The original documents are located in Box 8, folder "Congressional - Voting Rights Act (1)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MEMORANDUM FOR: MR. BUCHEN
MR. STAN SCOTT
MR. THEIS
MR. O'NEILL
MR. WALTER SCOTT
MR. PURCELL
MR. KALLEN

Subject: Voting Rights Act Amendments

The attached just came in from Justice.

We need advice on the following in order to develop the final package to send to Congress.

(1) Is the draft legislation satisfactory? Yes

(2) Is the Speaker letter satisfactory? Should paragraph 5 of the Speaker letter be deleted? OK except paragraph 5 should be deleted.

(3) Is there to be a Presidential statement? When will it be given?

(4) Should the Attorney General transmit the draft and the letter to Congress at the same time that statement is given?

} Pres. to transmit

I will be glad to coordinate your responses and to communicate them to Justice.

I assume someone in the White House will see to it that appropriate clearances are obtained there--I have communicated only with those listed on this memo.

W. Skidmore
(395-4870)

Called Skidmore on 1/13/74 to give him my answers and to put on him responsibility for pushing Bill and Speaker letter through WH system

Attachment

GERALD R. FORD LIBRARY

Office of the Attorney General
Washington, D. C. 20530

The Speaker
House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed for your consideration and appropriate reference is proposed legislation entitled the "Voting Rights Act Amendments of 1975."

This proposal would extend for an additional five years the basic provisions of the Voting Rights Act of 1965. These provisions, including the requirement that certain States and political subdivisions submit to the United States District Court for the District of Columbia or the Attorney General any changes in voting laws, will be subject to expiration after August 6, 1975.

The proposal would also extend for an additional five years the provision which suspends the use of literacy tests and other similar prerequisites for voting in all states and subdivisions not subject to such suspension under section 4(a) of the 1965 Act.

The Voting Rights Act of 1965 has proved to be an extremely effective statute. Since its enactment, substantial progress has been made in safeguarding and furthering the right to vote. Nonetheless, our experience indicates the need to extend once more the key sections of the Act.

We recognize that there may be substantial problems of discriminatory denial of the right to vote which are not fully addressed by the Voting Rights Act. We are examining such matters, and it may be that additional federal legislation will be necessary. Still, I respectfully urge that, in order to avoid the possibility of expiration of provisions of the Voting Rights Act, the present proposal be enacted as promptly as possible.

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The Office of Management and Budget has advised that enactment of this legislation is in accord with the program of the President.

Sincerely,

Attorney General

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..... CONGRESS
..... SESSION

H. R. .....

(NOTE.—Fill in all blank lines except those provided for the date and number of bill.)

IN THE HOUSE OF REPRESENTATIVES

Mr. ..... introduced the following bill; which was referred to the Committee on .....

A BILL

To extend the Voting Rights Act of 1965, and for other purposes.

(Insert title of bill here)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Voting Rights Act Amendments of 1975."

Sec. 2. Section 4(a) of the Voting Rights Act of 1965 (79 Stat. 438; 42 U.S.C. 1973b(a)), as amended by the Voting Rights Act Amendments of 1970 (84 Stat. 315), is further amended by striking the words "ten years" wherever they appear in the first and third paragraphs and by substituting the words "fifteen years."

Sec. 3. Section 201(a) of the Voting Rights Act of 1965 (42 U.S.C. 1973aa(a)), as added by the Voting Rights Act Amendments of 1970 (84 Stat. 315), is amended by striking "August 6, 1975" and substituting "August 6, 1980."

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OFFICE OF THE
DEPUTY ATTORNEY GENERAL

1/13/75

To: Phil Buchen

From: Larry Silberman

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Office of the Attorney General
Washington, D. C. 20530

MEMORANDUM FOR THE PRESIDENT

Re: Extension of Voting Rights Act

Attached is a detailed memorandum which sets forth my reasons for recommending a simple extension of the Voting Rights Act for five years. Such an extension would continue for five years (1) a nationwide literary test ban; (2) provisions authorizing the Attorney General to send federal examiners to observe elections and to register voters, and (3) provisions forbidding certain states or political subdivisions from changing their voting laws without prior approval by the Attorney General or the federal District Court for the District of Columbia.

In summary, I urge an extension of the nationwide ban on literary tests because there is evidence that the use of such tests may continue to perpetuate past racial discrimination. I have recommended an extension of the provisions relating to federal examiners and preclearance review by the Attorney General or District Court of voting law changes because recent experience under the Voting Rights Act shows a need for such provisions to prevent racial discrimination in connection with elections.

WILLIAM B. SAXBE
Attorney General

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Office of the Attorney General
Washington, D. C. 20530

MEMORANDUM FOR THE PRESIDENT

Re: Extension of Voting Rights Act
ACTION MEMORANDUM

The provision of the Voting Rights Act of 1965 (as amended in 1970) providing nationwide protection against use of literacy tests as a prerequisite to voting will lapse on August 6, 1975 unless renewed by new legislation. Most states and political subdivisions (with the notable exception of New York) currently subject to the provisions of the Act providing for federal observers and examiners and preclearance of voting laws will be eligible to terminate coverage shortly after August 6, 1975.

I recommend that the Administration support a five year extension of the nationwide literacy test ban and another five year extension of the special provisions relating to examiners, observers, and election law preclearance.

I. Background

A. 1965 Act

The Voting Rights Act, enacted in 1965, 1/ "was designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century." South Carolina v. Katzenbach, 383 U.S. 301, 308 (1966). It was needed because Congress' prior efforts, in the Civil Rights Acts of 1957, 1960 and 1964, had "done little to cure the problem of voting discrimination." Id. at 313.

1/ The House vote was 328-74; the Senate approved the Act by a 79-18 vote.

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The Act provided several uncontroversial general protections such as an authorization for federal courts which find racial discrimination in voting practices to authorize the appointment of federal voting examiners where necessary, and an authorization for the Attorney General to sue to challenge the constitutionality of the poll tax. In addition, the Act provided more important special protections as to states meeting a prescribed formula, 2/ most of which were southern states with a history of voter discrimination. 3/ The special protections were as follows:

(1) In certain instances the Attorney General could send federal examiners to register voters (§§6 & 7);

(2) Where there were federal examiners, the Attorney General could send federal observers to monitor elections (§8);

(3) No change could be effected in voting laws or practices without first either obtaining a finding from the United States District Court for the District of Columbia that the law or practice "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" or submitting the law or practice to the Attorney General without his interposing an objection to it within 60 days. (§5);

2/ The formula encompassed states which maintained a test or device as a prerequisite to voting and in which less than 1/2 the voting age population had registered or voted in November 1964.

3/ The covered southern states were Alabama, Georgia, Louisiana, Mississippi, parts of North Carolina, South Carolina, and Virginia. Except for one Arizona County, the covered northern areas (Alaska and parts of Arizona, Hawaii and Idaho) subsequently demonstrated their non-discrimination in using literacy tests and were removed from coverage.

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(4) No person in covered states could be denied the right to vote for failure to comply with any test or device. (§4). 4/

States which could demonstrate that they had not used the tests or devices discriminatorily in the five preceding years were eligible for exemption from coverage by these special protections. 5/ Since the Act suspended tests and devices in those states, the provision meant the states would almost certainly be able to "bail out" -- that is, remove themselves from coverage, in August of 1970 or shortly thereafter. The constitutionality of these provisions was upheld in South Carolina v. Katzenbach, supra as "a valid means for carrying out the commands of the Fifteenth Amendment."

The Department of Justice concentrated its efforts during the first five years of the Act on litigation to end the forbidden use of tests or devices, to end the use of the poll tax, and on using examiners, observers and litigation to insure that registration and voting were conducted fairly.

4/ "Test or device" was defined as:

> any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

5/ In Gaston County v. United States, 395 U.S. 285, the Supreme Court held that imposition of a literacy test was discriminatory because "throughout the years, Gaston County [North Carolina] systematically deprived its black citizens of the educational opportunities it granted to its white citizens." Therefore Gaston County could not be exempted from coverage.

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Black registration and voting increased dramatically during those years, 6/ and black elected officials increased more slowly. (See Appendix, Table G-4). 7/

The covered states submitted very few voting law changes as required by §5. (See App., Tables A-1, A-2). For example, Alabama, Georgia, Louisiana, Mississippi, North Carolina and Virginia together submitted a total of two such changes during the period 1965-67. From 1965 through 1969 the Attorney General objected to only 24 changes. Not until after the Supreme Court, in litigation brought under §5, had begun to define the scope of §5 in 1969 (Allen v. State Board of Elections, 393 U.S. 544), did the Department begin to develop standards and procedures for enforcing §5.

