Voting Rights Act Materials (1) OA 5102 Meese, Edwin, III: Files

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DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	Michael Uhlmann to Meese re: Voting Rights Act Options, 3p	10/16/81	~~P5~~
2. memo	Elisabeth Dole to Richard Darman re: Voting Rights Act, 2p	10/7/81	P5
3. memo	Fred Feilding to Meese/Baker/Darman re: Voting Rights Act, 3p	10/8/81	P5
4. memo	Henry Zuniga to Dole re: Bilingual election provisions, 4p	10/5/81	P5
5. memo	Samuel Pierce to Craig Fuller re: Voting Rights Act, 1p	10/7/81	P5
6. memo	T.H. Bell to Fuller re: DOJ report, 1p	10/7/81	P5
7. memo	Uhlmann to Fuller re: DOJ's report, 2p	10/7/81	~~P5~~
8. memo	Same as item # 2, 2p	10/7/81	P5
9. memo	Same as item # 6, 1p	10/7/81	~~P5~~
10. memo	Same as item # 5, 1p	10/7/81	~~P5~~
11. memo	Mel Bradley to Marty Anderson/Ron Frankum re: Voting Rights Act, 1p	9/24/81	P5
12. memo	Anderson to Meese/Baker re: Voting Rights Act, 1p	9/21/81	P5
13. memo	Ulmann to Meese, et al re: extension, 2p	9/9/81	~~P5~~
14. memo	Ulmann to Meese, et al re: extension, 8p	5/18/81	P5
			12/5/00

RESTRICTIONS

P-1 National security classified information [(a)(1) of the PRA].
P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
P-3 Release would violate a Federal statute [(a)(3) of the PRA].
P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

F-1 National security classified information [(b)(1) of the FOIA].
F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
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NOV 2 1981

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

November 2, 1981

FOR: EDWIN MEESE, III

FROM: MICHAEL UHLMANN

Per our conversation, I am attaching the revised second draft on the Voting Rights Act. Please let me know if it meets your requirements.

SECOND DRAFT

The right to vote is among the most cherished of all individual rights. The people of America have consistently supported efforts to expand the franchise and to secure its exercise against force, fraud, and unlawful discrimination. By means of constitutional amendment, legislative enactment, and judicial rulings over many decades, we have demonstrated our continuing commitment to the truths that all men are created equal and that governments derive their just powers from the consent of the governed.

The Voting Rights Act stands at the center of the network of those legal protections which guard against denials or abridgements of the right to vote. Enacted in 1965 because some states and localities sought to prevent blacks from exercising the right to vote, the Act opened a new chapter in the struggle to achieve real equality for racial minorities. The Act's principal purpose was to provide badly needed enforcement tools for carrying into effect the guarantee of the Fifteenth Amendment that no one shall be deprived of the right to vote on account of race.

The Act contains both permanent and temporary provisions. The permanent provisions, which apply nationwide, generally forbid electoral devices and procedures which have as their purpose the

denial or abridgement of the right to vote because of race, color, or (since 1975) membership in a language minority group.

The temporary, special provisions of the Act were directed against only a relative handful of States (and their subdivisions). Located primarily in the South, these jurisdictions were historically associated with efforts to deny full political equality to blacks. The special provisions required these covered jurisdictions to submit for preclearance by the United States Attorney General or the U.S. District Court for the District of Columbia all future changes in electoral practices or procedures. Such changes are allowed to go into effect only after the submitting jurisdiction satisfies the Attorney General or the district court that the revisions have neither the purpose nor the effect of denying or abridging the right to vote on account of race.

The special provisions also included a so-called "bail-out" mechanism, whereby a covered jurisdiction could after a certain number of years apply to remove itself from the preclearance requirement. At the time of its original enactment, the Act set this period at five years.

In 1970, Congress reviewed the then five-year history of the Act and found sufficient evidence of continued racial discrimination in voting to warrant an extension of the preclearance provisions for another five years.

In 1975, Congress again revisited the issue, extended the preclearance provisions for another seven years (until 1982), and brought within their coverage additional jurisdictions -- in both the North and the South -- having sizeable linguistic minorities.

Today, the question is once again before Congress: Should these special provisions be extended yet a third time? The right answer may be found only after a careful assessment of the Act's history to date.

Measured by almost any yardstick, the results of the Act are impressive. Literacy tests, poll taxes, and similar devices the disciminatory use of which led to the original Voting Rights Act have been effectively eliminated. Minorities, especially blacks in the South, have made dramatic gains in voter registration and election to public office.

For example, the U.S. Commission on Civil Rights estimated in 1965 that only 6.4 percent of eligible blacks were registered to vote in Mississippi. Today, that figure stands at 67.4 percent. In the South as a whole, black voter registration is estimated to be nearly 60%, which is only slightly less than the comparable figure for whites. Similarly, the number of black elected officials in the South has increased dramatically, from less than 100 in 1965 to more than 2,000 in 1980. Louisiana and Mississippi, for example, rank among the top four states in the nation in the number of black elected officials, and the Georgia

State Assembly has the highest number of black members in the country.

Notable gains have also been achieved in a number of covered jurisdictions having sizeable Hispanic populations. In Texas, voter registration among Hispanics has increased by two-thirds in recent years, and the number elected to public office has increased by 30 percent since 1976. Even more dramatic is the case of Arizona, where Hispanics constitute 16.2 percent of the population and 13.2 percent of all elected officials.

These encouraging statistics are but a quantitative measure of a significant qualitative change for the better, especially in the South, since the Voting Rights Act became law 16 years ago. There is no doubt whatsoever that the Act has contributed greatly to the creation of a non-discriminatory political and social environment.

Heartening as this news is, it is offset by the sad truth that racial discrimination in the electoral process still exists in some parts of the country. Testimony received by the House Committee on the Judiciary in recent hearings convinced the House, as it does me, that some political jurisdictions in the country have made insufficient progress and that continued federal oversight is necessary.

The question before Congress is thus not whether the special

provisions of the Voting Rights Act should be extended for an additional period. Clearly they should. The inquiry is now focused, rather, on the terms of such an extension. The House has already made its views known, and the Senate will soon address the matter. Because I feel strongly that the preclearance provisions of the Act should be extended, I would like to offer my views on the principles which are at stake and, while doing so, address some problems which may profit from closer consideration.

My first and most important concern is that the right to vote be freely exercised on an equal basis, that it be exercised without fear or intimidation, and that it be so exercised without reference to race or color. That principle is sacred and must not be compromised in any way.

Second, I think it vital to recall that while the Voting Rights Act was enacted in part as punishment against certain jurisdictions for their past actions, it had another and more important purpose as well, which was forward-looking and constructive in nature. That purpose, which is the one that ought to guide us today, was to encourage states and localities to bring blacks and other racial minorities into the mainstream of American political life. In whatever is done, we should emphasize the positive rather than the punitive.

Third, even while we work toward an extension of the Act's

special provisions, we should neither ignore nor underestimate the importance of the very real progress which has taken place since the Voting Rights Act was enacted. This is not 1965, and the racial problems of that year are not, thankfully, those of 1981. The march toward full equality in the electoral process continues. Some are content to remark only the distance yet to be traveled; I prefer to celebrate its milestones. I therefore take pride in the fact, as should all Americans of all races, that many jurisdictions against whom the Act's special provisions are directed have made great strides to correct past abuses.

Fourth, although we properly salute the Act for its contributions, we must also recognize its exceptional character. It vests extraordinary powers in the national government over matters that, consistent with the principles of federalism, have traditionally lain within the province of state and local control. Moreover, it establishes a dual pattern of enforcement, whereby some parts of the country are subjected to more stringent legal obligations than other areas. Based on the evidentiary record before it, Congress felt in 1965 that there was good and sufficient reason -- which there was -- for differential treatment. Even so, the Supreme Court, in sustaining the constitutionality of the Act, took care to note the temporary nature of the specical provisions, the fact that covered jurisdictions had been particularly found to be neglectful of their consitutional obligations, and the fact that these jurisdictions would be given an opportunity to get out from under

the Act's special burdens.

With these principles in mind, I turn now to H.R. 3112, the Voting Rights Act extension bill recently passed by the House.

The House hearings demonstrated the desirability of extending the Act's special provisions, and the House agreed. I am fully in accord with that judgment.

As the House moved toward recommending extension of the Act, an effort was made to revise the current bail-out mechanism, in order to distinguish more adequately those jurisdictions which had complied with the law and those which had not.

But questions have been raised about the adequacy of the changes which appeared in the bill as finally passed by the House. It has been said, for example, that in the course of trying to make bail-out fairer and more flexible, the House may have made it less fair and more rigid. I am open to the possibility that new problems, unanticipated at the time of the Voting Rights Act became law, may have arisen which may warrant more stringent conditions for bail-out for some jurisdictions. Where the evidence is sufficient to sustain such a judgment, I will support it. But I do not believe that all should be made to pay for the sins of the few. The whole purpose of having a bail-out mechanism to begin with was to create an incentive for covered jurisdictions to carry out the goals of the Act. On two prior

occasions, in 1970 and 1975, Congress decided to extend the time when jurisdictions might be able to apply for bail-out. But other than extending the time, Congress imposed no new conditions.

In this year's bill, however, the House for the first time imposed new conditions for bailing out and in effect made them permanent. Some doubt has been expressed concerning the fairness of these new conditions and the adequacy of the evidence which led to their adoption. I would urge the Senate, in its review of the House bill, to consider whether the bail-out provisions are in fact an improvement over current law. In light of the well-settled and, on the whole, favorable results of current law, twice renewed by Congress, I would particularly urge the Senate to consider whether the imposition of new conditions without a time limit is necessary to carry out the noble purposes of the Act.

The House bill also amended the permanent provisions of the Act -- those which apply nationwide -- to cover not only electoral practices which intentionally discriminate but as well those which may result, whether intentionally or accidentally, in discrimination.

This change in the Act's permanent provisions would run directly counter to a Supreme Court ruling handed down only last year. For that reason alone, I think we should be cautious in seeking

to revise current law. Even more important is the fact that this change will apply to every state and local jurisdiction in the country. It in effect imposes upon the entire country a legal test that in 1965, Congress saw fit to apply only to certain jurisdictions which had been demonstrably derelict in their failure to protect minority voting rights. Neither testimony before the House committee nor the floor debate this year established a justification for departing from the constitutional standard adopted by Congress in the original Act and in all subsequent amendments. So major a change in the law should not be undertaken without a compelling and demonstrable reason for doing so. Nor should it be undertaken without a close study of all its ramifications.

