

been registered while both literate and illiterate African-Americans had not been; it could require the states to seek federal permission to reinstitute old tests or to institute new ones; and it could provide for federal examiners to register qualified voters.

The nearly unanimous decision affords Congress a vast amount of discretion to enact measures designed to enforce the Amendment through broad affirmative prescriptions rather than through proscriptions of specific practices.⁵⁹ Subsequent decisions confirm the reach of this power. In one case, the Court held that evidence of discrimination in the educational opportunities available to black children in the county as compared to that available to white children during the period in which most of the adults who were now potential voters were in school precluded a North Carolina county from reinstituting a literacy test because of the past educational discrimination.⁶⁰ And, in 1970, when Congress⁶¹ suspended for a five-year period literacy tests throughout the nation, the Court unanimously sustained the action as a valid measure to enforce the Fifteenth Amendment.⁶²

Moreover, in *City of Rome v. United States*,⁶³ the Court read even more broadly the scope of Congress's remedial powers under § 2 of the Fifteenth Amendment, paralleling the similar reasoning under § 5 of the Fourteenth. The jurisdiction sought to escape from coverage of the Voting Rights Act by showing that it had not utilized any discriminatory practices within the prescribed period. The lower court had found that the City had engaged in practices without any discriminatory motive, but that its practices had had a discriminatory impact. The City thus argued that, because the Fifteenth Amendment reached only purposeful discrimination, the Act's proscription of effect as well as purpose went beyond Congress's power. The Court held, however, that even if discriminatory intent was a prerequisite to finding a violation of § 1 of the Fifteenth Amendment by the courts,⁶⁴ Congress had the authority to go beyond that and proscribe electoral devices that had the effect of discriminating.

The Court held that § 2, like § 5 of the Fourteenth Amendment, was in effect a "necessary and proper clause" enabling Con-

⁵⁹ Justice Black dissented from that portion of the decision that upheld the requirement that before a state could change its voting laws it must seek approval of the Attorney General or a federal court. 383 U.S. at 355.

⁶⁰ *Gaston County v. United States*, 395 U.S. 285 (1969).

⁶¹ 84 Stat. 315, 42 U.S.C. § 1973aa.

⁶² *Oregon v. Mitchell*, 400 U.S. 112, 131–34, 144–47, 216–17, 231–36, 282–84 (1970).

⁶³ 446 U.S. 156 (1980).

⁶⁴ *Cf. City of Mobile v. Bolden*, 446 U.S. 55 (1980).