B. 1970 Act

In January of 1969 Congressman Celler and Senator Mathias introduced bills to extend the special provisions of the 1965 Act by enlarging from five to ten years the period after which a state could almost certainly "bail out." After hearings had begun the Administration proposed a bill which would have changed

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6/ In six covered Southern states (Alabama, Mississippi, Georgia, Louisiana, South Carolina and Virginia) only 31% of the black voting age population was registered before enactment of the 1965 Voting Rights Act, but by the 1968 Presidential election 57% of the black voting age population was registered, an increase of 740,000. Hearings before Subcommittee No. 5 of Committee on Judiciary, on H.R. 4249, H.R. 5538, et al., p. 193. Dramatic examples of change occurred in Mississippi where black registration increased from 6.7% to 59.8% and in Alabama where it increased from 19.3% to 51.6%. Id. at 74. In the South as a whole 52.0% of the black voting age population voted in 1968 as compared with 44.2% in 1964. (Voting and Registration in the Election of 1972, Bureau of Census, Series P. 20, No. 253, Table B.)

7/ The Appendix contains a series of lists and statistical tables relating to experience under the Voting Rights Act. This memorandum refers to many of them.

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the literacy test suspension and observer provisions so as to have nationwide applicability 8/ and would have established uniform residency requirements for voting in presidential elections; finally, the bill would have eliminated the preclearance procedures of §5.

Attorney General Mitchell's testimony relied heavily on the Gaston County opinion, supra, as supporting nationwide suspension of literacy tests, both because of court findings of de jure segregation in the North and because over 4 million Negroes had migrated from the South between 1940 and 1968. He also pointed out the discriminatory motives for adoption of literacy tests in non-covered states (to prevent recent immigrants from voting), and the irrationality and unfairness of denying "rights of citizenship" to the undereducated. (House Hearings, pp. 222-224).

As to §5, Attorney General Mitchell noted that it had been little used in actual practice and argued that even if the facts supported "regional legislation" in 1965 they did not support it in 1970: "As a result of the gains made since 1965, we should no longer single out any State or region for voting legislation . . . ." (Id. at 227).

The House, by a 208-204 vote, substituted the Administration bill for the Celler bill which had been reported out by the Judiciary Committee; it adopted the bill 234-179. The Senate, however, substituted (51-21) a bill proposed by Senators Scott and Hart and adopted it (as amended) 64-12. The House agreed to the Senate substitute, 272-132, and President Nixon signed it on June 22, 1970.

The 1970 Amendments incorporated the simple extension proposed by Congressman Celler's bill 9/ and added the nationwide suspension of literacy tests for five years, as proposed by the Administration. 10/ The ten sponsors of the substitute argued that "the Voting Rights Act of 1965 has been the most effective civil rights legislation ever enacted by the Congress,"

8/ Literacy tests would have been suspended for five years.

9/ The formula was expanded, however, to include states using tests or devices, in which less than 1/2 the voting age population had registered or voted in November 1968.

10/ They also addressed the 18-year-old vote and residency requirements.

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but that "more time is needed to accomplish what finally must be done to implement the Fifteenth Amendment, by preserving the only voting rights law that has really worked." 116 Cong. Rec. 5520. As to the expansion of the test and device suspension to all states, the sponsors stated:

> Even though these other areas have no recent history of discriminatory abuses like that which prompted enactment of the 1965 Act, this extension is justified for two reasons: (1) because of the discriminatory impact which the requirement of literacy as a precondition to voting may have on minority groups and the poor; and (2) because there is insufficient relationship between literacy and responsible, interested voting to justify such a broad restriction of the franchise.

116 Cong. Rec. 5521.

II. Considerations As to Whether to Seek Extension

A. Nationwide ban on tests and devices

I believe that almost all considerations relating to the nationwide ban on tests and devices support the extension of that ban for five years.

1. Constitutionality.

The Supreme Court unanimously upheld the constitutionality of the five year nationwide suspension of literacy tests in Oregon v. Mitchell, 400 U.S. 112. Justice Black, without relying at all on the fact that the ban was temporary, stated in the lead opinion "that Congress, in the exercise of its power to enforce the Fourteenth and Fifteenth Amendments, can prohibit the use of literacy tests or other devices used to discriminate against voters on account of their race in both state and federal elections." 400 U.S. at 118. Of the five opinions in the case, all of which upheld the nationwide ban, only Justice Harlan's comment that "the fact that the suspension is only for five years will require Congress to re-evaluate at the close of that period" attaches any significance to the temporary nature of the ban. Appendix E is a legal memorandum setting forth the constitutional basis for the extension.

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2. Experience under the 5-year nationwide suspension

Oregon, which challenged the suspension of tests and devices, subsequently repealed its literacy test requirements, as have Alaska, Arizona, California, Hawaii, Virginia, Washington, and Wyoming. Only 14 states still have laws providing for tests or devices as a prerequisite to voting. 11/ (These would, of course, become effective again if the ban is not extended.) Attorney General Mitchell noted in 1969 that the fact that 30 states had no literacy test "would appear to imply substantial national sentiment that they are not necessary for an effective electoral process." (House Hearings, p. 224). That argument is strengthened by the repeal of literacy tests in eight states.

Second, at the time the 1970 Act passed the main judicial basis for the nationwide ban was Gaston County v. United States, supra. Since then several cases have been decided which either explicitly (see generally Coalition for Education v. Board of Elections, 370 F. Supp. 42 (S.D. N.Y. 1974)) or implicitly (Lau v. Nichols, 414 U.S. 563) recognize that language requirements may unlawfully discriminate on the basis of national origin. In New York, for example, Spanish-surnamed persons have, on the average, less than a 9th grade education, as compared with 12 grades for whites and 10.8 for blacks. The growing recognition of the special problems of Spanish-surnamed citizens argues for extension of the ban.

Third, we know of no adverse effects which have even been alleged to have occured as a result of the nationwide ban on tests and devices. Thus, the states' interest in reviving tests or devices is so minute that it must be asked whether they could constitutionally do so, in light of the Court's recognition of the right to vote as fundamental. Dunn v. Blumstein, 405 U.S. 330.

Fourth, revising tests or devices would present the possibility of disfranchising thousands of voters who have been participating in the election process as a result of the Voting Rights Act.

11/ They are Alabama, Connecticut, Delaware, Georgia, Idaho, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, New York, North Carolina, Oklahoma, and South Carolina. See Appendix, Table F-3.

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B. Regional Provisions

In my view a good case exists for a further five year extension of the special provisions relating to states falling within the special coverage formula of §4, although that case is not quite as compelling as the nationwide test ban.

1. Constitutionality

If there is a factual basis for continuing them, the decision in South Carolina v. Katzenbach, supra, clearly supports the constitutionality of an extension of these provisions. The precedents are set forth in Appendix E.

2. Experience under the Act

There has unquestionably been progress made in the covered states. They rank very high in terms of black elected officials (see Appendix, Tables G-1, G-2, G-3, G-6) and they have greatly increased black voter participation. For example, Mississippi had no black elected officials in 1965, when only 6.7% of its eligible blacks were registered; today it has 191 black elected officials, and at least 59.3% of its eligible blacks are registered. But if such statistics are to be a gauge of success, we must recognize that while Mississippi's population is over 36% black, only 4% of its elected officials are black. A higher proportion of eligible whites (69.6%) is registered. This pattern persists in many of the covered states. 12/

Another measure would be the extent to which the Attorney General has felt compelled to invoke the provisions of the Act. Five new counties have been designated as needing federal examiners since 1970, as compared with 64 counties in the first five years of the Act. But, as Appendix, Table D-1 shows, the

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12/ For example, the percents of eligible persons who are registered to vote in other covered Southern states are estimated to be:

	White	Black
Alabama	78.5	54.6
Georgia	68.7	64.2
Louisiana	77.7	56.6
North Carolina	60.6	44.3
South Carolina	49.7	45.8
Virginia	59.6	52.0

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Attorney General has continued to make regular use of federal observers, although not on as massive a scale as during the 1960s. 13/ Because racial politics have continued to be hot in some political subdivisions, we are often asked to send observers by both the white and black communities.