In closing, let me return to the thought with which I began. The right to vote must be protected against all interference. It must be protected against all efforts which seek to impose

inequality in the electoral process. It must be protected against any attempt to impose unequal conditions because of one's race or color, or the language one happens to speak.

My Administration will remain steadfast in its opposition to all forms of racial discrimination. It will enforce the law fully and effectively against those who by clever artifice seek to return to those dark days when the free exercise of constitutional and legal rights was determined by the color of one's skin. We have come too far as a nation to reverse the progress we have made in recent years, and as long as I am President, there will be no reversal. The Voting Rights Act should be extended. I will do my utmost to see that it is.

I am sensitive to the concerns which guided the Members of the House in their deliberations. I welcome their contribution to what should be a permanent dialogue among all branches of the government on how to maintain and advance the civil rights of all Americans, irrespective of race. I ask the Senate to join that dialogue. I pledge to work with members of both Houses to produce an extension of the Voting Rights Act of which we can all be proud.

THE WHITE HOUSE

WASHINGTON

TALKING POINTS ON VOTING RIGHTS ACT
FOR MEETING WITH SENATORS BAKER, THURMOND, AND HATCH
TUESDAY, NOVEMBER 3, 1981

BACKGROUND ON THE ACT

-- The Act contains two separate sets of provisions:

(a) the permanent provisions, which generally forbid interfering with the right to vote on account of race, and which apply nationwide. Under a Supreme Court ruling handed down only last year, violation of the permanent provisions requires a showing of unlawful purpose.

(b) the temporary or so-called "special" provisions which require certain jurisdictions (principally in the South, but with the addition of the language minority provisions, elsewhere as well) to pre-clear all changes in electoral procedures with the Attorney General or the Federal District Court in Washington. The submitting jurisdiction must satisfy the Attorney General that the proposed change has neither the purpose nor the "effect" of discriminating on account of race.

Covered jurisdictions were originally given an opportunity to "bail out" of the pre-clearance requirement by 1970. That was later extended (twice) until 1982.

THE HOUSE-PASSED BILL (H.R. 3112)

-- Extended the time when covered jurisdictions could apply for bail-out from 1982 to 1984, in order to cover this decade's reapportionments. We have no objection to this.

-- Added new conditions that must be met before a bail-out order could be issued and made those conditions permanent. Some jurisdictions were shown in the House hearings to be foot-dragging, but the new bail-out requirements are to be imposed on all. The Department of Justice questions the fairness of the new bail-out test.

-- Amended the permanent provisions of the Act to impose a "results" test nationwide. This goes beyond the constitutional standard of intent set down by the Supreme Court only last year. Proponents of this change argue that intent is too difficult to prove and too easy to disguise. But, in sharp contrast to the evidentiary record amassed by Congress in 1965, there is no evidence in the House record this time to support the extension of a results test to non-covered jurisdictions throughout the nation. The Department of Justice strongly objects to this change.

DISCUSSION

-- The Administration (and the GOP) want to avoid the political accusation that we seek to "weaken" the Voting Rights Act. Objectively speaking, the House bill goes substantially beyond current law, and the delicate task is to effect such changes as we can in the House bill without at the same time appearing to "water down" needed legal protections.

-- Pursuit of the foregoing strategy depends heavily on the ability of Senators Baker and Thurmond to reach a general agreement.

-- Senator Thurmond's actual position is probably a good deal more flexible than his prior public statements may suggest. Senator Baker has been generally "liberal" on the Act.

-- One of the central difficulties with the current debate over revising and extending the Act is that the Act has been made into a major politicial symbol, whereas only lawyers for the most part are familiar with the implications of what the House did. Long-time Northern supporters of the Act, for example, may be unaware that the addition of a "results" test to the permanent provisions will subject their states and locales to possible litigation in which the legal test will be the same as that which now applies only to the specially covered jurisdictions.

-- The House bill is being held at the Senate desk at the request of the majority leadership in order to prevent dilatory tactics on the part of the Senate Judiciary Committee. This means in theory that the bill could be called up at any time, but as a practical matter, the Committee will be given opportunity to conduct hearings for some reasonable

period of time. Properly conducted, those hearings can and should become the means through which the full implications of the House bill are brought to light.

-- It would be extremely beneficial if Senator Baker could assist in providing sufficient time to develop an adequate hearing record in the Senate -- it being understood that the Committee will conclude its deliberations by a date certain. It would also be wise if he could convey the Administration's concerns with the House bill in such a way as to avoid any appearance of "weakening" the Voting Rights Act.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

02 November 1981

MEMORANDUM FOR EDWIN MEESE

FROM: BARBARA PARKER

SUBJECT: Mel Bradley Meeting with the President

Mel Bradley called at 8:39 this morning and asked that you be reminded that he is supposed to meet with the President prior to the President making an announcement on Wednesday re Voting Rights. Please confirm.

Voting Rights act

30 OCT 1981

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 30, 1981

FOR: EDWIN MEESE, III

FROM: OFFICE OF POLICY DEVELOPMENT (Michael M. Uhlmann)

RE: Statement on Voting Rights Act

1. Attached is a draft statement on the Voting Rights Act. I am not, I confess, very happy about it, and I recognize the necessity of further revising. What I tried to do was to posture the President foursquare against discrimination and in favor of the Act, while at the same time building some flexibility into his position vis-a-vis the House bill. I would particularly like to know whether my efforts to provide flexibility detract from the overall thrust, which is and should be that the President favors extension.

2. As a practical political matter, I think we have to accept whatever it is that Senators Thurmond and Baker can agree on. A meeting with them prior to locking in the President's position is essential. As they will be in part guided by what the President wants, so the President will have to adjust his position in part by what they believe to be desirable and possible.

The right to vote is among the most cherished of all individual rights. The people of America have consistently supported efforts to expand the franchise and to secure its exercise against force, fraud, and unlawful discrimination. By means of constitutional amendment, legislative enactment, and judicial rulings over many decades, we have demonstrated our continuing commitment to the truths that all men are created equal and that governments derive their just powers from the consent of the governed.

The Voting Rights Act stands at the center of the network of those legal protections which guard against denials or abridgements of the right to vote. Enacted in 1965 because some states and localities sought to prevent blacks from exercising the right to vote, the Act prohibited voting qualifications and procedures throughout the nation which were designed to deny the franchise on the basis of race or color. In addition, the Act contained a number of special provisions, which placed certain state and local governments, mainly in the South, under a five-year obligation to submit for preclearance by the United States Attorney General or the U.S. District Court in the District of Columbia all future changes in electoral practices or procedures. Such changes are approved only if the submitting jurisdiction satisfies the Attorney General or the district court that the proposed practice or procedure "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color."

In 1970, Congress reviewed the then five-year history of the Act and found sufficient evidence of continued racial discrimination in voting to warrant an extension of the preclearance provisions for another five years.

In 1975, Congress again revisited the issue, extended the preclearance provisions for another seven years (until 1982), and brought within their coverage additional jurisdictions -- in both the North and the South -- having sizeable linguistic minorities.

Today, the question is once again before Congress: Should these special provisions be extended yet a third time? The right answer may be found only after a careful assessment of the Act's history to date.

Measured by almost any yardstick, the results of the Act are impressive. Literacy tests, poll taxes, and similar devices which were in the past used on a racially discriminatory basis have been effectively eliminated. Minorities, especially blacks in the South, have made dramatic gains in voter registration and election to public office.

For example, the U.S. Commission on Civil Rights estimated in

1965 that only 6.4 percent of eligible blacks were registered to vote in Mississippi. Today, that figure stands at 67.4 percent. In the South as a whole, black voter registration is estimated to be nearly 60%, which is only slightly less than the comparable figure for whites. Similarly, the number of black elected officials in the South has increased dramatically, from less than 100 in 1965 to more than 2,000 in 1980. Louisiana and Mississippi, for example, rank among the top four states in the nation in the number of black elected officials, and the Georgia State Assembly has the highest number of black members in the country.

Notable gains have also been achieved by in a number of covered jurisdictions having sizeable Hispanic populations. In Texas, voter registration among Hispanics has increased by two-thirds in recent years, and the number elected to public office has increased by 30 percent since 1976. Even more dramatic is the case of Arizona, where Hispanics constitute 16.2 percent of the population and 13.2 percent of all elected officials.

These encouraging statistics are but a quantitative measure of a significant qualitative change for the better, especially in the South, since the Voting Rights Act became law 16 years ago. There is no doubt whatsoever that the Act has contributed greatly to the creation of a non-discriminatory political and social environment.

Heartening as this news is, it is offset by the sad truth that racial discrimination in the electoral process still exists in some parts of the country. Testimony received by the House Committee on the Judiciary in recent hearings convinced the House, as it does me, that some political jurisdictions in the country have made insufficient progress and that continued federal oversight is necessary.

The question before Congress is thus not whether the special provisions of the Voting Rights Act should be extended for an additional period. Clearly it should. The inquiry is now focused, rather, on the terms of such an extension. The House has already made its views known, and the Senate will soon address the matter. Because I feel strongly that the preclearance provisions of the Act should be extended, I would like to offer my views on the principles which are at stake and, while doing so, address some problems which may profit from closer consideration.

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Second, I think it vital to recall that while the Voting Rights Act was enacted in part as punishment against certain

jurisdictions for their past actions, it had another and more important purpose as well, which was forward-looking and constructive in nature. That purpose, which is the one that ought to guide us today, was to encourage states and localities to bring blacks and other racial minorities into the mainstream of American political life. In whatever is done, we should emphasize the positive and de-emphasize the punitive.

Third, even while we work toward an extension of the Act's special provisions, we should neither ignore nor underestimate the importance of the very real progress which has taken place since the Voting Rights Act was enacted. This is not 1965, and the racial problems of that year are not, thankfully, those of 1981. The march toward full equality in the electoral process continues. Some are content to remark only the distance yet to be traveled; I prefer to celebrate its milestones. I therefore take pride in the fact, as should all Americans of all races, that many jurisdictions against whom the Act's special provisions are directed have in fact succeeded in correcting past abuses.

