French delegation, and I think a delegation, Mr. Waldheim, our most sincere thanks for the interesting statement he has made. It is an interesting statement of a fascinating man. Sir, your clear and carefully thought-out remarks and your words of encouragement. They will remain in our memories throughout the effort we shall be making to work out concrete and substantial measures of agreement.

On behalf of us all, I should like to express our deep gratitude for this demonstration of sympathy and interest which you have made by accepting our invitation.

I now declare that we have finished the open part of this meeting. After a suspension of five minutes, the Committee will resume its work in closed meeting.

U.S. CUSTODY OF MARINE RESOURCES ON THE CONTINENTAL SHELF

Mrs. SMITH. Mr. President, for myself and on behalf of the distinguished members of the Committee, I ask unanimous consent to have printed in the Record a joint resolution of the Legislature of Maine relating to U.S. custody of marine resources on the Continental Shelf.

There being no objection, the joint resolution was ordered to be printed in the Record, as follows:

JOINT RESOLUTION PETITIONING THE HONORABLE WILLIAM P. ROGERS, SECRETARY OF STATE, AND THE MAINE CONGRESSIONAL DELEGATION FOR U.S. CUSTODY OF MARINE RESOURCES AND ENVIRONMENTAL PROTECTION.

Whereas, the living resources found in the waters adjacent to the State of Maine and associated with the continental shelf and adjacent islands, and within the United States are essential to the seafood needs of the State of Maine and the nation; and

Whereas, protecting and managing marine resources are gravely endangered from unrestrained harvesting and fishing; and

Whereas, the United States, because it has a special responsibility for the security of life over all domestic and foreign fishing in the area in which these resources are found, is unable to provide adequate protection and management to guarantee the conservation of these living marine resources; and

Whereas, the State of Maine has traditionally depended upon its commercial fishing industry for a major portion of its coastal income; and

Whereas, the State of Maine believes that, because of a further decline in the fish stocks in this area as a result of continued heavy fishing and other pressures, the living marine resources are in danger of critical depletion; and

Whereas, there is strong evidence that the harvesting of these living marine resources on a sustained basis can be continued only if a greater measure of jurisdiction and control is given to coastal authorities; now, therefore, be it.

Resolved: That the members of the 105th Congress of the United States, and the members of the Maine Congressional Delegation to use every effort at their command to establish a legal basis so that the United States shall become the custodian of all living marine resources on the continental shelf and its slope, including all resources on such a slope above the continental shelf and its slope, so that these resources may be harvested in a manner compatible with observation and wise utilization; and that in addition to such management, the United States shall, in such cases where such resources are above the continental shelf, exercise jurisdiction over the preferential control and use of such living marine resources on the bottom and in the water column above such bottom and its slope as is now provided for the nonliving resources of this area; and that such fishing jurisdiction be qualified to permit continued harvesting by the United States of the fishery zone of species not fully utilized by United States vessels; and be it further

Resolved: That a copy of the joint Resolution, duly authenticated by the Secretary of State of the State of Maine, be transmitted forthwith, with the signature of the Governor of the State of Maine, to the United States and to each member of the Maine Congressional Delegation with our thanks for their prompt attention to this vitally important matter.

CIVIL RIGHTS AND EXECUTIVE COMMITMENT

Mr. MONDALE. Mr. President, an incisive review of the long history of the civil rights struggle in America, written by Senator HUBERT H. HUMPHREY, was published in the New Leader, of February 21, 1972.

Senator Humphrey correctly identifies the crucial role of the President in advancing or delaying the Nation's movement toward the establishment of genuine equal opportunity for all Americans. In his article, entitled "Civil Rights and Executive Commitment," Senator Humphrey concludes that the present administration has yet to demonstrate a genuine commitment to the quest for civil rights and full opportunity.

Senator Humphrey suggests a social action program to get America back on the road to equal opportunity where every possible effort is made by the Federal Government. It is a program that would assure affirmative compliance with the Full Faith and Credit Act, provide effective assistance for self-help community economic development programs, rebuild our cities, and develop new growth centers in rural and foreign fishing areas; all designed to give every American genuine equality of opportunity.