In some counties, old patterns of racial discrimination in election procedures have required repeated litigation. For example, we have had to file three voter discrimination suits against Marshall County, Mississippi officials since 1971. In the first suit, officials had rejected a qualifying petition of a black candidate for office because of a technical defect in the petition, but accepted the defective petition of a white candidate. In the second suit, in 1973, we showed that registration officials had placed 253 white persons on the rolls in an illegal fashion and had sent records of a large number of black registered voters to the wrong district, so that they could not vote. In the third suit, which is still pending, we allege that registration officials have discriminatorily failed to register qualified black applicants. We have filed 19 suits under the Voting Rights Act since the 1970 Amendments went into effect (as compared with 22 between 1965 and enactment of the 1972 Amendments).

Experience under §5 is that although most submissions have not been objected to, the number that has been is significant: 184 objections were lodged out of the total of 4068 submissions

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13/ SUMMARY BY YEAR OF ELECTIONS COVERED BY FEDERAL OBSERVERS (1966-Sept. 10, 1974)

YEAR	NO. ELECTIONS	NO. OBSERVERS
1966	12	1919
1967	5	1309
1968	14	1093
1969	3	239
1970	7	370
1971	6	1055
1972	13	465
1973	0	0
1974	6	218

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received between 1965 and June 1, 1974. Over 150 of those objections have been lodged during the past four years. We objected to more submissions in the first six months of 1974 (20) than during any year from 1965 (0) through 1969 (15). Notwithstanding the clear requirement that voting changes in covered states must have preclearance, we have had to file ten suits (9 since 1970) to prevent the application of non-cleared laws. Just recently we discovered as a result of a random check of state laws that Alabama had failed to submit 161 of the 251 election law changes the legislature enacted in 1971. As black registration, voting, and attempts to run for office have grown, changes in election laws have assumed an increasingly important, though subtle and complex, role as potential engines of discrimination. The Supreme Court, in Allen, supra, and in Perkins v. Matthews, 400 U.S. 379 (1971), has therefore held that §5 applies to such election law changes as reapportionment and annexation as well as to voting and registration requirements. Appendix, Table A-3, gives an idea of the range of objectionable laws over the past five years.

Some of our objections were state-wide, and some local. Louisiana is an example of a state-wide objection. In 1971, the Attorney General objected under Section 5 to the state's reapportionment of both houses of its legislature. The reapportionment plans submitted contained several instances of patent racial gerrymandering which had the effect of reducing black voting strength.

Twiggs County, Georgia is a recent example of a covered jurisdiction in which black potential voters are a substantial minority (49.3%); after Department of Justice enforcement action and a private voter registration drive had increased black registration in two county commissioner districts, the county shifted from county elections to at-large elections. The Attorney General objected under §5, but the county implemented the at-large plan in 1972 anyway, necessitating our filing a suit to enjoin the violation of §5. As recently as August 13, 1974 another Georgia county held an election under a voting change to which the Attorney General had objected. Suit is pending.

While the Act has thus been very effective and has markedly increased black political participation in covered states, problems of discrimination have been sufficiently recurrent in the past four years to suggest that §5 and the examiner and observer provisions are still needed.

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3. Fairness to the Covered States

The strongest, most vehement argument made against the special provisions has been that they discriminate regionally, against the South. As Justice Harlan phrased the argument in his dissent in Allen v. Board of Elections, 393 U.S. 544, 586:

> "the statute, as the Court now construes it, deals with a problem that is national in scope. I find it especially difficult to believe that Congress would single out a handful of States as requiring stricter federal supervision concerning their treatment of a problem that may well be just as serious in parts of the North as it is in the South."

That argument was advanced in 1970 by the Administration, and the Congress rejected it, as the Supreme Court had earlier done. South Carolina v. Katzenbach, supra. In any event, if the facts warrant the continued application of the special provisions to presently covered states, the fact that other states should arguably also be covered would not justify allowing the provision to lapse entirely. 14/

CONCLUSION

I would recommend that both the nationwide literacy ban and the special provisions for covered states should be extended for five years.

WILLIAM B. SAXBE
Attorney General

14/ A new sort of regional discrimination would occur if the Act were not extended: the southern states whose history of discrimination prompted the provisions could bail out, but New York and other northern jurisdictions brought under the Act in 1970 would continue to be subject to it until at least 1980.

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Voting Rights Act

January 10, 1975

MEMORANDUM FOR: DONALD RUMSFELD

FROM: PHILIP BUCHEN

On January 10, I asked Paul O'Neill to have OMB prepare a draft bill to extend the Voting Rights Act, so that the President may submit it to Congress as early as January 14.

cc: Paul O'Neill

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FOR IMMEDIATE RELEASE JANUARY 27, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

THE WHITE HOUSE MADE PUBLIC TODAY THE FOLLOWING LETTER FROM THE PRESIDENT TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE

Dear Mr. Speaker: (Dear Mr. President:)

Enclosed for your consideration and appropriate reference is proposed legislation entitled the "Voting Rights Act Amendments of 1975."

This proposal would extend for an additional five years the basic provisions of the Voting Rights Act of 1965. These provisions, including the requirement that certain States and political subdivisions submit to the United States District Court for the District of Columbia or the Attorney General any changes in voting laws, will be subject to expiration after August 6, 1975.

The proposal would also extend for an additional five years the provision which suspends the use of literacy tests and other similar prerequisites for voting in all states and subdivisions not subject to such suspension under section 4(a) of the 1965 Act.

The Voting Rights Act of 1965 has been an extremely effective statute. Since its enactment, substantial progress has been made in safeguarding and furthering the right to vote. Nonetheless, our experience indicates the need to extend once more the key sections of the Act.

Sincerely,

GERALD R. FORD

The Honorable
The Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nelson A. Rockefeller
President of the Senate
Washington, D.C. 20510

more

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A BILL to extend the Voting Rights Act of 1965, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Voting Rights Act Amendments of 1975."

Sec. 2. Section 4(a) of the Voting Rights Act of 1965 (79 Stat. 438; 42 U.S.C. 1973b(a)), as amended by the Voting Rights Act Amendments of 1970 (84 Stat. 315), is further amended by striking the words "ten years" wherever they appear in the first and third paragraphs and by substituting the words "fifteen years."

Sec. 3. Section 201(a) of the Voting Rights Act of 1965 (42 U.S.C. 1973aa(a)), as added by the Voting Rights Act Amendments of 1970 (84 Stat. 315), is amended by striking "August 6, 1975" and substituting "August 6, 1980."

#####

GERALD R. FORD LIBRARY

February 10, 1975

Dear Dave:

Thank you for your very candid letter to the President concerning extension of the Voters Rights Act of 1965.

I want to assure you that your letter will be called to the President's attention at the earliest opportunity. In addition, copies will be shared with the appropriate Presidential advisers. I am certain your recommendations will be fully reviewed.

With kindest regards,

Sincerely,

Max

Max L. Friedersdorf
Assistant to the President

The Honorable David C. Treen
House of Representatives
Washington, D.C. 20515

bcc: w/incoming to Geoff Shepard for further action.
bcc: w/incoming to Robert Hartmann - for your information.
bcc: w/incoming to Philip Buchen - for your information.

MLF:EF:VO:vo

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DAVID C. TREEN
THIRD DISTRICT, LOUISIANA

MEMBER:
COMMITTEE ON
ARMED SERVICES

MEMBER:
COMMITTEE ON
MERCHANT MARINE AND
FISHERIES

MEMBER:
REPUBLICAN TASK FORCE ON
ENERGY AND RESOURCES

Congress of the United States
House of Representatives
Washington, D.C. 20515

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TELEPHONE: 504-889-2303-4

210 EAST MAIN STREET
NEW IBERIA, LOUISIANA 70560
TELEPHONE: 318-365-7149

February 6, 1975

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

It has been a privilege to support you on most of your major proposals to the Congress. You know that you can count on me to be in your corner most of the time. But, with all due respect, Mr. President, I am very distrubed by your stated intention to request the Congress to extend for another five years the Voter Rights Act of 1965. This was one of the most abominable pieces of legislation ever adopted by the U. S. Congress.

I do not quarrel with the fact that legislation to ensure equal voting opportunities be extended to all persons regardless of race. But the methods provided in this legislation, for the most part, are indefensible.