Fourth, although we properly salute the Act for its contributions, we must also recognize its exceptional character. It vests extraordinary powers in the national government over matters that, consistent with the principles of federalism, have traditionally lain within the constitutional province of states and localities. Moreover, it establishes a dual pattern of enforcement, whereby the test for what constitutes racial discrimination in voting rights is more stringent in some parts of the country than in others. Based on the evidentiary record before it, Congress felt in 1965 that there was good and sufficient reason -- which there was -- for differential treatment.

Even so, the Supreme Court, in sustaining the constitutionality of the Act, took care to note the Act's temporary nature, the fact that the jurisdictions covered by its special provisions had been particularly found to be neglectful of their consitutional obligations, and the fact that these specially covered jurisdictions would be given an opportunity to get out from under the Act's special burdens. This is what those familiar with the Act refer to as "bail-out," and it has been part of the Act from the beginning. The idea of bail-out is based upon concepts of fundamental fairness. If the bail-out provisions are seen to be punitive or vindictive, they will fail the test of fairness.

With these principles in mind, I turn now to H.R. 3112, the Voting Rights Act extension bill recently passed by the House.

The House hearings demonstrated the desirability of extending the Act's special provisions, and the House agreed. I am fully in accord with that judgment.

The House also indicated some concern that the bail-out

provisions of current law should, in the interest of fairness, be amended. I am also in agreement with that sentiment.

But questions have been raised about some of the particular provisions of the House bill. It has been said, for example, that in the course of trying to make bail-out fairer and more flexible, the House may have made it less fair and more rigid. I am open to the possibility that new problems, unanticipated at the time of the Voting Rights Act became law, may have arisen which may warrant more stringent conditions for bail-out. Where the evidence is sufficient to sustain such a judgment, I will support it. But I do not believe that all should be made to pay for the sins of the few. And as doubt has been raised about the adequacy of evidence on this point, I would enjoin the Senate to examine the record carefully, to determine (a) whether, as some beleive, the bail-out mechanism in the House bill is in fact more stringent than current law and (b) whether the facts are sufficient to justify the recommended change. I would especially ask the Senate to consider whether the bail-out tests ought to remain, as the House bill suggests, a permanent rather than a temporary provision of law.

The House also amended the permanent provisions of the Act -- those which apply nationwide -- to cover not only electoral practices which intentionally discriminate but as well those which may result, whether intentionally or accidentally, in discrimination.

This change in the Act's permanent provisions would run directly counter to a Supreme Court ruling handed down only last year. For that reason alone, I think we should be cautious in seeking to reverse current law. Even more important is the possibility that the proposed change could effect a major alteration in American jurisprudence. Before such a step is taken, I would want to make sure that all its ramifications are well understood. I would therefore urge the Senate, in its consideration of the House bill, to study this issue most carefully. With the Supreme Court and a majority of the House, I concur in the view that neither the Constitution nor the Act requires proportional representation by race. The danger under the proposed House bill, however, is that it invites the very goal the propriety of which it seeks to deny. If it is said, for example, that certain electoral arrangements result in a "dilution" of minority voting strength, against what standard are the courts to judge a violation of law? The question under the House bill will be, "Diluted" as compared to what? There was no virtually testimony before the House Committee on that point, and none during the floor debate. The courts will have little in the way of legislative guidance to determine how they shall enforce the law. I would urge the Senate, therefore, to examine the consequences of this change with particular care.

In closing, let me return to the thought with which I began. The right to vote must be protected against all interference. It

must be protected against all efforts which seek to impose inequality in the electoral process. It must be protected against any attempt to impose unequal conditions because of one's race or color, or the language one happens to speak.

My Administration will remain steadfast in its opposition to all forms of racial discrimination. It will enforce the law fully and effectively against those who by clever artifice seek to return to those dark days when the free exercise of constitutional and legal rights was determined by the color of one's skin. We have come too far as a nation to reverse the progress we have made in recent years, and as long as I am President, there will be no reversal. The Voting Rights Act should be extended. I will do my utmost to see that it is.

I am sensitive to the concerns which guided the Members of the House in their deliberations. I welcome their contribution to what should be a permanent diaglogue on how to maintain and advance the civil rights of all Americans, irrespective of race. I ask the Senate to join that dialogue. I pledge to work with members of both Houses to produce an extension of the Voting Rights Act of which we can all be proud.

16 OCT 1981

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 16, 1981

FOR: EDWIN MEESE, III

FROM: MICHAEL M. UHLMANN, OFFICE OF POLICY DEVELOPMENT

SUBJECT: Voting Rights Act Options

1. Highlights of House-passed bill

- o extended the pre-clearance and language-minority provisions until 1992.
- o modified the bail-out procedures.
- o postponed the date (from 1982 until 1984) when jurisdictions might apply for a bail-out.
- o added an "effects" test to the Act's permanent provisions.

Comment:

a. The changes in bail-out are more cosmetic than real. The sponsors claim to have ameliorated some of the complaints of the current Act's bail-out procedures, but upon close examination the new requirements are equally as strong, perhaps even stronger, than current law.

b. The addition of an "effects" test to the Act's permanent provisions is a major change in the law, far more so than the bail-out changes.

The permanent provisions, which apply nationwide, generally proscribe denials of the right to vote on account of race, color, national origin, linguistic minority status. The Supreme Court has ruled that proof of discriminatory intent is prerequisite to a violation of this generic provision.

The prinicpal result of an "effects" test will be to invite litigation almost anywhere in the country where minority political strength is deemed to be less than

what it should be. The argument will be that certain electoral arrangements have a "dilutive effect on minority political power. Multi-member districts and at-large systems will be targeted for attack as per se discriminatory.

Whatever the final outcome of such litigation, it will encourage the view already too far advanced that the Act creates a right to be represented by a member of one's own race, or that only a fixed minimum registration can effectively guarantee the rights sought to be protected by the Act.

It will also tempt a Democrat-dominated federal bench to redraw a large portion of the American political map in the name of protecting "voting rights", when in fact the issue has less to do with the right to vote than it does with raw political power.

2. Possible Options

a. Endorse the House bill.

Pro: Will be hailed by the civil rights community as an act of statesmanship.

Con: Will be attacked, heavily in private, to a lesser extent in public, by conservatives who view the House bill as worse than current law.

b. Support extension of the Act's special provisions, but seek further modification of the bail-out procedures and elimination of the "effects" test in the permanent provisions.

Pro: Will please conservatives mightily. Will prevent enactment into law of certain principles that over time could work considerable mischief in the courts.

Con: Will be attacked by the civil rights community as "watering down" a bi-partisan House bill which passed by an overwhelming majority.

c. Endorse extension of current law.

Pro: From a legal standpoint, a preferable position compared to the House bill. Much more difficult to attack as a "watering down" of legal protections. Perhaps the easiest way to avoid enactment of the "effects" test.

Con: Because of the House action, may be considered a moot question. May make life more difficult for Southerners who voted for the House bill, using the change in bail-out as a political fig-leaf. May be attacked as a weakening of the new "protections" provided by the House bill.

d. (1) Strong presidential statement endorsing the Act and setting forth certain guiding principles that ought to govern its extension;

(2) Make favorable reference to, without specifically endorsing, the House bill; and

(3) Announce that the subject is too important to become a political football and that therefore, what the President wants is a bi-partisan bill which will unite all races and regions of the country and which can be agreed upon by both Houses in fairly short order.

Pro: If the rhetoric is right, will make it difficult to attack as a weakening of either current law or the House bill. Will enable Senate conservatives to fashion a better bill without directly involving the White House in high-risk negotiations over detail. Will in fact produce a bill that will be generally acceptable to the civil rights community.

Con: Depends on the willingness of Senate Republicans to fashion a bill that does not differ radically from current law and/or the House bill. If, e.g., Baker and Thurmond cannot reach agreement, the White House may be drawn into detailed no-win negotiation.

Comment:

It is politically imperative that the President favor extension of the Act. The question for some time has been not whether, but how that is to be accomplished. For the President to seek major changes in the Act, or in the House-passed bill, will open him to the charge that he seeks to undercut the Act's protections.

At the same time, we should not blink the fact that the House bill goes far beyond current law. The addition of the "effects" test to the permanent provisions transforms the Act from a statute concerned with equality of rights into a litigative weapon concerned with guaranteeing minority political power. If it is at all possible to do so without jeopardizing the President's dedication to protecting voting rights, the "effects" test should be stricken from the House bill.

cc: Martin Anderson
Craig Fuller

For Ed Meese

THE WHITE HOUSE
WASHINGTON

9/8

Ed,

I attach copies of all memos given to you in the Voting Rights meeting. The originals will be maintained in the OCA "comments" file on this subject.

Ken Cribb

Voting Rights Act

THE WHITE HOUSE

WASHINGTON

October 7, 1981

MEMORANDUM FOR: RICHARD G. DARMAN

FROM: ELIZABETH H. DOLE

SUBJECT: Voting Rights Act

There is no compelling reason now for the President to commit himself to a position on the Voting Rights Act which contains chapter and verse details on all issues. The House has already passed its version of amendments to the Act (HR 3112) by a margin of 389 to 24. Considering the strength of that vote in the House, and the considerable favorable vote from Republicans, it seems likely that many minds are already made up concerning the extension of the Act. It seems likely that a similar measure will be passed in the Senate, and that there will ultimately be a House-Senate compromise on the final details.

In view of these events, there is little to be gained from a "nuts and bolts" discussion of the various alternative suggestions from the Attorney General. If the President offers a detailed alternative to the House Bill, it would simply subject him to comparison, and hence a defense, of each detail on an item by item basis.

A less risky approach might be for the President to "take the high road", recommending extension of the Act, and the protection of voting rights in general. This would be consistent with his recent public comments concerning the Act. In deference to the conclusions of the Attorney General's report, he could cite the requirement in some areas to continue the preclearance provisions in order to protect the rights of voters. At the same time, he could pledge his strong support for fair bail-out procedures which give covered jurisdictions a reasonable opportunity to remove themselves from Section 5 coverage. This was also a major conclusion of the Attorney General's report which runs counter to the House-passed bill.