Mr. President, I ask unanimous consent that the article by printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

THINKING ALOUD: CIVIL RIGHTS AND EXECUTIVE COMMITMENT

By HUBERT H. HUMPHREY

In President Nixon trying to create a new civil rights era, a second post-Reconstructionist era in which the goals of the past decades will be cast aside? Judging from the political ebb and flow of the past three years, one would have to say Yes. The Administration's total neglect of the civil rights issues; even the most liberal Republicans have found their zeal chilled by Presi­dential inaction. That is why, Senator Humphrey concludes that the present ad­ministration has yet to demonstrate a genuine commitment to the quest for civil rights. But the President's inaction, and to each member of the Maine Congressional Delegation with our thanks for their prompt attention to this vitally important matter.
March 20, 1972

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developments in the qualitative nuclear arms race, the number of deliverable nuclear warheads by both superpowers increased by a factor of 3. In 1964, while the world thus survives on the knife-edge of nuclear terror, vast material and human resources which could be far more beneficially employed for the purpose of enriching the standards of living and the quality of life of the people of the world have been wasted on tests which have contributed to the destruction of human civilization.

For more than two years the Soviet Union and the United States have been engaged in bilateral negotiations at SALT. All of us, I am sure, are greatly encouraged by the reports reaching us concerning the possibility of an agreement on specified limitation of ballistic missiles systems and an interim agreement on certain measures with respect to the limitation of strategic offensive arms. Any agreements between the two Powers to limit the production of these strategic weapons would have great political significance, particularly if it represented an initial step in a further disarmament process. Increasingly, however, concern is being voiced that the possibility of a limitation of the qualitative nuclear arms race may be frustrated by the continued proliferation of nuclear weapons and the testing of such weapons. Furthermore, continued at an even greater rate than in the past, it is clear that the possibility of a limitation of the quantitative aspects of the nuclear arms race is even more remote.

The recent General Assembly condemned all nuclear-weapon tests and called on the nuclear Powers to desist from further tests without delay. It called for immediate unilateral or negotiated "measures of restraint" to reduce the number and size of such tests pending an early ban; and finally the Assembly called upon this Conference to give "highest priority" to banning underground nuclear tests, and appealed to the nuclear Powers to take an action that would demonstrate their commitment to the goal of a comprehensive test-ban treaty in the CDD specific proposals for such a ban.

A comprehensive test-ban treaty would strengthen the effectiveness of the Non-Proliferation Treaty. In my firm belief that a comprehensive test-ban treaty would facilitate the achievement of agreements at SALT and might also be a beneficial factor in the prospects of all arms control agreements. In my opinion be most fitting that the Conference on Disarmament be held at some early date in order to advance the study of ways and means to achieve the ultimate goal of a non-proliferation treaty. In my view, an Indispensable step to halt the nuclear arms race, at least with the nuclear Powers, is to achieve final agreements. If nuclear-test ban negotiations were to progress as they should, it would give a further impetus to the disarmament negotiations of all the Powers at the SALT and SALT II conferences. It is also in my opinion be most fitting that a World Disarmament Conference be held at some early date to consider the long-range objectives of both the Disarmament Decade and the Second Development Decade. It is, of course, of prime importance, as the resolution itself indicates, that such a conference be the subject of the most careful preparation in order to ensure its success.

Mr. Chairman, while disarmament is of vital interest to all peoples and to every member of the United Nations, I share the oft-enunciated view of my distinguished predecessor underlining the importance of the participation and disarmament negotiations of all the members of the United Nations, as permanent members of the Security Council have—according to the Charter of the United Nations—primary responsibility for the maintenance of international peace and security in which progress in disarmament is an essential element.

As far as the participation of China in disarmament negotiations is concerned, a new situation has been created by the restoration of the legal rights of the People's Republic of China in the United Nations, its subsequent entry in the organization and participation in its various activities.