It is my fervent hope that you will tell the Congress that the Voter Rights Act, after a life of ten years, has served its purpose and that no extension is needed. Should you feel, however, that you must recommend an extension, I sincerely hope that your recommendations will parallel the positions that you took in 1965 and 1969 as a Member of the House. On those occasions you came out forcefully against:

(1) Automatic triggering devices. Citing the inequity of automatically requiring federal registrars and observers in states which failed an arbitrary voter registration/voter participation test, you pointed out to the House on April 5, 1965 that: "Low registration or voting

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may be equally credited to voter apathy - especially in areas where one political party predominates - or to misleading census figures which include persons who are nonresidents (such as military personnel and college students)."

(2) Perpetually different standards for states targeted by the 1965 Act. On December 11, 1969, you pointed out the injustice of permitting 43 states to adopt whatever voting qualifications they chose, including literacy tests, while forbidding such freedom for five states where one million black voters had registered between 1965 and 1969.

(3) Prior federal approval of election law changes. In cosponsoring the McCulloch substitute in 1965, you claimed among its advantages that it did not "degrade a state or smaller governmental body in a state to the problem of coming to the Nation's Capital and putting itself at the foot of the federal judiciary in the District of Columbia."

(4) Placing the burden of proof on the states. Your proposal in both 1965 and 1969 would have placed the burden on the Attorney General to establish the need for federal supervision, rather than on the states to establish that grounds existed to terminate such supervision.

As you told the House in December 1969, the presence of a million newly enfranchised voters in the targeted states was a stronger guarantee against future discrimination than an extension of the 1965 Act could ever be. A majority of the House agreed with you at that time. That is even truer today than it was five years ago.

I trust you will again exercise your leadership to restore to all states their constitutional authority to conduct elections and register voters. You will have my utmost support in that effort.

With best wishes, I am

Respectfully,

Dave Treen

DAVID C. TREEN
Member of Congress

DCT/fw

Am

Mr. Kallen

Mr. Purcell

Mr. Buchen ✓

Mr. Lazarus

William V. Skidmore 3/4/75

May I have your comments on the attached Justice testimony ASAP today.

Thanks.

3/4/75

I checked with Dawn --

Mr. Lazarus did receive a copy of the attached.

Mr B wants Lazarus to respond to this

he doesn't have the time

SPECIAL SERVICE

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MIASTECH

Pottinger

DRAFT 3/2/75 ng

TESTIMONY OF J. STANLEY POTTINGER
BEFORE THE SUBCOMMITTEE ON CIVIL AND
CONSTITUTIONAL RIGHTS, COMMITTEE ON THE
JUDICIARY, U.S. HOUSE OF REPRESENTATIVES

MARCH 5, 1975

I am pleased to appear before ~~this~~ the Subcommittee this morning to testify on the extension of those provisions of the Voting Rights Act which are due to expire later this year. Accompanying me here this morning are Deputy Assistant Attorney General James P. Turner and Gerald Jones, the Chief of our Voting Section, who are responsible for administering the Act, and Brian Landsberg, Chief of our Appellate Section and Anne Clarke, Director of our Research Unit, who have assisted in our study of the issues surrounding the proposed extension. In my testimony I will describe the facts and reasoning which support President Ford's recommended bill, H.R. 2148, which was introduced by Congressmen Hutchinson, McClory, Railsbach, Fish and Cohen, and I will also discuss H.R. 939, which Chairman Rodino and Chairman Edwards have introduced. In addition, just last week H.R. 3247 and 3501 were introduced. These bills propose that

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THE WHITE HOUSE

WASHINGTON

March 6, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: KEN LAZARUS

SUBJECT: Pottinger Testimony on the Voting Rights Act

After reviewing the proposed testimony of Stan Pottinger, Assistant Attorney General, Civil Rights Division, to be presented before the House Judiciary Subcommittee on Civil and Constitutional Rights yesterday, I communicated my comments to Bill Skidmore at OMB. I interposed no objection to the testimony but made the mild suggestion that the testimony might overstate the case for an extension of the Voting Rights Act.

My private views are that this type of testimony is unnecessarily offensive to Southerners and can be counterproductive in terms of efforts to extend the Act. I would hope that representatives of the Department of Justice will temper their views when the matter is considered in the Senate. If the occasion presents itself, you might want to discuss this further with our new Attorney General.

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For "Voting Rights Act" file

THE WHITE HOUSE

WASHINGTON

April 28, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: KEN LAZARUS KL

SUBJECT: Voting Rights Act

I have reviewed the attached draft of Stan Pottinger's testimony before the Senate Judiciary Subcommittee on the Voting Rights Act Extension. I do not believe it warrants any comment.

On the question of the simple extension of the Voting Rights Act, this testimony tracks his earlier statement in the House. On the question of expansion of the Act to cover Chicanos, Pottinger finds no necessity for such an expansion.

Attachment

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THE WHITE HOUSE
WASHINGTON

Ken Lazarus:
Kindly review
this and advise
what comments
should be made
to Dick Parsons.
P.

THE WHITE HOUSE

WASHINGTON

April 25, 1975

MEMORANDUM FOR: Phil Buchen
Max Friedersdorf

FROM: Dick Parsons

SUBJECT: Voting Rights Act

Attached is a copy of Stan Pottinger's proposed testimony before the Senate Judiciary Subcommittee on Constitutional Rights concerning the Voting Rights Act.

Any problems?

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OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : A. Mitchell McConnell
Deputy Assistant Attorney General
Office Of Legislative Affairs

DATE: APR 24 1975

FROM : Brian K. Landsberg, Chief
Appellate Section

BKL:bhj
D.J. 166-01

SUBJECT: Voting Rights Act

Stan Pottinger asked that I send you our proposed draft of his testimony before the Senate Judiciary Subcommittee on Constitutional Rights, which he is scheduled to deliver on April 29. Because of the shortness of time (we are supposed to provide copies of the statement to the subcommittee by tomorrow) I am sending it before it has received Mr. Pottinger's final review and before it has been typed in final.

The statement pretty much tracks his statement before the House Subcommittee, except for Parts III, IV and V. The only exhibits I am sending with this draft are those which are not attached to the House testimony.

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DEPARTMENT OF JUSTICE

FOR RELEASE AT 9:30 A.M. EDT
TUESDAY, APRIL 29, 1975

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STATEMENT

BY

J. STANLEY POTTINGER
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

Before The

SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS

Of The

SENATE JUDICIARY COMMITTEE

On

THE EXTENSION OF THE VOTING RIGHTS ACT

9:30 A.M.

Tuesday, April 29, 1975
WASHINGTON, D.C.

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Exhibit 35 will be delivered tomorrow.

TESTIMONY OF J. STANLEY POTTINGER
BEFORE THE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS, COMMITTEE ON THE JUDICIARY, U. S. SENATE

APRIL 29, 1975

I am pleased to appear before the Subcommittee this morning to testify on the extension of those provisions of the Voting Rights Act which are due to expire later this year. Accompanying me here this morning are Deputy Assistant Attorney General James P. Turner and Gerald Jones, the Chief of our Voting Section, who are responsible for administering the Act, Brian Landsberg, Chief of our Appellate Section, Cynthia Attwood, an Attorney in that Section and Anne Clarke, Director of our Research Unit, who have assisted in our study of the issues surrounding the proposed extension.

In my testimony I will describe the facts and reasoning which support President Ford's recommended bill, S. 407, which was introduced by Senators Griffin, Mathias, and Scott, and I will also discuss S. 1279, which Senators Hart and Scott have introduced and H.R. 6219, the bill under consideration now by the House Judiciary Committee. In addition, Amendments to S. 1279 have been introduced, proposing

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additional changes should be made in the Act, primarily to protect further the rights of persons of Spanish heritage and citizens whose primary language is other than English. In my view, as explained in our legal memorandum which is attached as Exhibit 32 , the Voting Rights Act, in its various protections against discrimination on account of race or color, does to some extent already cover Mexican-Americans, Puerto Ricans and Native Americans. The possible need for further protection, however deserves careful consideration by the Subcommittee, and I am pleased to see that representatives of these groups and other persons concerned with this question are testifying in these hearings. My testimony will outline the considerations of which we are presently aware on this issue, and which we believe are relevant to these proposals.

The Department of Justice helped draft the Voting Rights Act of 1965: The Act was based in part on facts and case law developed by the Department under prior voting rights legislation, and the primary task of federal enforcement of the Act is placed on the Department. The Civil

Rights Division — particularly our Voting Section -- has therefore accumulated a large amount of information which I hope the Subcommittee will find helpful in assessing the need for any extension of the Voting Rights Act. Exhibits which the Division's staff has developed will be submitted with my testimony, and I will refer to those exhibits in the course of testifying this morning.