From a practical and political standpoint, taking this approach has several advantages. It would send an appropriately positive signal to minority communities and civil rights advocates without getting the President directly involved in the various compromise proposals which might evolve.

The President's conservative supporters will appreciate the President's commitment to fair bail-out, their major concern on this issue. The procedures contained in H.R. 3112 are so stringent as to realistically preclude any bail-out at all, and will be a source of complaint.

In addition to the bail-out issue, it would be most beneficial for the President to make a positive statement concerning the value of the bilingual provisions. These provisions have already been approved for extension in the House bill. The omission of a statement in favor of bilingual election materials will be viewed as opposition from the Administration on this issue. In view of the growing numbers of Hispanics in key states, and the increase in Hispanic Reagan voters in the past election, Hispanics have been targeted as a high-potential constituency for the future. Since the bilingual provisions are not of burning interest to the President's conservative supporters, there is little to be lost and much to be gained by embracing these provisions.

It will not be necessary, we feel, for the President to comment on the subject of bail-out jurisdiction to local federal courts. This proposal is strongly opposed by Black and Hispanic groups, who desire to maintain jurisdiction in the D.C. District Court. (An amendment proposed to the House bill in this regard was defeated.) While conservative organizations would certainly prefer to see the provision for bail-out jurisdiction in the local federal courts, they are not making a major issue of this point. It is their feeling that the bail-out cases will ultimately find their way to the Supreme Court in any event. Thus, it appears that there will be no major controversy from conservatives on this issue, so the President need not specifically address himself to it in his policy statement.

RECOMMENDATIONS:

- The President should recommend extension of the Act and protection of voting rights in general.
- The President should make a positive statement regarding the value of the bilingual provisions.
- While citing the need in some areas to continue preclearance provisions, and to provide fair bail-out provisions, the Administration should avoid a detailed analysis of various proposed alternatives.
- The President announces his support for continued D.C. District Court jurisdiction for both preclearance and bail-out.
- Since conservatives do not strongly support bail-out based on low minority population percentages and minorities are in opposition, the President should not support automatic preclearance bail-out based on minority population percentages.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 8, 1981

FOR: EDWIN MEESE III
JAMES A. BAKER III
RICHARD G. DARMAN

FROM: FRED F. FIELDING

SUBJECT: Voting Rights Act

I have reviewed the Attorney General's October 2, 1981, memorandum on possible Voting Rights Act legislation, and have the following comments:

On the central question involving the pre-clearance provisions of Section 5 of the Act, Justice's general approach of supporting adoption of "modified bail-out" provisions should be followed in some form. Neither simple extension of the pre-clearance provisions (Justice's Alternative Four) nor simple failure to extend (not listed as an alternative) seems politically feasible, and there are serious, evident policy objections to either course. Extending the pre-clearance provisions nationwide (Alternative Five) faces similar political and policy problems. Also, this would raise serious questions whether universal application of these unusual provisions for Federal pre-clearance of proposed changes in state law is Constitutionally permissible absent a strong showing of past discrimination by the states covered under such a scheme.

The goal, then, should be adoption of an "extension plus bail-out" formula that (a) permits presently covered states and other political units to escape pre-clearance when appropriate, (b) to the degree possible, cannot plausibly be portrayed as "proof" of Administration "insensitivity" to minority voters by groups who are opposed to anything other than simple extension of the pre-clearance provisions, and (c) would not create unduly complicated or expensive administrative and litigation burdens.

Some of the specific ideas advanced by Justice as parts of any bail-out formula appear, in general, to meet these criteria and seem worthy of support. These include the proposals to permit counties and other discrete political units within states wholly covered by Section 5 to bring individual bail-out actions; to exempt automatically special service and utility election districts, as well as other political units that have very low percentages of minority residents; and to allow bail-out actions to be brought in the local Federal District Courts rather than, as at present, solely in the United States District Court for the District of Columbia. These will not be entirely noncontroversial; but each seems a reasonable, defensible proposal.

However, I have serious reservations about some features of the bail-out formulas listed as Justice Alternatives One, Two and Three. With respect to Alternatives One and Two, the principal difficulty is that the kinds of litigation that would result would be both protracted and complex, and hence would require, as Justice notes, an Administration commitment "to seek the additional resources needed to carry out this Department's responsibilities under the Act."

One possibility for eliminating this complexity would be to delete some of the standards the Justice formulas include in the list of things a political unit seeking bail-out would have to prove. For example, under Alternative One, Justice would require such a unit to prove that it has not engaged in discriminatory practices in registration or the conduct of elections for the requisite period of time. Justice accurately observes that this is the "'compliance' criterion which likely will cause the greatest amount of litigation." One could avoid this problem by requiring a county or other political unit simply to show that no judgment has been entered against it in any public or private suit charging such discrimination. Concern that this would make bail-out "too easy" could be alleviated by providing for automatic resubjection to pre-clearance if discrimination of this sort is established in any subsequent law suit.

In general, this approach of simplifying bail-out procedures, but providing strict rules for automatic resubjection to pre-clearance provisions in the event of post-bail-out discrimination, may have some promise. It should shorten and simplify bail-out litigation, eliminating the need to seek substantial additional appropriations for the Civil Rights Division at Justice. At the same time, it should preserve, to a considerable degree, the prophylactic effect of the Act on contemplated discrimination that supporters of the Act contend is one of its chief virtues.

Justice's Alternative Three -- which would provide for bail-out based on percentages of minority voter registration -- is troublesome for the reasons Justice notes. In addition to lack of data on registration by race in most affected jurisdictions -- and the problems that might result from encouraging such data to be compiled -- I do not think the President should endorse an approach so closely linked to "racial balance" and "quota" ideas. For similar reasons, I agree that the Administration should not support adding a simple "effects test" for evaluating whether given election law changes are discriminatory. Our approach to all such issues should be consistent with a philosophy of a race-blind, not race-conscious, legal system.

With respect to the Act's provisions involving bilingual elections and language minority groups, I also agree that the Administration not propose any extension of such provisions. In general, these are due to expire in August, 1985, and can be exam-

ined closer to that time. Addressing these issues now would further complicate an already difficult and controversial matter.

I have two other, more general comments. First, I agree that it would be a good idea to make non-discriminatory completion of any reapportionment required by the 1980 census a condition to bringing a bail-out action. This is probably a factor of considerable concern to interested minority groups. Second, we should try to limit any extension of pre-clearance to no longer than four or five years, so that the issue can be reexamined, in light of the experience at that time, in 1985 or 1986. In this regard, I would not advance, at this time, the proposal for automatic "sunset" provisions to take effect in 1992.

THE WHITE HOUSE

WASHINGTON

October 5, 1981

MEMORANDUM FOR: ELIZABETH H. DOLE

FROM: HENRY ZUNIGA HZ Diana

VIA: RED CAVANEY/DIANA LOZANO

SUBJECT: Bilingual Election Provisions of the Voting Rights Act

The bilingual election provisions of the Voting Rights Act were passed in 1975 and are in effect through 1985. These provisions call for bilingual elections (bilingual ballots, information, and oral instructions) in certain covered jurisdictions. These jurisdictions include the State of Texas and Arizona plus selected counties and precincts in other states.

At issue at this time is whether these provisions should be extended as part of any amendment of the Voting Rights Act or whether to delay action until the 1985 expiration date. Hispanic civil rights groups have joined with Black civil rights groups and others to form a coalition advocating the inclusion of the bilingual provisions as part of the amendments to the Voting Rights Act. The bilingual provisions have become the "Hispanic issue" among those actively supporting the Voting Rights Act.

Opponents of the bilingual provisions advance five major arguments against an extension. These are listed below, with the corresponding counterarguments put forth by Hispanic spokesmen.

1. The right to vote is an American right and should be exercised in the official language--English.

To deny a citizen the right to vote because of a language difference is to deny him his constitutional rights. Many Hispanics, such as Mexican-Americans in the southwest, do not speak English well because of inadequate educations and discriminatory practices. Puerto Ricans educated in Puerto Rico were taught in their native language--Spanish, and this has not been considered unAmerican. Many recent immigrants have fallen into an environment where Spanish is spoken and, hence, have not felt the need to learn English. In fact, naturalization practices now permit those over 50 to be sworn-in as citizens without any English requirements.

The elections that same year in Orange County, California, indicate that the bilingual election costs were 3.4% of the total cost of the elections; Santa Clara County, California, reported 1.5% of the total. New Mexico which has experienced bilingual elections since 1912 reports the extra cost as "minimal."

Congressman Paul McCloskey (R-California), long an opponent of bilingual elections, now states that costs are no longer an issue.[2/]

4. American citizens do not need assistance to vote in a language other than English.

Recent statistics and results of surveys[3/] indicate that the bilingual material and assistance is in fact needed, used and determined to be helpful by the user. In the same 1980 election in Los Angeles, there were 45,000 separate requests for bilingual material. A recent survey indicated that 87% of Hispanics surveyed in Bexar County, Texas (San Antonio), and 76.6% in Nueces County, Texas (Corpus Christi), found the bilingual material to be helpful.

5. The provision of bilingual election materials has not significantly increased voter participation.

Actual election returns and registration figures, which compare 1976 and 1980, show sharp gains in registrations and in Hispanic citizens actually voting.

The number and percentage of Hispanics registered to vote has increased by 30%, between 1976 and 1980, in the Country, with increases in California, Colorado and Texas well above that figure (Texas at 64%). The number and percentages of Hispanics who actually voted also increased by 19% between 1976 and 1980 with those same three states well above the national average (Texas had a 49% increase). A heavy Hispanic state showing an increase at near the national level is New Mexico. New Mexico, however, has enjoyed bilingual elections since 1912, hence there was no difference in procedure between 1976 and 1980. New Mexico also shows the highest percentage of Hispanics in elected state positions. It is also important to note that New Mexico has a 100% Republican representation in Congress, including the only Hispanic Republican Congressman. The bilingual provision have not been an impediment to Republicans in New Mexico.

2/ Statement dated June 10, 1981 before House Subcommittee on Civil and Constitutional Rights.

3/ Texas Advisory Committee to the U.S. Commission on Civil Rights, January 1980.

