ment, although a majority of the Justices did not agree on a rationale for the holding. Four of them thought the case simply indistinguishable from *Smith v. Allwright*, and they therefore did not deal with the central issue.[40] Justice Frankfurter thought the participation of local elected officials in the processes of the organization was sufficient to implicate state action.[41] Three Justices thought that when a purportedly private organization is permitted by the state to assume the functions normally performed by an agency of the state, then that association is subject to federal constitutional restrictions,[42] but this opinion also, in citing selected passages of *Yarbrough* and *Reese* and Justice Bradley's circuit opinion in *Cruikshank*, appeared to be suggesting that the state action requirement is not indispensable.[43] The 1957 Civil Rights Act[44] included a provision prohibiting private action with intent to intimidate or coerce persons in respect of voting in federal elections and authorized the Attorney General to seek injunctive relief against such private actions regardless of the character of the election. The 1965 Voting Rights Act[45] went further and prohibited and penalized private actions to intimidate voters in federal, state, or local elections. The Supreme Court has yet to consider the constitutionality of these sections.

Federal Remedial Legislation.—The history of federal remedial legislation is of modern vintage.[46] The 1957 Civil Rights Act[47] authorized the Attorney General of the United States to seek injunctive relief to prevent interference with the voting rights of citizens.

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[40] 345 U.S. at 477 (Justices Clark, Reed, and Jackson, and Chief Justice Vinson).

[41] 345 U.S. at 470.

[42] 345 U.S. at 462, 468–69, 470 (Justices Black, Douglas, and Burton).

[43] 345 U.S. at 466–68. Justice Minton understood Justice Black's opinion to do away with the state action requirement. Id. at 485 (dissenting).

[44] 71 Stat. 637, 42 U.S.C. §§ 1971(b), 1971(c). In a suit to enjoin state officials from violating 42 U.S.C. § 1971(a), derived from Rev. Stat. 2004, applying to all elections, the defendants challenged the constitutionality of the law because it applied to private action as well as state. The Court held that inasmuch as the statute could constitutionally be applied to the defendants it would not hear their contention that as applied to others it would be void. United States v. Raines, 362 U.S. 17 (1960), disapproving the approach of United States v. Reese, 92 U.S. 214 (1876).

[45] Pub. L. 89–110, §§ 11–12, 79 Stat. 443, 42 U.S.C. §§ 1973i, 1973j.

[46] The 1871 Act, ch. 99, 16 Stat. 433, provided for a detailed federal supervision of the electoral process, from registration to the certification of returns. It was repealed in 1894. ch. 25, 28 Stat. 36. In Giles v. Harris, 189 U.S. 475 (1903), the Court, in an opinion by Justice Holmes, refused to order the registration of 6,000 African-Americans who alleged that they were being wrongly denied the franchise, the Court observing that no judicial order would do them any good in the absence of judicial supervision of the actual voting, which it was not prepared to do, and suggesting that the petitioners apply to Congress or the President for relief.

[47] Pub. L. 85–315, 71 Stat. 634. *See* United States v. Raines, 362 U.S. 17 (1960); United States v. Alabama, 192 F. Supp. 677 (M.D. Ala. 1961), *aff'd*, 304 F.2d 583 (5th Cir.), *aff'd*, 371 U.S. 37 (1962).