The Voting Rights Act is unusual legislation in several respects. First, it attacks a problem which, prior to 1965, had been allowed to sap the strength of our democratic form of government: the denial and abridgment of the right to vote based on race. A rereading of the legislative history of the Act and a rereading of the Supreme Court's decision upholding the

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Act, South Carolina v. Katzenbach, 383 U.S. 301, reveals the systematic and thorough use of every conceivable device to stop black citizens in many of the covered states from having a fair voice in their government.

The second unusual aspect of the Act is that, because of this prior history, Congress enacted what the Supreme Court has called "a complex scheme of stringent remedies aimed at areas where voting discrimination has been most flagrant." Id. at 315. Justice Black argued in dissent in South Carolina v. Katzenbach that §5 of the Act "so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between state and federal power almost meaningless." Id. at 358. While I disagree with that characterization of §5, I think it is fair to say that §5 does represent a substantial departure from ordinary concepts of federalism.

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Finally, the Act has been unusually effective. It brought about a prompt, visible, dramatic increase in political participation by the black citizens in the South whose prior exclusion from the political process it was primarily designed to remedy. The results have fortunately been a general acceptance in the covered States of the resulting franchise of blacks, with important exceptions, of course, that require the continuing attention which extension would afford.

The questions before us this morning are whether, in light of present needs, in light of the successes of the Voting Rights Act to date, and in light of the principles of federalism, the Act should be extended. If answered affirmatively, a secondary concern is for how long it should be extended. To properly consider these questions we should examine the workings of the Act. Has it proved workable? Has it promoted nondiscrimination in voting? Does experience under it warrant extending its special coverage provisions to more fully protect the rights of other groups? Has it been so successful that it is no longer needed? How much of a strain of federalism has resulted? I believe that the results of such an examination, together with an examination of the judicial and

legislative precedents, strongly support the Administration's proposed five-year extension, S. 407. I will address these questions, first as to the extension of §4(a) of the Act, and second as to §201(a) of the 1970 Amendments; and third as to the various amendments to expand the coverage of the Act.

I. Section 4 is the central provision of the 1965 Act, because that section determines which states shall be subject to the special provisions of the Act relating to the suspension of tests or devices, pre-clearance of changes in voting laws, listing of voters by federal examiners, and the use of federal observers to monitor the conduct of elections. Section 4(b), as amended in 1970, provides for coverage of states and political subdivisions which the Attorney General determines maintained as a prerequisite for voting any test or device on November 1, 1964 or November 1, 1968 and which the Director of the Census certifies had less than 50% voter participation or registration in the Presidential election in 1964 or 1968, respectively. The Supreme Court, in upholding the provision of §4(b) of the 1965 Act that these determinations are not reviewable said:

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"the findings not subject to review consist of objective statistical determinations by the Census Bureau and a routine analysis of state statutes by the Justice Department." South Carolina v. Katzenbach, 383 U.S. 301, 333.

Pursuant to these provisions 7 states and 46 political subdivisions were initially determined to come under the 1965 Act. Following extension of the Act in 1970, an additional 62 political subdivisions were covered (including 8 political subdivisions which had been determined to be covered in 1965 but had subsequently "bailed out" under §4(a)). Exhibit 1 lists the states and subdivisions covered under §4 of the Act in 1965 and 1970. While most of the covered jurisdictions are located in the South, some are located in the North and West, particularly in areas with large Native American or Spanish-speaking populations, such as Arizona and New York.

The provision of §4 which leads to today's hearing states that jurisdictions covered by virtue of the certifications of the Attorney General and Director of the Census may escape coverage if:

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the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: Provided, that no such declaratory judgment shall issue with respect to any plaintiff for a period of five years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff.

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

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Since the passage of the Act two states and 14 political subdivisions have sought such a judgment. Of these, one state and 12 political jurisdictions have obtained such a judgment (including three New York counties which have since been placed back under the special coverage of the Act by motion of the Attorney General), and four such judgments have been denied. Actions under this so-called "bail-out" provision are listed in Exhibit 2. Since that provision, as it currently reads, requires entry of a declaratory judgment in favor of the moving state or subdivision if it has not used a test or device in a discriminatory fashion during the ten years preceding the action, those jurisdictions which became covered in August of 1965 and which were consequently required to suspend entirely the use of tests or devices should be able to establish their eligibility to "bail out" in August 1975, assuming that they in fact suspended all use of tests or devices as required. For jurisdictions first covered in 1970, the ten years will not expire until at earliest 1980.

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Section 4 suspends the use of tests or devices by covered jurisdictions, but since §201 (a) of the 1970 Amendments imposed a nationwide suspension of tests or devices, I will discuss the suspension later in this statement, when we come to §201(a). I now want to turn to the other consequences of coverage under §4: preclearance of changes in voting laws; federal examiners; and federal observers.

A. Preclearance

Section 5 of the Act requires preclearance of changes in the voting laws of jurisdictions covered by §4. The jurisdictions must either obtain from the United States District Court for the District of Columbia a declaratory judgment "that such [changed] qualification, prerequisite, standard, 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" or submit the change to the Attorney General. If the Attorney General does not object to the submission within sixty days, the change may be enforced by the submitting jurisdiction. The Supreme Court, in upholding the constitutionality of §5, said:

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> Congress knew that some of the States covered by §4(b) of the Act had resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees. Congress had reason to suppose that these States might try similar maneuvers in the future in order to evade the remedies for discrimination contained in the Act itself.

South Carolina v. Katzenbach, 383 U.S. 301, 335.

The Congressional hearings on the 1970 Amendments to the Voting Rights Act reflect that §5 was little used prior to 1969 and that the Department of Justice questioned its workability. Not until after the Supreme Court, in litigation brought under §5, had begun to define the scope of §5 in 1969 (Allen v. State Board of Elections, 393 U.S. 544) did the Department begin to develop standards and procedures for enforcing §5. Congress gave a strong mandate to us to improve the enforcement of §5 by passing the 1970 Amendments. We subsequently promulgated regulations for the enforcement of §5 and directed more resources to §5, so that today enforcement of §5 is the highest priority of our Voting Section. Thus, most of our experience under §5 has occurred within the past five years. Although

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4476 voting changes have been submitted under Section 5 since 1965, between 1965 and 1969 the number of changes submitted was only 323 or 7% of all the Department has received. About 93% of all changes have been submitted since 1970. The year 1971 was the peak year for changes reviewed (1,118) and objections entered (50), a natural occurrence in light of the upcoming elections and redistrictings following the 1970 Census. The past three years, however, have continued to require the Department to review a high number of changes (between 850-1000 a year). See Exhibit 3. */

The following sets forth the states in descending order by numbers of changes submitted. The corresponding numbers of objections entered are also listed.

	Changes	Objections
S. Carolina	941	19
Virginia	891	10
Georgia	809	37
Louisiana	632	37
Mississippi	428	29
Alabama	331	22
N. Carolina	194	6
Arizona	149	2
New York	88	1
California	12	0
Wyoming	1	0
Idaho	0	0
	4,476	163

Exhibit 4 classifies changes into seven basic types: redistricting, annexation, polling place, precinct,

*/ This Exhibit has been updated through April 13, 1975, in Exhibit 39.

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reregistration, incorporation and a broad category, "election laws", which includes such changes as numbered posts, staggered terms, and candidate filing fees. As Exhibit 4 shows, annexations, polling place changes and redistrictings are the types of laws most frequently reviewed.

A total of 163 objections have been entered since 1965. Exhibit 5 lists the objections by state and Exhibit 6 sets forth Section 5 objection totals by state and year. A precise count of the number of changes involved is difficult because of the varying compositions of the laws submitted. However, these 163 objections have involved about 300 changes, e.g. one redistricting plan may involve at-large elections, multi-member districts, numbered posts and a majority requirement, while another may only involve numbered posts.

The highest number of objections was in 1971 (50), followed by 32, 27 and 30 in the next three years. Thus, it is apparent that the rate of objections has been about the same the past three years, indicating the continuing need for Section 5 review.


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Approximately one-third of our objections have been to redistrictings on the state, county and city levels. In contrast, only 9 of our objections have related to annexations, which comprise the highest number of changes submitted.

These statistics tell only part of the story. The substance which lies behind them is even more important. The provisions of Section 5 have proved more complex than was imagined in 1965. It was not until the publication of the Department of Justice regulations in September of 1971 that states and political subdivisions were provided with a definite, concrete list of the types of legislation and administrative actions which constituted voting changes within the meaning of Section 5 (see 28 C.F.R. §51.4). The regulations are attached as Exhibit 7.

