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State Implementation of Voting Rights Act Amendments of 1970.

To Civil Rights 2/24

This is in response to your memoranda of February 3 and 11, requesting our comments on material prepared by your Division to assist the States in implementing Titles II and III of the Voting Rights Act of 1965, as added by the Voting Rights Act Amendments of 1970 (P.L. 91-285).

With respect to the draft letter to the State Governors, we are in accord with your conclusion that section 202 does not apply to primary elections. Possibly an argument could be made the other way, cf. United States v. Classic, 313 U.S. 299 (1941), but it is clear from a comparison of Title II and Title III that Congress specified primary elections when it wanted to cover them. Mr. Marblestone of your Division informs us that the legislative history of Title II does not suggest any contemporaneous understanding that primary elections were covered.

We suggest adding to the second paragraph on the next to last page of the draft letter language something like this:

> "* * * or, of course, to make these requirements generally applicable to all elections."

We are also in agreement with the legal conclusions expressed in your material on the 18-year old vote. It seems clear that on the Court's (i.e. Justice Black's) reasoning in United States v. Arizona, 27 L. Ed. 2d 272, 278-85, section 302 would apply to Congressional primaries held under State laws, United States v. Classic, supra at 317; Klein v. United

States, 176 F. 2d 184, 186-87 (C.A. 8, 1949), cert. denied, 338 U.S. 870 (1949), and probably as well to primaries run under private auspices if they are in fact part of the process for election to Congress. See Terry v. Adams, 345 U.S. 461 (1953).

While the Court's rationale for upholding the 18-year old vote in Presidential elections is not entirely clear, it would appear to be equally applicable to Presidential primaries. As you point out, elections to party conventions present a more difficult problem and can best be dealt with on a case-by-case basis.

We have some doubts, however, regarding the desirability of furnishing the States with draft legislation to implement Title II. The approach of the proposed draft, as we understand it, is to set up a self-contained system of administering section 202, and, of course, persons who qualify to vote and vote under this statute would be entitled to vote only for President and Vice President. Title II requires no more, and the proposed draft is, therefore, quite consistent with that title. However, the States are free to go beyond the requirements of Title II in their legislation, and might, in so doing, adopt the different approach of incorporating some or all of the standards of section 202 into their general election laws. Any draft legislation offered by the Department would necessarily appear to favor one out of several possible choices, and such action by the Department would not be appropriate, in our view.

As to the text of the draft law, we have the following suggestions:

1. Section 2(b) is not entirely clear as to the consequences of inordinate delay in the mail. In a sense, one can never "insure" that the document will arrive on time. If the intent is to place all risk of delay on the sender, why not simply say that the document must be actually received in the appropriate office by the deadline date?

2. Section 3(a) uses the phrase "any person living in this state." Why not "residing"? Perhaps because of

the possibility that "residence" under State law includes a durational requirement. But to introduce, without defining, the concept of "living" as something akin to but not synonymous with residence is likely to be confusing. Perhaps some explanatory material here would be helpful.

3. In the footnote on page 3, "require" should be "permit."

4. In section 3(c), page 4, we suggest substituting in the second line the words "otherwise qualified voter" for the words "former resident," and in the fifth line inserting between the words "he" and "began" the words "ceased to be a resident of this state and." The present draft does not reflect the fact that only one already qualified as a voter in the State of former residence may take advantage of the provisions of section 202(e).

We have examined Senator Goldwater's letter of February 10 to the Deputy Attorney General, and we believe that your draft letter adequately covers the points raised in his letter and accompanying material.