because preservative of all others." Yick Wo v. Hopkins, 118 U.S. 356, 370 (1996). Senator Stewart, the leading Senate proponent of the Amendment, argued that the right to vote

> is the only measure that will really abolish slavery. It is the only guarantee against peon laws and against oppression. It is that guarantee which was put in the Constitution of the United States originally, the guarantee that each man shall have a right to protect his own liberty.68/

Congressman Shanks urged:

> No man is safe in his person or property in a community where he has no voice in the protection of either. The subjugation of his rights and liberties, the seizure and waste of his property, the degradation of his character, and the insecurity of his life are only questions of time that are not often long deferred.69/

This view was shared by numerous supporters of the Amendment,70/ who feared that with the end of

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68/ Cong. Globe, 40th Cong., 3rd Sess., p. 668.

69/ Id p. 693.

70/ Id. pp. 709 (remarks of Sen. Pomeroy), 722 (remarks of Rep. Kelley), 912 (remarks of Sen. Wilkey), 982-23 (remarks of Sen. Ross), 990 (remarks of Sen. Morton).

Reconstruction whites hostile to the Union would regain control of the Southern states and seek to strip the newly freed slaves of the rights for which the Civil War had been fought.[71] Some Republicans felt that the rights of blacks would not be secure if they could only choose among candidates of the white aristocracy which had dominated the antebellum South,[72] but Stewart and others contemplated that the right to vote would carry with it the ability of blacks to elect black officials.[73] The Amendment was intended to guard against, not only state attempts to formally "deny" blacks the right to cast ballots, but also state election schemes which "abridge" that right by so nullifying the effect of black votes as to eviscerate their value as a defense against discrimination and oppression.

The Fortieth Congress envisioned that the critical role of the Amendment would be

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71/ Id. pp. 724 (remarks of Rep. Ward), 900 (remarks of Sen. Williams).

72/ Id. p. 1626 (remarks of Sen. Edmunds).

73/ Id. p. 1627 (remarks of Sen. Wilson), 1629 (remarks of Sen. Stewart).

to protect black voters from as yet unknown forms of denial or abridgment of the right to vote. When the Amendment was passed blacks uniformly enjoyed the franchise throughout the South, which was under the control of the Union Army and the watchful eye of the Freedmen's Bureau.[74/] The concern of Congress was with possible devices and election systems which might be introduced in the South in years ahead. The prohibition against abridgement of the franchise is indicative of this concern, for there were in 1869 no practices to which "abridge" could have applied, and none is cited in the debates; the term was evidently included to encompass possible forms of partial disenfranchisement that might emerge in the future.

The election system in operation in Mobile strikes at the very heart and purpose of the Fifteenth Amendment. In form blacks are able to mark and cast ballots, but in substance they are disenfranchised. They cannot elect any black to the city commission. They cannot elect to the

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74/ Id. pp. 724 (remarks of Rep. Ward), 979 (remarks of Sen. Frelinghuysen), 981 (remarks of Sen. Frelinghuysen), 984 (remarks of Sen. Ross).

commission any white known to support fair treatment for the black community. And they cannot protect themselves against a pervasive policy of discrimination which runs rampant through the operations of the city government. In the district court the defendants proposed[75/] that an appropriate remedy for this situation would be for the court to engage in ongoing monitoring and supervision of every city agency to detect and redress any act of discrimination. Neither principles of federalism nor considerations of comity recommend such federal receivership. The Constitution requires that an effective franchise be conferred on blacks so that they can protect themselves against government discrimination. Mobile's election system must be modified to do so.

75/ Defendants Proposed Plans, p. 2.

V. THE DISTRICT COURT CORRECTLY FORMULATED A REMEDY FOR THE PROVEN VIOLATION

The Jurisdictional Statement contains a question regarding the remedy fashioned by the district court, J.S. 4, but it is not included in the Questions Presented in the Brief for Appellants, pp. 3-4. Neither the body of the Jurisdictional Statement, nor the Brief for Appellants discusses that question. We contend that the district court acted properly in formulating a remedy.

As the court of appeals noted, the defendants in the district court, despite the finding of a violation, "refused to come forward with a plan, forcing the district court to fashion a remedy."[76/]

76/ At the end of the trial the court ordered the parties to submit proposed plans in the event that the court found the at-large system unconstitutional. The defendants responded by proposing several "plans," such as denying any injunctive relief but retaining jurisdiction, all of which contemplated electing all commissioners at-large. Proposed Plans of Defendants, pp. 2-4 (filed September 8, 1976). This recalcitrant response constituted neither a "plan" relevant to Wise nor compliance with the district court's order.

J.S. 13a. Under that circumstance it was the obligation "of the federal court to devise and impose a reapportionment plan." Wise v. Lipscomb, 57 L.Ed. 2d 411, 417 (1978). Manifestly some alteration of Mobile's method of election was required to remedy the proven violation, and Chapman v. Meier, 420 U.S 1 (1975), required the district court in fashioning its own plan to use only single-member districts.

The district court's problems were further aggravated by the fact that the defendants adamantly opposed electing commissioners from single-member districts,[77/] even though commissioners are chosen in this manner in a number of other cities.[78/] Defendants also indicated

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77/ A. 33; Tr. 348-50, 1149-53.

78/ All the commissioners are chosen from single-member districts in Harrison, Hatfield, Nether Providence and Ridley, Pennsylvania. All but one of the commissioners in Weehawken, New Jersey, Vicksburg, Mississippi, and Ottawa, Illinois are chosen from such districts. Municipal Yearbook, 1978, pp. 18, 26, 30, 36-37.

that, if there were to be single-member district elections, they preferred to change the form of Mobile's government to a mayor-council plan.

Anxious to induce the defendants to play some constructive role in the preparation of a plan, the district court persuaded the city to nominate two members of a three member advisory committee to propose a remedy. The committee proposed a plan based on the mayor-council form of government in force in Montgomery, an Alabama city comparable in size to Mobile. After submission of this proposal the court invited and received comments on the plan from both counsel for the parties and other elected officials from Mobile. The district judge adopted the plan with some modifications based on those comments. Ever concerned to avoid any unnecessary intrusion into state and local affairs, the district judge also expressly provided that the legislature could at any time replace the court approved plan with any other "constitutional form of government for the City of Mobile," and could authorize the city itself to do so. J.S.

3d. The legislature, however, has never acted to adopt or authorize any other reapportionment plan.

We noted earlier that the district court did not condemn the use of the commission form of government throughout the country or even elsewhere in Alabama. The district court's order does not even forbid Mobile itself to adopt a variant of the commission system. Mobile could, with appropriate authorization by the legislature, adopt a commission form of government under which, as in other states, all or most commissioners were chosen from single-member districts. The city might also create a city council with members elected from both single member and at-large districts and provide that the at-large members would hold the executive power of the government. See Wise v. Lipscomb, 57 L.Ed.2d 411 (1978).[79/] Mobile and Alabama thus remain free to use "many innovations, numerous combinations of old and

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79/ Whether such a scheme would be constitutional would depend, inter alia, on the number of single and multi-member seats.

new devices, [and] great flexibility in municipal arrangements to meet changing urban conditions." Holt Civic Club v. City of Tuscaloosa, 47 U.S.L.W. 4008, 4012 (1978).

CONCLUSION

For the above reasons the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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