Although the publication of the Attorney General's guidelines, other Department activities and court decisions were followed by a large increase in the number of voting changes submitted for preclearance under Section 5, still many such changes have not been submitted. We have undertaken

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a number of programs to uncover such changes and to obtain their submission. For instance, in July 1971 the Civil Rights Division sent letters to local district attorneys in 18 of the 33 judicial districts in the State of Louisiana reminding them of the preclearance requirements of Section 5 and asking that they apprise us of redistrictings or reapportionments of any of the parishes located in their respective districts, since we understood that virtually all of the Louisiana parishes had redistricted, or were in the process of doing so and we had received no redistricting submissions from those districts. After the sending of these letters, 70 local reapportionments were submitted, including 18 which resulted in objections.

In 1972 and early 1973 the Voting Section undertook a review of Louisiana state statutes passed during the years 1965 through 1972 in an effort to identify those appearing to deal with voting changes which had not been submitted for a determination under Section 5. As a result of this project the Louisiana Attorney General was advised that a substantial number of such statutes existed and he was reminded of the State's Section 5 responsibility with respect to the voting changes apparently involved. The State made a submission of 149 statutes in March 1973.

A similar project with respect to the 1971 Session laws for the State of Alabama during 1974 resulted in the discovery of 161 unsubmitted voting changes from the year 1971. This was brought to the Alabama Attorney General's attention by my letter of August 27, 1974.

This year we have undertaken similar reviews of the session laws for nine states for the years 1970-1974. As a result we have mailed just recently (February 25, 1975) to the Attorney General of Georgia a letter apprising him of 158 unsubmitted laws which our search revealed appropriate letters were sent to the states involved in March.

In addition, we have asked the FBI through contact with local authorities to determine whether changes relating to voting may have been adopted in a manner such as ordinance, resolution, etc., which may not be reflected in the state statutes. Where such changes have been made we intend to seek Section 5 compliance where necessary.

Thus, Section 5 has yet to be fully implemented. In some instances voting changes have been implemented even

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after we notified the state or local authorities of the requirements of Section 5 and even after we had sent objection letters under Section 5. For instance, in Leake County, Mississippi, in 1970 and in Kemper County, Mississippi in 1974 we were forced to file suit in order to prevent these counties from implementing an unsubmitted change to at-large elections for their school board members. And in a number of instances, i.e., the State of Georgia; Jonesboro, Hinesville and Twiggs County, Georgia; and St. James Parish, Louisiana, we had to file suit to prevent intended implementation of a change to which the Attorney General had objected.

Under Section 5, the submitting authority has the burden of showing that the submitted change does not have a racially discriminatory purpose or effect. While some of the Attorney General's objections under Section 5 are based primarily on the submitting authorities' failure to carry this burden, many are based on a conclusion that the change involved is clearly discriminatory. Permit me to cite a few examples.

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In recent years we have objected to the change of polling places to an all-white segregated private school (Lafayette Parish, La., July 16, 1971) and to an all-white segregated club (St. Landry Parish, La., Dec. 6, 1972); to a racial gerrymander of voting districts using non-contiguous areas as a part of the district (E. Feliciana Parish, La., Dec. 28, 1971) and a racial gerrymander resulting in "an extraordinarily shaped 19-sided figure that narrows at one point to the width of an intersection, contains portions of three present districts, and suggests a design to consolidate in one district as many black residents as possible" (Orleans Parish, La., August 20, 1971). In several instances covered jurisdictions submitted proposed annexations of white areas, while refusing to annex black areas; attached, for example, as Exhibit 8 are our objection letter of February 5, 1975 regarding a proposed annexation to Granada, Miss., a map of the proposed annexation and, for comparison purposes, a map of the voting change held unconstitutional in Gomillion v. Lightfoot, 364 U.S. 339 (1960). Rather than provide only

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selective examples, I have attached as Exhibit 5, a list of all objections entered under §5 and as Exhibit 9 lists and summaries of Department of Justice litigation under the Voting Rights Act.

In summary, the protections of §5 should be expanded because:

(a) it has been effective in preventing discrimination;

(b) it has never been completely complied with by the covered jurisdictions; and

(c) the guarantees it provides are more significant to the country than slight interference to the federal system.

B. Examiners

§6 of the Voting Rights Act, governing the use of Federal examiners, provides for their appointment whenever authorized by a court in a proceeding brought by the Attorney General to enforce the guarantees of the 15th Amendment (§3(a)), or in a covered jurisdiction under §4(b), whenever the Attorney General certifies that he has received meritorious written complaints from 20 or more residents of political subdivision that they have been denied the right to vote under color of law

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by reason of race or color, or when, in his judgment, "the appointment of examiners is otherwise necessary to enforce the guarantees of the fifteenth amendment"... §6(b)(2). In making the latter determination, the Attorney General is required to take into account whether the ratio of nonwhite to white persons registered to vote appears reasonably attributable to violations of the 15th Amendment or whether bona fide efforts are being made to comply. More specifically, the Department considers such factors as how long and how consistently the voter registration office is open, its location in relation to areas where black registration is low and whether offices are set up in outlying areas; whether there has been intimidation of registrants ranging from discourtesy to violence; and whether standards are applied differently to white and black applicants.

Once an area has been designated for federal examiners, at the request of the Attorney General the U.S. Civil Service Commission selects and assigns them.

As recognized by the Supreme Court in South Carolina v. Katzenbach, supra, this section of the Act was necessary because "voting officials have persistently employed a variety of procedural tactics to deny Negroes the franchise, often in direct defiance or evasion of federal court decrees." 383 U.S. at 336. The procedure was designed to cure some of the "localized evil" which might be undisturbed by mere suspension of misused voting rules.

The duty of federal examiners is to list persons who satisfy state voting qualifications which are consistent with federal law and to supply that list monthly to local election officials, who then enter the names on the official voter registry. A procedure for challenging any person listed is provided in §9. In addition, examiners are available during an election and within forty-eight hours after the closing of the polls to receive complaints that persons otherwise eligible to vote have been denied that right.

Since the passage of the Act, approximately 317 examiners have been sent to 73 designated jurisdictions. A complete list of designated counties and parishes is attached as Exhibit 10. The majority of designations for examiners occurred from 1965-1967 (61 out of 73); however, 6 additional areas were designated in 1974. The largest number of designations have been made in Alabama (14), Louisiana (11), and Mississippi (38).

Since 1965, 160,358 black persons have been listed by federal examiners. During the period from 1965-1969, a total of 158,384 blacks were listed, and from 1970-1974, the federal examiners listed 1974 black voters. A complete list of totals, by race, state, and year of persons listed by federal examiners is attached as Exhibit 11. Estimates based upon data collected by the Voter Education Project in Atlanta, Georgia would indicate that registration of blacks by federal examiners accounted for 34.2% of the total increase in black voter registration in Alabama from 1964-1972. The comparable percentages in other states were 1.9% in Georgia, 13.2% in Louisiana, 27.5% in

Mississippi, and 7.4% in South Carolina, with a total overall of 18.9% of black registration being accomplished by federal examiners. See Exhibit 12. In addition, we believe that the overall increase in black registration in the covered southern states from 1.2 million in 1964 to 2.1 million in 1972 has been due, in part, to the knowledge by local registrars that federal examiners will be designated if black persons are not given a meaningful opportunity to register.

The most recent use of federal examiners to list black voters occurred in Pearl River County, Mississippi in April, 1974. The designation of Pearl River County resulted from more than 40 complaints by residents that they had been denied the right to vote by reason of their race, the first such designation made by the Attorney General on the basis of specific complaints under §6(b)(1).

The underlying complaints in Pearl River County concerned the unwillingness of county officials to facilitate registration by persons residing in the City of Picayune, 26 miles from the county seat and the home of approximately 70% of the county's black residents.

Statistics showed that only about 50% of those eligible to vote were registered. In spite of efforts by attorneys from the Department to resolve the matter with county officials, the circuit clerk refused to carry his registration books to Picayune on Saturday when many blacks, who were unable to travel the 26 miles to his office during regular business hours, could register.

As a result of the appointment of federal examiners, 181 persons were registered, 172 of whom were black.