A recent survey[1/] points out that 43% of the Hispanic community speaks "only enough English to get by." Only Mexican Americans are Hispanics primarily native born (53%), with foreign born figures of 82% for Puerto Ricans, 93% for Cubans and 93% for other Hispanics. Over 52% of Cubans and 61% of Puerto Ricans know little or no English.

What this data highlights is that bilingualism is a growing trend, and one which is likely to grow rather than diminish. Thus large percentages of foreign born, non-English speaking Hispanics will become voting citizens in increasing numbers (note: Puerto Ricans are voting citizens by birth) and will depend on bilingual elections to exercise their right to vote.

2. Bilingualism fosters a "separatist" movement and risks problems similar to those being experienced in Quebec.

There is no "separatist" movement among Hispanics in this country of any size or influence. The Hispanics who are seeking bilingual election materials are not seeking total bilingualism in America. They are seeking only the necessary assistance to exercise their constitutional right to vote.

Far from being separatists, the beneficiaries of bilingual election materials are among the more conservative Hispanics. The senior citizen and recently naturalized citizen are generally very patriotic and upright and seeking to become an integrated part of the American mainstream. It was a generally accepted fact during the campaign that, aside from the upwardly mobile professionals, the senior citizen and recently naturalized were natural Reagan constituents. This was the basis of rationale for the large expenditures of campaign funds for materials in Spanish. This was precisely the target voter we were seeking and were quite successful in attracting.

3. Costs of bilingualism are prohibitive and/or wasteful since bilingual material is neither needed nor used.

Arguments that bilingual elections are too costly are no longer based on fact. Many examples now available show the cost of a bilingual election as minimal. In Los Angeles County, where 30% of the population is Hispanic, the 1980 elections cost $7 million dollars, the bilingual elections cost $135,000 or 1.9% of the total cost.

1/ Yankelovich, Skelly and White, Inc., "Spanish USA, Summary of Findings."

SUMMARY

The President and the Administration should clearly support the inclusion of the bilingual provisions in the Voting Rights Act position for the following additional reasons:

* The bailout provisions and other points in the Voting Rights Act are far too technical and sophisticated for anyone but a student of the Voting Rigths Act to understand. The average Hispanic will not understand the position the Administration takes. What he or she will understand, however, will be whether the President included Hispanics in his position -- did he support the bilingual provisions. This is an important issue to Hispanics. It will be made far more important to the Hispanic community by the Hispanic civil rights groups who will quickly and effectively spread the word that the President left them out.

* Bilingual elections have been ordered by a federal court in New York in 1974, Tones v. Sachs. This case was followed by a second court decision in 1975, Ortez v. New York State Board of Elections, which required bilingual elections statewide.

CONCLUSION

Administration support of the bilingual provisions would extend a law which is politically important to the Hispanic community; which is minimally controversial, except during the congressional hearings; which has been shown to be needed and used by Hispanics; and which has been previously ordered by a federal court independent of legislative action.

THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

October 7, 1981

The Honorable Craig L. Fuller
Deputy Assistant to the President
Director, Office of Cabinet
Administration
The White House
Washington, D.C. 20500

Dear Mr. Fuller:

I have reviewed the Attorney General's report on "Amending the Voting Rights Act."

I strongly favor extension of the "special provisions" of the Voting Rights Act without change. I am sympathetic to the reasons expressed by the Attorney General for disfavoring an extension of as much as 10 years. However, I believe that the extension should be for a period not shorter than that required for a full and deliberate evaluation of the impact of post-1980 redistricting. Therefore, I recommend and urge that the President support straight extension of the special provisions for at least five years.

Very sincerely yours,

Samuel R. Pierce, Jr.

THE SECRETARY
WASHINGTON, D.C. 20202

October 7, 1981

MEMORANDUM FOR THE HONORABLE CRAIG FULLER, DIRECTOR
OFFICE OF CABINET ADMINISTRATION

SUBJECT: DOJ Report on the Voting Rights Act

Of the options listed in the Attorney General's letter to the President dated October 2, 1981, Option II is preferable, for the following reasons:

1. Some sort of "bail-out" provision is required because absent a showing of intentional discrimination, States should not be subjected to procedures designed to preclude such discrimination. States have been subject to the Voting Rights Act with no possibility of getting out from under it. The first three options provide for some kind of bail-out scheme, but that provided in Option II is preferable.

2. In Option II, jurisdictions smaller than States can bail-out, even if the State in which that jurisdiction lies could not bail-out.

3. Under Option II, a jurisdiction can bail-out on proof that, during a preceding period of time, it did not deny or abridge voting rights on the ground of race or membership in a language minority group in violation of the Fourteenth or Fifteenth Amendment, and that it did not make any change in its voting laws that were discriminatory in purpose or intent. The significance of this provision is that purposeful, i.e., intentional, discrimination is required for a finding of a violation. Intent is required for a finding of a violation of the Fourteenth and Fifteenth Amendments.

4. Also, under this option, local courts, rather than the District Court for the District of Columbia, have jurisdiction over lawsuits brought under the Act.

T. H. Bell

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 7, 1981

FOR: CRAIG FULLER

FROM: MICHAEL UHLMANN

SUBJECT: DOJ's Report on the Voting Rights Act

1. The political "given" is that the President must be postured as favoring extension of the Act's special provisions. The question from the beginning has been whether and to what extent extension should be combined with a loosening of the extant bail-out provisions.

2. For a time, it appeared that the civil rights community would remain inextricably wedded to (a) extension of the special provisions (including the language minority sections) for ten years; and (b) the addition of an "effects" test to the Acts's permanent provisions. As a practical matter, this would have presented the President with the constricted option of either favoring (a) and (b), or being accused of opposing the protection of voting rights for racial and linguistic minorities.

   As the bill moved through the House Judiciary Committee, however, the proponents of simple extension changed tactics -- in part because they feared the worst from Republican and Southern Democratic opposition. After much internal debate, and some sturm und drang among civil rights lobbyists, a change in tactic was effected: they agreed for the first time to liberalize the bail-out procedures. In a broad political sense, it is not decisively important that the House-passed language on bail-out is more cosmetic than real, for a premise has been conceded -- namely, that some modification of bail-out procedures is called for. This is an invitation to Senate conservatives to seek further modifications, and unless the President endorses the House-passed bill (which I would not recommend), the Administration will be inescapably involved in negotiating an alternative.

3. Because of the House action, a presidential endorsement of simple extension is no longer politically relevant.

4. The President's options are these:

(a) To endorse the House-passed bill.

Pro: Will be hailed as a strong gesture in favor of voting rights.

Con: Will annoy Senate conservatives mightily, and because they are able to control Senate timing, the President will have to expend substantial political capital in an effort to force an essentially Democratic bill down the throats of his fellow Republicans.

(b) To support specifically one (or a combination) of DOJ's proposals for modifying the bail-out provisions, and state the reasons for doing so, packaged in rhetoric clearly supportive of voting rights in general and of the Act in particular. This might take the form of a letter to the Senate leadership or to Chairman Thurmond.

Pro: If the particular provisions are in effect pre-cleared with both Senate leadership and leading civil rights advocates, could be a sure political winner.

Con: If substantial opposition arises either among Senate moguls or civil rights leaders, the strategy will backfire.

(c) To issue a general statement of guiding principles, making some particular (but not agonizingly detailed) reference to the House-passed bill, and pledge to work with both the Senate and the civil rights community to produce a bipartisan bill that both Houses can endorse.

Pro: Will force certain segments of the civil rights community to bargain in good faith and, by involving them in the negotiating process, ensure their support for the final resolution. (They will play because they fear the worst from Senate conservatives and will want Administration support to weaken Senate opposition.)

Con: Certain civil rights leaders may adopt an all-or-nothing stance on the House-passed bill, characterizing the President's position as an effort to "water down" voting rights protections.

THE WHITE HOUSE

WASHINGTON

October 7, 1981

MEMORANDUM FOR: RICHARD G. DARMAN

FROM: ELIZABETH H. DOLE

SUBJECT: Voting Rights Act

There is no compelling reason now for the President to commit himself to a position on the Voting Rights Act which contains chapter and verse details on all issues. The House has already passed its version of amendments to the Act (HR 3112) by a margin of 389 to 24. Considering the strength of that vote in the House, and the considerable favorable vote from Republicans, it seems likely that many minds are already made up concerning the extension of the Act. It seems likely that a similar measure will be passed in the Senate, and that there will ultimately be a House-Senate compromise on the final details.

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From a practical and political standpoint, taking this approach has several advantages. It would send an appropriately positive signal to minority communities and civil rights advocates without getting the President directly involved in the various compromise proposals which might evolve.

The President's conservative supporters will appreciate the President's commitment to fair bail-out, their major concern on this issue. The procedures contained in H.R. 3112 are so stringent as to realistically preclude any bail-out at all, and will be a source of complaint.

In addition to the bail-out issue, it would be most beneficial for the President to make a positive statement concerning the value of the bilingual provisions. These provisions have already been approved for extension in the House bill. The omission of a statement in favor of bilingual election materials will be viewed as opposition from the Administration on this issue. In view of the growing numbers of Hispanics in key states, and the increase in Hispanic Reagan voters in the past election, Hispanics have been targeted as a high-potential constituency for the future. Since the bilingual provisions are not of burning interest to the President's conservative supporters, there is little to be lost and much to be gained by embracing these provisions.

It will not be necessary, we feel, for the President to comment on the subject of bail-out jurisdiction to local federal courts. This proposal is strongly opposed by Black and Hispanic groups, who desire to maintain jurisdiction in the D.C. District Court. (An amendment proposed to the House bill in this regard was defeated.) While conservative organizations would certainly prefer to see the provision for bail-out jurisdiction in the local federal courts, they are not making a major issue of this point. It is their feeling that the bail-out cases will ultimately find their way to the Supreme Court in any event. Thus, it appears that there will be no major controversy from conservatives on this issue, so the President need not specifically address himself to it in his policy statement.