This new situation was reflected in the disarmament debates during the 26th session of the General Assembly where a practically unanimous wish was expressed by those delegations which spoke on the subject underscoring the desirability of the participation of China and France in disarmament negotiations. I have thought it appropriate to bring these facts to the knowledge of the representatives of the Governments concerned.

Mr. Chairman, it is my firm conviction that disarmament negotiations of all the Powers, and France be associated with the disarmament negotiations. I hope that serious consideration will be given in this Conference to ensure the participation of these two Powers in the disarmament negotiations.

During the Disarmament Decade all existing conventional and disarmament negotiations should be strengthened and fully implemented. I have already referred to the growing adherence to and support of the 1965 Geneva Protocol.

Today we are only a few days away from the second anniversary of the entry into force of the Non-Proliferation Treaty. In those two years, progress has been made in working out a Safeguards Agreement as required by Article II of the Treaty. The Chairman of the Safeguards Committee that succeeded in working out the Safeguards Agreement and in drafting the act of ratification and appreciation of the great work of the International Atomic Energy Agency was invaluable assistance to this agreement. I am confident that this spirit of international co-operation must be reinforced and strengthened in order to ensure the participation of these two Powers in the disarmament negotiations.

The report of the Secretary-General on the Economic and Social Consequences of the Arms Race and of Military and Economic Exploitation of the Disadvantaged peoples of the World presented to this Conference, as well as other documents presented, as recommended by the previous General Assembly, which recommended that the conclusions of the report should be taken into
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King Jr., was helping Americans to accept the Negro not simply as a Negro but as a fellow human being. His nonviolent vision captured America's imagination. When Martin was killed, he died, according to his friends, a symbol of honor for generations yet unborn, and thousands may praise you as one of history's supreme healers, Mr. President, if you have no love, your blood is spilled in vain.

At the same time, America was increasingly realigning its social and economic platform, much of which became the law of the land under Presidents Kennedy and Johnson, but also in the Congress. Yet substantive progress in civil rights and social welfare came from a generally unnoticed source—the Democratic Party. Formulated out of Minnesota Representative Eugene "McCarthy's Mavericks," this ad hoc body developed a broad social and economic platform, much of which became the law of the land under Presidents Kennedy and Johnson. Once this recognition took hold, pressure mounted on Congress to enact needed changes. By 1965 the majority leadership in the area of civil rights and social welfare came from a particularly noticed source—the Democratic Party. Formulated out of Minnesota Representative Eugene "McCarthy's Mavericks," this ad hoc body developed a broad social and economic platform, much of which became the law of the land under Presidents Kennedy and Johnson, but also in the Congress. Yet substantive progress in civil rights and social welfare came from a generally unnoticed source—the Democratic Party.

True, his Administration's "offered few signs..." But in today's South economic and social relations among the races remain a goal envisioned but unachieved. We acted upon racial segregation and in the "visionary" of President's gross mismanagement of its..." To the harsh reality became clear: The President's bungling of the economy for three years forced him to ask Congress..." to "amend my proposals..." to the right to life, liberty, and the pursuit of happiness for all. The President's new strategy might have succeeded in the South of 10 years ago, when only 1.3 million black citizens were registered to vote. Now the number has reached 2.6 million, and the white community is turning its back on the past. (In this new South, the Republican Governor of Vir..."—"...resistance"—"...respects"—disagrees with the President and urges Virginians not to resist because "we are fighting against the color line..."

Third, although our urban problems remain the most serious obstacle to equal opportunity, the Congress has committed this nation to promoting a "sound balance..." To fill this mandate, we need to encourage rural capital development that would create new regional and national growth centers in the American economy. These will ease the pressures..."economic, environmental, social, and fiscal..." The need for development in Bangladesh..."...the very moment they achieve the right and..."...to produce the funds..."...to the President's pronouncements..."...the third important change..."...to..."...for the Bengali people..."...to..."...to..."