C. Observers

Whenever federal examiners are serving in a particular area, the Attorney General may request that the Civil Service Commission assign one or more persons to observe the conduct of an election to determine whether persons who are entitled to vote are permitted to do so and to observe whether votes cast by eligible voters are being properly counted.

In making the determination that federal observers are needed, the Attorney General considers three basic

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factors: (1) the extent to which those who will run an election are prepared, so that there are sufficient voting hours and facilities, procedural rules for voting have been adequately publicized, and polling officials, non-discriminatorily selected, are instructed in election procedures; (2) the confidence of the black community in the electoral process and the individuals conducting the election, including the extent to which black persons are allowed to be poll officials, and (3) the possibility of forces outside the official election machinery, such as racial violence or threats of violence or a history of discrimination in other areas, such as schools and public accommodations, interferring with the election. Such factors are particularly important in an election where a black candidate or a candidate who has the support of black voters has a good chance of winning the election. Federal observers provide a calming, objective presence in an otherwise charged political atmosphere, and serve to prevent intimidation of black voters at the polls and

to assure that illiterate voters are provided with non-coercive assistance in voting. For instance, when the local polling place is located in a white-owned store, the presence of federal observers can alleviate apprehension by black voters that informal voting procedures or other improprieties will be used which will enable the poll officials to know how they voted.

Attached as Exhibit 13 is a group of representative examples of specific situations in which observers were authorized in response to local conditions surrounding elections in 1974 which had a potential for discriminatory practices. These narratives indicate that the use of federal observers is still warranted and necessary not only to assure a fair election but to lend the appearance of fairness which is essential to the maintenance of confidence in the election process.

A total of 7,359 observers have been assigned to counties and parishes in five states through December 1974, the largest number being assigned in Alabama and Mississippi. See Exhibit 14. A complete listing of observers assigned, by date of election, for the period

from May, 1966 through December, 1974 is attached as Exhibit 15. From 1966-1969, 4818 observers were used in 39 elections while from 1970-1974, 38 elections were covered by 2541 observers. In 1974, 464 observers were assigned to 12 elections.

Each observer completes a report summarizing in detail the conduct of the election process at the polling place to which he or she is assigned. That report is provided to the Department of Justice for review. A sample report form is Exhibit 16. Observer reports have been useful in evaluating complaints of discrimination in the election process, and observers have testified in court in several instances in order to establish the existence of improper practices at the polling places.

In January 1968, two federal observers testified before a state grand jury that they had observed the defendant altering ballots in the August 8, 1967 primary election in Coahoma County, Mississippi. And in a case involving the May 3, 1966 election in Dallas County,

Alabama, a federal observer testified as to the method of tallying ballots.

The observers' reports were used in a lawsuit instituted by the Attorney General against election officials in Marshall County, Mississippi to establish that scores of black voters who had been assigned to the wrong polling places were turned away from the polls in the 1971 elections.

The United States District Court for the Northern District of Mississippi in its recent opinion (10/4/74) in the case of James v. Humphreys County Board of Election Commissioners (C.A. No. GC 72-70-K) relied heavily upon observer reports which it termed "highly credible" to establish the election procedures at each polling place. The reports were also used by the Attorney General in a separate lawsuit involving the same election to establish that over 700 ballots were improperly rejected by election officials.

In addition to information which is used subsequent to an election in the context of a lawsuit,

observer reports of alleged impropriety have been useful in clearing up problems quickly, at the polls, before they become more serious. In many instances, too, observer reports have been useful in documenting that alleged violations had not occurred.

D. Overall Results of Voting Rights Act

The overall results of the Voting Rights Act in strengthening the role of black persons in the political process have been significant, but there remains a great deal to be accomplished. Based upon the available data, we estimate that the number of blacks registered to vote has increased from 1.5 to 3.5 million in the eleven-state South and nearly doubled from 1.2 to 2.1 million in the seven Southern states covered by the Voting Rights Act.

The most significant gains in voter registration by blacks have occurred in Mississippi, Louisiana, and Alabama. Prior to the Voting Rights Act, in 1964, less than 10% of the black persons of voting age were registered to vote in Mississippi, although blacks constituted 36% of the voting age population. As of

1971-72, 62.2% of eligible blacks in Mississippi were registered. Even considering this gain, however, black registration is still nearly 10% lower than the rate of white registration in Mississippi. In Louisiana, black registration, expressed as a percentage of voting age population, was 59.1% in 1971-1972 as compared with 32.0% in 1964. However, the rate of black registration in Louisiana is approximately 20% less than that for white persons. A similar pattern exists in Alabama where, although the gain in percentage of black persons registered is 34%, a gap of 23.6% still exists between black and white registration rates. These statistics, compiled from data gathered by the Voter Education Project, appear in Exhibits 17 and 18. They demonstrate, graphically, great gains, but also much more that can be accomplished.

Another indication of the gains made by black citizens under the Voting Rights Act is the increase in the number of black elected officials. As of April, 1974 there were 2,991 black elected officials in the United

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States. This includes federal, state, county and municipal governments as well as elected law enforcement and education officials. Approximately 45% of the black elected officials are in municipal government positions including mayors, councilmen, commissioners, and aldermen. The attached Table, Exhibit 19, shows the distribution of black elected officials by state and position as of April, 1974. In 1970, there were only 1,469 black elected officials. Exhibit 20, attached, shows the number by state in 1970 and in 1974 together with the change which has occurred during that time. Exhibit 21, showing the number of blacks in elective office compared to the total population, voting age population and all elected officials shows that although blacks constitute 9.8% of the voting age population, less than 1% (0.6%) of all elected officials are black. All of these tables can be found in the 1974 Roster of Black Elected Officials published by the Joint Center for Political Studies in Washington.

Concentrating on the southern states, the gains from 1965 to 1974 are significant. There were less than

100 black elected officials in the southern states prior to the Voting Rights Act, compared with 565 black elected officials in eleven southern states in 1970, and 1398 in 1974. The attached chart, Exhibit 22, shows the number of black officials by state and year for these eleven states. Of the 1398 black elected officials today, 964 are in the seven states covered by the Voting Rights Act.

Notwithstanding these gains, out of 101 counties with majority black populations, 38 have no black elected officials in district, county, city or state positions and an additional 11 majority black counties have only one (1) black elected official.

The South's black mayors are, with few exceptions, in small municipalities or in areas in which there is a majority black population. In the seven southern states covered by the Voting Rights Act, only 7% of the seats in the lower houses of state legislatures were held by blacks, while in the upper houses blacks held only 2.5% of the seats. Of the sixteen black United States Representatives, only two are from southern states.

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Similarly, although Mississippi ranks second in the nation in the number of black elected officials with 191, black persons hold only 4% of the elective positions despite the fact that over 1/3 of the population in the state is black (36.8%). By pointing to these disparities, I do not mean to suggest that any particular number or percentage of black persons in elective offices is required, but only that the statistics suggest the existence of practices against blacks which have prevented the level of representation that could normally be expected.

The increase in the numbers of blacks registered and voting has also had an incidental effect on the responsiveness of white elected officials to black citizens' needs. We can see this increased responsiveness in recent appointments of blacks to state level positions by the white elected officials.

In summary, there have been significant improvements in the political role of blacks since the passage of the Voting Rights Act, but I have also tried to highlight those areas where more needs to be done. The number of objections which the Attorney

General has made to changes in voting laws submitted to him under § 5 shows that there is still a potential for the passage of legislation which has either as its purpose or effect the exclusion of black voters from their rightful role. This potential could become reality in the absence of some objective control at the federal level.

E. Conclusion

In my judgment the record strongly demonstrates the need for continuation of the special coverage of the Act, especially § 5. The Administration bill, S. 407 , differs from S. 1279, in proposing a five year rather than a ten year extension of the Act. The reasons for this approach are as follows.

First, Congress used five years as the appropriate period in 1965 and 1970. As we get further away from the events which led to passage of the original Voting Rights Act, it seems inappropriate to go to a new, longer time period. Rather, the need for periodic review by Congress of the continuing need for the special coverage seems

greater now than it was in 1965. It should be our goal to end the need for the special coverage provisions. A five year extension would provide a greater incentive to the covered jurisdictions to eliminate the need for special coverage. Indeed, I believe that the progress which has been made during the past five years warrants considerable optimism that we could complete the job in the next five years. Finally, I would note that a five year extension does not represent an absolute barrier inasmuch as the Act provides for continuing some protection, by providing for the retention of district court jurisdiction for the five years following the issuance of a declaratory judgment under § 4(a).