RECOMMENDATIONS:

- The President should recommend extension of the Act and protection of voting rights in general.
- The President should make a positive statement regarding the value of the bilingual provisions.
- While citing the need in some areas to continue preclearance provisions, and to provide fair bail-out provisions, the Administration should avoid a detailed analysis of various proposed alternatives.
- The President announces his support for continued D.C. District Court jurisdiction for both preclearance and bail-out.
- Since conservatives do not strongly support bail-out based on low minority population percentages and minorities are in opposition, the President should not support automatic preclearance bail-out based on minority population percentages.

THE SECRETARY
WASHINGTON, D.C. 20202

October 7, 1981

MEMORANDUM FOR THE HONORABLE CRAIG FULLER, DIRECTOR
OFFICE OF CABINET ADMINISTRATION

SUBJECT: DOJ Report on the Voting Rights Act

Of the options listed in the Attorney General's letter to the President dated October 2, 1981, Option II is preferable, for the following reasons:

1. Some sort of "bail-out" provision is required because absent a showing of intentional discrimination, States should not be subjected to procedures designed to preclude such discrimination. States have been subject to the Voting Rights Act with no possibility of getting out from under it. The first three options provide for some kind of bail-out scheme, but that provided in Option II is preferable.

2. In Option II, jurisdictions smaller than States can bail-out, even if the State in which that jurisdiction lies could not bail-out.

3. Under Option II, a jurisdiction can bail-out on proof that, during a preceding period of time, it did not deny or abridge voting rights on the ground of race or membership in a language minority group in violation of the Fourteenth or Fifteenth Amendment, and that it did not make any change in its voting laws that were discriminatory in purpose or intent. The significance of this provision is that purposeful, i.e., intentional, discrimination is required for a finding of a violation. Intent is required for a finding of a violation of the Fourteenth and Fifteenth Amendments.

4. Also, under this option, local courts, rather than the District Court for the District of Columbia, have jurisdiction over lawsuits brought under the Act.

T. H. Bell

THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

October 7, 1981

The Honorable Craig L. Fuller
Deputy Assistant to the President
Director, Office of Cabinet
Administration
The White House
Washington, D.C. 20500

Dear Mr. Fuller:

I have reviewed the Attorney General's report on "Amending the Voting Rights Act."

I strongly favor extension of the "special provisions" of the Voting Rights Act without change. I am sympathetic to the reasons expressed by the Attorney General for disfavoring an extension of as much as 10 years. However, I believe that the extension should be for a period not shorter than that required for a full and deliberate evaluation of the impact of post-1980 redistricting. Therefore, I recommend and urge that the President support straight extension of the special provisions for at least five years.

Very sincerely yours,

Samuel R. Pierce, Jr.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 24, 1981

'81 SEP 24 P1:10

TO: MARTY ANDERSON
THRU: RON FRANKUM

FROM: MEL BRADLEY

SUBJ: The 1965 Voting Rights Act

As you know, the Voting Rights Act has been the subject of review and debate for some time now.

Although I have not seen a report from the Justice Department, it is my understanding that the report offers four alternatives. Three of the alternatives essentially call for modification of the bail out procedure. The fourth recommends simple extension for five years.

I recommend that the President voice his strong support for a simple extension of the Bill. My rationale for this position is influenced by several observations:

1. The President should not be drawn into a protracted debate on this sensitive issue and be forced to argue for alternative approaches---preclearance/no preclearance, bailout/no bailout, etc. That path is laden with pitfalls. The President should simply support extension of the Bill and allow the Congress to debate possible modifications.

2. History should show that President Reagan clearly supported the Voting Rights Act without restrictions, conditions and stipulations which may have compromised the Act's effectiveness.

3. Action or inaction on this issue carries great political significance. If the President and/or the Republican Party are perceived as the enemy of the Voting Rights Bill, a national political backlash could develop, particularly in the South. There would be impetus for a massive mobilization of black voter registration and "education" using the Republican Party as the object of opposition. The results of such a mobilization could be disasterous to the ground gained in recent years. Southern Republican elected officials could suffer losses and setbacks because large numbers of southern blacks, many of whom ordinarily would not vote, would surely vote against the Republican candidates.

4. The President regards voting as the most sacred right of free men and women. The American people share this sentiment. It is safe to assume that the public expects the President to protect this right in the normal course of his duties as head of State.

21 SEP 1981

THE WHITE HOUSE

WASHINGTON

September 21, 1981

MEMORANDUM FOR ED MEESE
JIM BAKER

From: Martin Anderson MCA

Subject: Voting Rights Act

In the end the President of the United States must be for the protection of the voting rights of all Americans.

There is a great deal wrong with the current law, but any attempt by this Administration to propose changes in the present political climate will be presented -- unfairly to be sure -- as a gutting of the Voting Rights Act.

Recommendation. Call for a four year extension with no changes.

a) It will be very difficult for anyone to interpret this as being against voting rights, although some will probably manage it.

b) Congress, according to Friedersdorf, will almost certainly attempt to amend such legislation. It they should modify some of the worst provisions, the President could graciously accept the changes.

c) A four year extension is long enough to be considered more than a token extension, yet short enough to give hope to those who would like to see substantial changes -- in both directions. A four year extension would give the 2nd Reagan Administration or, in unthinkable circumstances, a Democratic administration a shot at proposing changes during the first year.

'81 SEP 21 P2:31

09 SEP 1981

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 9, 1981

FOR: EDWIN MEESE, III
JAMES A. BAKER, III
MARTIN ANDERSON
LYN NOFZIGER
MAX L. FRIEDERSDORF

FROM: MICHAEL M. UHLMANN

SUBJECT: Voting Rights Act Extension

The Justice Department is prepared to come in with an options memorandum which recommends one of two general courses of action: either (a) a simple extension for five years, or (b) an extension with a liberalized bail-out provision.

(a) Five-Year Extension

As you are aware, civil rights groups have made extension of the Voting Rights Act their major rallying cry. Presidential support for extension would remove the most poisonous arrow from their quiver and could be sold, in a positive sense, as a good-faith gesture to demonstrate that the President is not an enemy of civil rights. The political capital thereby acquired could then be deployed in other areas where we will be changing policy, e.g., affirmative action and bussing.

The downside, of course, is that a number of Southern conservatives may expect some sort of gesture their way, although their bark may be worse than their bite. According to a number of reports, the recent congressional election in Mississippi seems to have blunted the hard edge of potential Southern Republican opposition. All things considered, a case can be made that opting for a five-year extension (which would also include extending the language-minority provisions to 1987) would be the least damaging step. Before doing so, however, Lyn and Max should take some quick soundings, and potential sources of opposition (e.g, Thurmond and Lott) should be neutralized to the extent possible. The key element is that our troops should not be surprised by the announcement. One way of mollifying Southern conservatives would be to suggest that, absent exigent circumstances, we would anticipate a termination of the special provisions in 1987.

(b) Modification of the Bail-Out Provisions

If a simple five-year extension is deemed not to be feasible, a modified bail-out procedure would be the best way to go. There are any number of ways to do this, and bailing out could be made relatively difficult or relatively easy. The political problem in recasting the bail-out machinery, however, is that civil rights groups will describe any tinkering as a sell-out, and Southern conservatives may be encouraged to press further than we want to go.

If a simple extension is to be the preferred option, Justice could probably have the necessary background materials prepped in fairly short order. The technical difficulties of drafting proposed changes in bail-out would require more time. If the President does opt for a simple extension, I would recommend his doing so prior to Solidarity Day; in the event that option is rejected, I see little profit, and substantial political downside, in announcing the decision before the 19th.

Please advise me on how you would like to proceed.

Memorandum

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

TO: Ed Harper

FROM: Nat Scurry NAS

DATE: June 3, 1981

SUBJECT: Notes on Testimony regarding the "1965 Voting Rights Act" and "Affirmative Action and Equal Protection

As per your request the following notes were taken during the hearings held on the "1965 Voting Rights Act" and "Affirmative Action."

Voting Rights Act

As reported earlier, several House Subcommittee hearings to renew or extend the 1965 Voting Rights Act have been held during the past month. Recently, the House Subcommittee on Civil and Constitutional Rights, Chaired by Congressman Don Edwards, held hearings to review the Act.

Background

The 1965 Voting Rights Act (P.L. 89-110) provisions will expire August 6, 1982, unless extended. The major provision--Section 5 of the 1965 Act--requires certain states and counties to obtain DOJ approval for "preclearances" before making any election law changes.

As you know, the preclearance provisions were extended in 1970 and 1975. They apply to states and counties that used literacy tests in 1964 and had low voter registration. This coverage includes all or part of 25 states. Six southern states--Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia--have been covered in their entirety since 1965.

While other Congressmen and the Wednesday group have expressed reservations, if not strong opposition to extending certain provisions of the law, most media reports have quoted Chairman Thurmond, R-S.C. and Congressman Hyde, R-Ill. Chairman Thurmond is reported as saying the Act is no longer needed and that it is unfair to single out certain areas of the country for Federal supervision. Congressman Hyde has voiced a similar view and argues that all states should be treated equally and noted that "a handful of southern states have been in the penalty box for nearly 17 years." Congressman Butler is on record as stating that Virginia should not be on the list and the House Wednesday group is expected to propose a "Civil Rights Act of 1981," which would "eliminate the double standards of the Voting Rights Act by repealing those provisions which make distinctions among states based on their history of voting discrimination."

House Proposals

At present, two bills have been introduced in the House. Chairman Rodino, D-N.J. bill (H.R. 3112) would extend the Act in its present form for 10 years. Congressman Hyde's proposal (H.R. 3198) would require preclearance of election laws for 4 years only after a Federal court found pattern and practice of voting discrimination in a state, county or city.

On May 6, Vernon Jordan, President of the National Urban League, Lane Kirkland, President of AFL-CIO and Ben Hooks, Executive Director of the NAACP testified in support of extending the Act. The following views were expressed in testimony at a subsequent hearing on May 13:

- Jesse Jackson, President of Operation PUSH, urged the committee to not only extend the Act but also to strengthen it "to combat new forms of denials and to correct a misinterpretation of the Act resulting from the recent Supreme Court decision in the City of Mobile vs. Bolden case. Mr. Jackson's view also received some support from a recent N.Y. Times editorial which is attached and which describes, generally, the Supreme Court decision. Rev. Jackson also cited Edgefield County, S.C. the home of Senator Thurmond and Jackson, Miss. (see attached articles) as evidence that discrimination in voting is still occurring.