CANCELLATION OF U.S. AID TO BANGLADESH

Mr. KENNEDY. Mr. President, after telling Congress and the American people that "all of us can be proud of the administration's record" in committing $156 million in aid to the Bengali people, the administration has reluctantly revealed that $97 million of those commitments were canceled. These statistics were submitted to the Judiciary Subcommittee on Refugees. But what pride can there be in a record of nondeliveries, bureaucratic delays, and poverty in a time of humanitarian assistance for the Bengali people, whose needs were—and remain—great?

Mr. President, the administration has a sorry record in responding to human needs in Bangladesh. They have oversold...
and announced their program. A look at the record reveals a clear contrast between rhetoric and performance. Whether this is double talk, incompetence, or both, the administration has seriously misled the American people on the release of humanitarian aid to the people of Bangladesh.

The record is clear. There remain serious unmet humanitarian needs in Bangladesh, and that three international appeals for relief assistance have not been answered in any meaningful way by this administration. The Congress has appropriated $200 million for Bangladeshi relief needs, yet we read dispatches from the field that tell us that relief programs of the United Nations have been canceled and stymied because of the lack of American contribution. And so in desperation, the Bangladesh Government has turned to the Soviet Union. Should we be proud of the fact that this administration has proved themselves to be more responsive and efficient in humanitarian assistance than the United States?

It becomes clearer every day that America's failure to recognize Bangladesh is in the way of America's ability to respond to the human needs of the Bengali people. The Congress has met these needs months ago, and has provided funds that this administration must use now.

Mr. President, I ask unanimous consent to have printed on the Record the following statements and articles on the crisis in Bangladesh and America's response to it.

There being no objection, the items were ordered to be printed in the Record, as follows:

[From the Washington Post, Mar. 16, 1972]

WEST HESITATES, DACCA GIVES PORT JOB TO SOVIET

(Dacca, West Pakistan)

DACCA.—The Soviet navy has taken a major step toward extending its influence in the waters surrounding the Indian subcontinent by taking over one of the two Western countries to come up with $50 million to finance salvage operations.

Initially, the U.S. has been slow response to a U.N. money appeal. He told reporters that the country is facing an economic crisis. In order to deliver this food to Bangladesh, the U.S. has been reprogrammed or deobligated.

The Indian government has started to ship the first 80,000 tons of 900,000 tons of wheat that it has promised into north Bengal. This is coming overland across the northern border.

U.S. AID TO BANGLADESH BEING REPROGRAMMED

WASHINGTON (Reuters) — Administration of United States relief aid for Bangladesh, formerly East Pakistan, is being reprogrammed or deobligated, the State Department disclosed yesterday.

The disclosure came following claims by Senator Edward M. Kennedy (D, Mass.) that the American administration of the American people on the extent of U.S. aid actually reaching the war-torn nation.

The state department cables said that of the total U.S. commitment, East Pakistan relief of $156 million between November, 1970, and November, 1971, $97 million was being reprogrammed or deobligated.

No one knows how much of this latter amount will go to Bangladesh, since the government of Pakistan.

In order to deliver this food to Bangladesh, the U.S. has been reprogrammed or deobligated. The agreements with the government of Pakistan.

[From Worldview, January 1972]

TAKING BANGLADESH IN STRENGTH: SELECTIVE INDUKATION IN AMERICA

(By Martin E. Marty)

The world community does not seem to care. This judgment appears in almost every analysis of the situation in Bangla Desh, formerly East Pakistan. North Americans know little about the problem, the geography of suffering, the moral issues involved. What is more, "compassion fatigue" has set in and our capacity for moral outrage is dormant, at least where the apologies of remote millions are concerned.

It can, as Hugh McCormull, for example, does in the September, 1971, Canadian Churchman, make an effort to personalize the plight of the refugee. ("One of the almost eight million driven from their homeland by soldiers of the repressive military regime from West Pakistan.")

McCullum knows that readers "don't want to be told they ought to do something or other about the Bangladesh catastrophe."

The old familiar scene from Biafra and the Middle East and South America and Vietnam. The naked child, the blotted made, the...