- Archibald Cox maintained in testimony that states continue to violate the Act and urged extension.

- Roberto Mondragon, Lt. Governor of New Mexico, stated that "no issue is more important to the Hispanic Community that the extension of the Voting Rights Act." He supported the use of bilingual ballots and bilingual assistance at the polls and tied the success of Hispanic seeking elected office directly to the protections contained in the Voting Rights Act.

- Ruth J. Hinerfeld, President of the League of Women Voters, characterized gains made in minority registration and political participation under the Act as "fragile" and urged extension for ten years.

Affirmative Action and Equal Protection

On May 4, Senate Judiciary Subcommittee hearings were held on Affirmative Action and Equal Protection. Senator Hatch presided and witnesses were:

1. Robert Sedler, Professor of Law, Wayne State University
2. Martin Kilson, Harvard University
3. Dr. Noris Aliram, New York
4. William Van Alstyne, Duke University

Purpose: to examine the cost effectiveness of affirmative action, to clarify the issues i.e. quota system, reverse discrimination and the constitutionality of affirmative action programs.

Witnesses Testimony:

Professors Sedler and Kilson: Agreed that affirmative action is legally and morally justifiable.

Professor Aliram: Equated goals and timetables developed under an affirmative action plan with quotas, targets, and preferential treatment. Argued for a fair system.

Professor Van Alstyne: Recommended that Congress enact legislation prohibiting racial discrimination and the removal of specific racial quotas.

Senator Hatch stated on several occasions during the hearings that before someone could be charged with discrimination the government must be able to show "intent" and not merely disparate impact.

Civil Rights Leaders Press U.S. to Block Jackson, Miss. Vote

Civil rights officials appealed to the Reagan administration yesterday to seek a court order blocking a local election in Jackson, Miss., next Tuesday on grounds that city officials have violated the Voting Rights Act.

But Justice Department officials said it is not likely they will change their position, which is to seek a new election if Jackson follows through with its plans to count the votes from predominantly white areas annexed in 1976.

The Rev. Jesse Jackson, acting as spokesman for the civil rights leaders, said the Justice Department "just has not followed through."

Acting Assistant Attorney General James P. Turner, head of the civil rights division, said the department is reluctant to interfere with the election now. "It would be unusual," he said.

But Turner said he intends to consult with Attorney General William French Smith and did not absolutely rule out the possibility that the administration would change its mind.

On May 8, the department told city of Jackson officials that it might seek a court order for a new election if the city did not eliminate violations of the Voting Rights Act.

Under the act, some areas of the country – particularly the South – with a past history of discriminating against blacks, are required to obtain approval from the attorney general or a special federal court here before making any electoral changes.

The Justice Department said the city of Jackson did not comply with that requirement before annexing predominantly white areas that reduced the growing black population of Jackson from 41 percent of the voters in 1960 to 38 percent in 1976.

The Jackson case is seen by civil rights leaders as a test of the Reagan administration's commitment to enforcing the act. The act is schedule to expire in August 1982

Associated Press

Proving Discrimination at Large

NY TIMES editorial

Blacks are a third of the population of Mobile, Ala., but they have never elected a city commissioner. Why? Because the city elects all three commissioners at large rather than by district. Why is that? The explanation is either racially neutral or rooted in discrimination against black voters.

The answer is important to blacks in many Southern communities. Last year the Supreme Court said that if there were racial motives it couldn't detect them. It ruled that black plaintiffs needed more evidence that the city created, and clings to, its voting scheme by a racially discriminatory design. Those who brought the suit were thrown into despair — prematurely, it now turns out.

The trial now ending in Mobile's Federal court has breathed new life into the black voters' contention and fresh hope of meeting the high court's exacting burden of proof. The case may yet again teach civil rights advocates not to give up such causes too easily. And it could enlighten Congress on the need to strengthen, as well as extend, the 1965 Voting Rights Act.

•

Under the 1965 law, Mobile and many other cities and states may not make new voting rules until they demonstrate that the changes have no discriminatory purpose or effect. But where a challenged at-large election law has been on the books for generations, the burden of proof falls to the challengers. Until recently lawyers for Mobile had argued, plausibly, that the city's 1911 at-large law couldn't have been racially motivated. Their defense: blacks couldn't vote anyway because of all the other ways they were then deprived of the franchise.

But now blacks in Mobile, supported by the Justice Department, have offered evidence that the at-large scheme was devised not in 1911 but long before, well back in the 19th century. The refusal to carve out election districts looks much more like part and parcel of the overall shameful pattern of keeping blacks from political power.

Commendably, Attorney General Smith has agreed with his civil rights division that the case warrants Justice Department intervention, putting Federal prestige behind the formidable evidence gathered by private lawyers. (That praise, regrettably, is diluted by Mr. Smith's flabby capitulation to Senator Denton, the Alabama Republican, who insisted that the department delete references to "white supremacy" in its court filing.)

Even if resourceful lawyers manage to win this challenge to at-large voting, it's unfortunate that the Supreme Court made their task so difficult. Congress, while it is once more looking at the Federal voting law, would be wise not only to extend it but also to make it apply clearly in cases like Mobile's.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 18, 1981

FOR: EDWIN MEESE
JAMES BAKER
MARTIN ANDERSON
FRED FIELDING

FROM: MICHAEL UHLMANN

RE: Voting Rights Extension

At our meeting on May 6, you requested further comments on a possible Administration position on the Voting Rights Act along the following lines:

a. No state or section of the country should be singled out for exceptionally onerous treatment;

b. Pre-clearance, deriving as it does from a selectively applied presumption of wrongdoing, should be discarded altogether;

c. As a trade-off for dropping the pre-clearance provisions, the Attorney General's power to enforce the Act in appropriate circumstances should be broadened in order to demonstrate the Administration's commitment to preserving Fifteenth Amendment guarantees;

d. To the extent possible, the special provisions on bilingualism should be dropped;

e. Consistent with the Supreme Court's holding in City of Mobile v. Bolden, a showing of purposeful discrimination should be a pre-requisite to a violation of the Act;

f. Consideration should be given to additional provisions to expand federal jurisdiction over state and local election fraud.

Finally, you asked for a preliminary reading of Congressional views on the subject.

Congressional Views

As you know, hearings on the Act's extension have begun before Don Edwards' Judiciary subcommittee in the House. Edwards, who floor-managed the 1975 amendments, will push for full committee and House approval of a ten-year extension and probably has the votes in committee to get most of what he wants. The Department of Justice has postponed its testimony until a clear Administration position has been worked out.

The only significant alternative to simple extension now before the subcommittee is a bill introduced by Henry Hyde. The Hyde bill (H.R. 3198) would eliminate pre-clearance for racial minorities, but leave it intact as applied to linguistic minorities -- his theory being that because the latter provisions do not expire until 1985, there is no sense in taking on an extraneous political battle. Hyde's proposal would authorize the Attorney General to bring "pattern or practice" actions in any federal district court and to intervene in private voting rights actions anywhere in the country. Where a jurisdiction has been found in violation of the Act, subsequent pre-clearance for proposed changes could be ordered by the courts for a period up to four years, but the court (and not the Justice Department) would in that instance be the clearance-granting body. Finally, the Hyde bill would reverse the Supreme Court's holding in City of Mobile, thereby removing intent as a requirement for violation. Hyde is pushing his bill on both sides of the Hill as a reasonable alternative between extending the Act more or less as-is and allowing the special provisions to lapse. While it is too early to tell, the Hyde bill or something akin to it could become the rallying point for moderates in both parties. Conservatives, however, are unlikely to embrace a statutory reversal of City of Mobile, and that fact alone may kill whatever the chances the Hyde bill has of becoming a realistic middle-of-the road compromise.

Senate conservatives realize that they need do nothing until the House acts, and most of them would probably prefer to let the special provisions lapse on schedule in 1982. That position may not prove tenable for long, however. As you are aware, civil rights organizations have made extension of the Act their number-one priority, and once the President takes a position, positive legislative action will be unavoidable. Other than those who support simple extension, few in the Senate have focused on the issue as yet. Senator Thurmond's formal position for some time has been that he favors universal extension of the Act's special provisions; that outcome, however, is not in the cards, and speculation has it that Thurmond would probably be satisfied with anything which gets South

Carolina off the hook of pre-clearance and enables his and other similarly situated States to bail out more or less immediately. In the end, I think that the moderate and conservative members of the Senate can be persuaded to support a reasoned and principled Presidential alternative.

Universal Coverage and Elimination of Pre-clearance

A strong case can be made for the elimination of all pre-clearance provisions, although somewhat different issues are presented by pre-clearance for racial minorities and that for linguistic minorities. Pre-clearance was understood at the time of its creation in 1965 to be an extraordinary and novel remedy designed to meet widespread violations, principally in the South, of Fifteenth Amendment guarantees. It was also clearly understood, on the face of the statute itself, to be temporary in nature i.e., necessary so long as (and presumably only so long as) the exigencies to which it was addressed persisted. Despite what may be said by proponents of extension, the Act's special provisions have accomplished most if not all of the goals they were established to achieve for blacks. Discriminatory tests and devices, which led to the Act's creation in the first place, have either been expressly forbidden by law or can be reached by means other than pre-clearance. Moreover, black turnout and registration figures do not correlate with whether a jurisdiction is or is not covered by pre-clearance.

Civil rights advocates are much less concerned with a possible re-birth of discriminatory tests and devices than they are with such matters as apportionment, districting, and annexation. The latter, however, have the distinctive feature of being public acts, in contrast, e.g., to the midnight moving of polling places, and therefore can be attacked by ordinary legal action when necessary. The central question that needs to be asked is whether there is any species of electoral change of the sort thought likely to occur that cannot be reached effectively by post facto judicial proceeding. After fifteen years of experience under pre-clearance, the burden ought surely to be on the proponents of extension to show why pre-clearance is any longer necessary. The proponents of extension themselves provide a telling demonstration of the Act's past success when they say they are now less concerned with the denial of individual voting rights as such than they are with the political effectiveness of the franchise which is by and large freely exercised.

What they are principally concerned with, in short, is the lack of effective political power, and what they like most about the Act in its present form is its gratuitous presumption that the lack of effective power can be attributed to racial discrimination. There are no doubt instances in which the creation or maintenance of a particular political structure can be legitimately attributed to racial

discrimination, but the motives which enter into annexation, apportionment, and districting determinations, for example, are far more complex than can be comprehended by a presumption of racial discrimination. It is unwise, not to say unjust, for a statute to presume that discriminatory racial attitudes will be attributed to certain sections of the country. As much can and, in appropriately diplomatic language, probably should be said when the time comes for a presidential statement on the subject.

Bilingual Provisions

The Act contains two separate provisions which deal with language minorities, neither of which is due to expire until 1985. The first applies preclearance to jurisdictions having a certain percentage of any of four linguistic minorities (1), using the same registration or turnout test employed elsewhere in the Act for racial minorities. The second requires bilingual elections in non-covered jurisdictions having a similar percentage of linguistic minorities, but employs a literacy rate test as a triggering mechanism. Thus, even if the pre-clearance provisions were to be eliminated for linguistic minorities as well as for blacks, many jurisdictions would still be required under the Act to provide bilingual election materials.

Although it was agreed at our meeting that most of the presumptions underlying pre-clearance are unfounded, we did not specifically discuss the political pros and cons of prematurely attacking pre-clearance for linguistic minorities. As I recall, a third or more of the Mexican-American community voted for the President last November, and however much we may dislike pre-clearance as a matter of principle, we should perhaps take soundings on the issue before pressing ahead. If we do decide to eliminate pre-clearance, it may nevertheless be desirable to leave the general dual language requirement in place until it naturally expires in 1985 -- (a) because a sudden shift to English-only ballots everywhere may in fact induce undesirable effects and (b) because the removal of both provisions at once may be perceived as a gratuitous insult by certain linguistic minorities, especially Mexican-Americans.

If I sense the tenor of our discussion correctly, I gather that you would like to set the practice of dual-language ballots on the road to eventual extinction. But unless there is some urgency, I would suggest doing so one step at a time, reserving for a later occasion a more general statement on the larger bilingual question that the nation will soon or late have to address in the years ahead.

Enforcement Powers

The elimination of pre-clearance should be accompanied by appropriate

(1) The covered groups are persons of Spanish heritage, American Indians, Asian-Americans, and Aslakan natives.

reassurances that private parties and the Attorny General will be adequately empowered to enforce Fourteenth and Fifteenth Amendment political rights in appropriate circumstances. The Justice Department should be asked to provide a summary list of extant enforcement powers (including rights of intervention) possessed by the Attorney General, both under the Act and under other grants of authority. It would be desirable to recodify some of these powers in a single enforcement section of the Act (1) while at the same time spelling out rights of private action.

We touched briefly in our meeting on the idea of granting "pattern or practice" authority to the Attorney General and enabling him to request subsequent pre-clearance by the courts following a finding of intentional discrimination. In addition to or in lieu of such a provision, we should also consider the feasibility of a suspension provision, at least with respect to significant electoral machinery changes. One possibility would be to require the filing of proposed changes with the Attorney General 90 days or more prior to their effective date. Such a provision would, I think, go a long way toward calming many of the fears that will be voiced against the removal of pre-clearance.

Proof of Unlawful Discrimination

We should at all costs resist compromise which would allow a finding of a Fifteenth Amendment or Voting Rights Act violation on the basis of mere effects. Elimination of the intent requirement would open up a Pandora's Box of litigation and invite the courts to find statutory violations of the right to vote when in fact the real issue may be raw political power rather than racial discrimination properly so called. The Supreme Court has been moving steadily toward an intent requirement across a wide front of civil rights violations and for reasons of judicial economy if no other, we should do nothing to discourage that trend.

Expansion of Federal Jurisdiction Over Electoral Fraud

Title 18 of the United States Code contains numerous criminal provisions dealing with corrupt practices relative to federal office-holders and elections. In addition, there are any number of general jurisdictional handles, such as the Travel Act and the mail and wire fraud statutes, which enable the federal government to investigate and prosecute matters which are in essence infractions of state and local law. Traditionally, however, the policing of electoral

(1) In passing, it should be noted that the scheme of Voting Rights Act is among the most difficult statutes to follow. Its provisions are exceedingly hard to parse unless one is otherwise generally familiar with the Act's structure. Elimination of the triggering and pre-clearance provisions will go a long way toward simplifying its needlessly opaque schematic structure, but because the special provisions are in certain places intertwined with provisions we want to save, a general re-drafting of the entire Act would be desirable.

violations has for the most part been left to state and local enforcement, even where an ostensible federal interest might in theory be asserted.

The reasons for this deference lie deep within our constitutional history. Congress did not exercise its Article I power to regulate the time, place, and manner of congressional elections until the 1840's, and it was not until Reconstruction that it sought to police false registration, bribery, voting without legal right, making false returns, and the like. The Supreme Court struck down such parts of the latter legislation as were applied to states and locales, but upheld the application to federal elections. Thereafter, Congress repealed those pieces of Reconstruction legislation which dealt with elections as such, but retained those statutes which prohibited interference with civil rights generally. The latter, along with the civil rights enactments of 1957, 1960, 1964, 1965, 1968, and 1970, would form the basis for further federal regulation of the electoral process along the lines suggested by Jim Baker. Where federal office-seekers are on the same ballot, one could employ Article I, Section 4 (the times, places and manner clause) in tandem with the necessary and proper clause to extend the federal mantle. As to purely state and local elections, one would have to rely on the due process or equal protection clauses for the requisite constitutional base.

The general theory of such jurisdiction is in a sense already laid down in 18 U.S.C. 241 and 242, which prohibit actions and conspiracies which violate rights of citizens secured by the federal constitution. These sections have, apparently, been somewhat narrowly construed, but if reenacted after appropriate congressional findings they would undoubtedly stand on firmer constitutional footing. Absent such findings, and absent the presence of racial discrimination, however, a general federal assertion of jurisdiction over state and local election fraud may not pass muster with the courts.

Before taking such a step, we should carefully weigh three considerations: (1) Given the President's general feelings about the role of the states, and out oft-repeated arguments in other areas about restoring power to the states, do we really want to assert further federal control in the electoral area? (2) At a time when we are hoping to see a significant dimunition in the powers of the FEC, do we want to run the risk of creating a comparable monster for state and local elections? Finally, (3) would not the enforcement burdens on the Justice Department become prohibitive?

These questions are sufficiently compelling at the moment, I think, to cause us to be most circumspect about proceeding, at least without further study. I would suggest the following: (1) Request the Criminal Division to prepare a summary of their recent and

extant caseload in the election fraud area, with particular emphasis on state and local matters having only a limited federal nexus. (2) Request the Office of Legal Counsel to prepare a memorandum on the various constitutional theories that might be used to justify an extension of federal jurisdiction, with perhaps some examination of how those theories might come back to haunt us in other fields of law.

Justice Department Position

The Justice Department recently prepared a summary sheet of possible amendments to the Voting Rights Act. (Attached) I am informed that the Deputy Attorney General will present these options for discussion to three different groups during the next few weeks: state and local officials; prominent black civil rights leaders; and prominent Hispanic-American leaders. I think it would be useful to have a session with the Attorney General and the Deputy as soon as practicable to discuss our thoughts.

Tentative Outline for Administration Position

(1) Support firmly the general prohibition against denial or abridgement of the right to vote on account of race or color.

(2) Eliminate pre-clearance in respect of racial minorities.

(3) Apply a single test nationwide for violations of the Act, that being a showing of purposeful discrimination.

(4) Eliminate special jurisdiction in the D.C. federal courts; normal federal venue rules to apply.

(5) Support establishment of "pattern or practice" authority in the Attorney General to enforce the Act, in additon to his general authority. Following a successful demonstration of "pattern or practice", the Attorney General could request subsequent pre-clearance of changes by the court for up to four years.

(6) Support a requirement that major changes in electoral laws or political structure ("major" would have to be defined) be filed with the Attorney General at least 90 days before their effective date. This would not involve pre-clearance, but would serve the purpose of notification.

(7) Support retention of provisions which authorize the appointment of federal observers and referees when there iw reason to believe that voting rights violations may occur.

(8) Retain for the time being at least, the permanent nationwide ban on the use of literacy tests and similar devices.

Matters Still to be Decided

(1) Whether elimination of pre-clearance for linguistic minorities should be sought at this time.

(2) Whether the dual-language requirement for election materials should be retained, with or without continued pre-clearance for linguistic minority jurisdictions.

(3) Whether, on balance, it is wise or for that matter constitutional to extend federal jurisdiction over non-racial classes of state and local voting abuses.

(from Department of Justice)

POSSIBLE AMENDMENTS TO THE VOTING RIGHTS ACT

What do you believe are the justifications or factual foundations for supporting or opposing the following possible amendments to the Voting Rights Act:

I. Extend all features of the Act for five years.

II. Extend the general provisions of the Act, but limit any preclearance requirement to changes in apportionment, annexations or changes in the method of election (for example, requiring a majority vote in lieu of a plurality for election to a city-wide office). In addition, a proposed change could be disapproved only upon a showing of a racially discriminatory purpose, and review of proposed changes would be available in local federal district courts.

III. Extend the general provisions of the Act, but modify the coverage formula to include only those jurisdictions which, in the 1976 or 1980 Presidential elections, had voter registration or turn-out below 50 percent, and had a disproportionately low number of elected minority officials. In addition, political subdivisions within a state could remove themselves from coverage by demonstrating a history of non-discrimination in the administration of its voting laws.

IV. Extend the general provisions of the Act, but authorize a bail out from coverage upon a showing that there was no reason to believe, in light of experience during the preceding 15 years, that the covered jurisdiction was likely to commit constitutional violations if coverage were lifted.

V. Replace preclearance review with a mandatory notice provision applicable nationwide that would require that all voting changes pertinent to apportionments, annexations or methods of election be submitted to the Department of Justice 90 days prior to becoming operative. The Attorney General would be empowered to enjoin temporarily the enforcement of a voting law upon a showing of a likelihood of success in proving a discriminatory purpose. If a discriminatory purpose was established after the election, a new election would be mandated.

VI. Eliminate all preclearance review. In addition, criminal penalties would be enhanced for racially inspired reprisals against the exercise of voting rights.