II. Extension of § 201

Section 2 of the bill proposed by President Ford (S. 407) would extend for an additional five years §201(a) of the Voting Rights Act, as amended. This is the section providing for nationwide suspension of literacy tests and other similar prerequisites for voting. 42 U.S.C. 1973aa. Before discussing the basis for this aspect of our proposal, I wish to review the history of §201 and its relation to §4 of the Act.

As noted above, §4(a) of the 1965 Act, 42 U.S.C. 1973b(a), provided for the suspension of any "test or device" in any state or county found to be within the coverage formula set forth in §4(b). The means of terminating such suspension is a "bail out" suit. The primary effect of these provisions was to suspend the use of literacy tests in six states, Alabama, Georgia, Louisiana, Mississippi, South Carolina and Virginia, and in 39 counties in North Carolina. The constitutionaility of these provisions was upheld by the Supreme Court in South Carolina v. Katzenbach, supra.

In 1970, Congress amended §4(a), in effect by extending for five years the period of coverage. In addition, Congress amended §4(b) by adding a coverage formula based upon voter participation in the 1968 Presidential election. Use of the 1968 formula brought within §4(a)'s suspension of tests a number of political subdivisions, including three New York counties, eight Arizona counties and two California counties. The constitutionality of the 1968 formula has not been challenged in court.

Thus, the net effect of §4(b)'s original coverage formula (based on the 1964 Presidential election) and the formula added in 1970 was to suspend the use of tests and devices in some, but not all, states and counties which employed such prerequisites for voting. The other jurisdictions which had a test or device either were never brought under §4(a) (because their voter participation in 1964 and 1968 exceeded 50 percent) or, if covered, were successful in a "bail out" suit.

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However, §201, another provision added by the 1970 Amendments, prohibited the use of any test or device in any state or political subdivision not subject to suspension under §4(a). The definition of "test or device" used in §201 is identical to that used in §4(b). The definition includes literacy tests, good-character requirements and other similar prerequisites for voting. Originally, §201 applied to all or some of the political subdivisions in 14 states*/. For example, it applied to the entire State of Oregon and to all New York counties, except the three that were covered by §4(a). The suspension effected by §201(a) continues until August 6, 1975, but, unless the statute is amended, it will terminate on that date.

Soon after enactment of the 1970 Amendments, the State of Arizona indicated that, on constitutional grounds, it would not comply with §201. The United

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*/ One of the states, Idaho, had a good-character test, rather than a literacy test.

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States then brought an original action in the Supreme Court to enforce §201 with respect to Arizona, and the Court held in favor of the United States. As a result of this and related litigation the Court sustained the constitutionality of §201. Oregon v. Mitchell, supra.

In its brief in the Arizona case, the Department of Justice noted that, in adopting §201, Congress had relied upon its power to implement the 14th and 15th Amendments. Brief for the United States, pp. 39-51. We contended that §201 was a proper exercise of Congress' power under each of the amendments and stressed, among other things, the applicability of the rationale of the Gaston County decision, Gaston County v. United States, 395 U.S. 285 (1969). In that case the Supreme Court said that imposition of a literacy test in Gaston County, North Carolina was discriminatory where its racially disparate effect was attributable to racial discrimination by the state's public schools.

While somewhat different reasoning was employed in the five opinions in Oregon v. Mitchell, the Court was unanimous in sustaining §201. Seven justices relied solely upon the 15th Amendment. 400 U.S. at 154, 232 and 282. Justice Black referred mainly to the 15th Amendment, but also mentioned the 14th. 400 U.S. at 118, 132. Justice Douglas referred only to the 14th Amendment. 400 U.S. at 144. Opinions in which seven justices joined were based in part upon the Gaston County theory.

In our view, essentially the same reasons which led to enactment of §201 in 1970 and which furnished the basis for its constitutionality support extension of §201. Those reasons were summarized as follows in the joint statement signed by a majority of the members of the Senate Judiciary Committee:

> . . . our main concern is to extend undiminished the Voting Rights Act of 1965. In addition, however, our amendment . . . would extend the suspension of literacy tests and of other tests and devices to all states of the Nation.
>
> Even though these other areas have no recent history of discriminatory abuses like that which prompted enactment of the 1965 Act, this extension

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> is justified for two reasons: (1) because of the discriminatory impact which the requirement of literacy as a precondition to voting may have on minority groups and the poor; and (2) because there is insufficient relationship between literacy and responsible interested voting to justify such a broad restriction of the franchise. 116 Cong. Rec. 5521 (1970).

Since §201 has been in effect, use of tests and devices has been suspended throughout the United States. However, current statistics indicate that, in affected states, the rate of literacy among blacks, Indians or Spanish-speaking citizens is disproportionately low. See Exhibit 23. This fact, bolstered by the Gaston County theory, indicates that the Congress has a proper basis for extending the ban on use of tests and devices.

As noted above, in Oregon v. Mitchell, most of the justices relied upon the 15th Amendment and did not discuss the 14th Amendment with regard to §201. Still, in our opinion, the alternate ground employed by Congress in 1970 has some judicial support. That is, even apart from the discriminatory effects which literacy tests have upon blacks and other minority

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groups, Congress could properly determine that such tests are invalid under the 14th Amendment because they are not justified by any "compelling state interest." Cf., e.g., Dunn v. Blumstein, 405 U.S. 330 (1972); American Party of Texas v. White, 415 U.S. 767 (1974).

The importance of the widespread availability of radio and television as means of informing the electorate was referred to in the 1970 statement of the ten members of the Senate Judiciary Committee. We are aware of no indication that §201 has had detrimental effects in any state. Finally, it is significant that at present only 14 states retain laws providing for literacy tests. See Exhibit 24. This number includes five states covered by §4(a) and nine states covered, in whole or part, by §201. Since 1970, six states have repealed their literacy requirements.

In short, we feel that the basis for continuing §201 is clear. Our proposal that the extension of §201 be for an additional five years, rather than for a longer period, is tied to our proposal that §4(a) be extended for five years. At such time as §4 is allowed to expire,

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Congress may wish to consider enacting permanent voting rights legislation, and that would be the appropriate time for considering whether the suspension of tests or devices should be converted to a permanent ban.

III. I would like to turn next to the issues raised by Amendment No. 312 to S. 1279, sponsored by Senators Bayh, Haskell, Gary W. Hart, Philip A. Hart and Hugh Scott, Amendments No. 343, 344 and 345 sponsored by Senator Tunney, and raised by Titles II and III of H.R. 6219. These bills would amend the Voting Rights Act, so as to provide further protection for the voting rights of Spanish heritage Americans, Native Americans, Alaskan Natives, and Asian Americans. As I stated in my testimony before the House Subcommittee on Civil Rights and Constitutional Rights, it is my view that the Voting Rights Act presently provides some protections for these minority groups. As noted earlier, both the general prohibitions against discriminatory voting practices based on race or color, such as sections 2, 3, 11 and 12, and the special coverage provisions triggered by §4 apply, in our view, to discrimination against persons of Spanish heritage, Native Americans, and Asian-Americans. */

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*/ The Mexican Census of 1921, referred to in Exhibit 32, is attached as Exhibit 33. It shows that over 90 percent of the persons of Mexico are classified as either of the indigenous, i.e. Indian, race or of mixed races. Less than 10 percent of the people are classified as white. I understand that 1921 was the last year in which such data was collected by the Mexican census.

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In addition, one of the stated reasons for extending to the whole nation the suspension of literacy tests was the discriminatory impact of such tests on Spanish heritage Americans. In reviewing voting changes from covered jurisdictions in which significant numbers of persons of these groups reside, our uniform practice has been to consider the impact of the changes on these groups, and in some instances objections to voting changes have been based on the impact on Spanish-origin or Native American citizens. Specifically, I would refer the Committee to Exhibit 25, consisting of the objection letter of April 1, 1974, regarding reapportionment in New York; the Memorandum of Decision of July 1, 1974 on the same subject; correspondence to and from the Attorney General of Arizona, dated October 3, 1974; and the objection letter of February 3, 1975, regarding Cochise Co., Arizona.

The most recent Departmental litigation involving voting rights of Puerto Ricans is New York v. United States, Nos. 73-1371 and 73-1740, decided October 22, 1974, in which the Supreme Court affirmed the reopening of the New York litigation and the denial of a motion filed by the State of New York to "bail out" from special coverage of the Voting Rights Act. In our motion to affirm in that case we relied heavil

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on the existence of a district court order finding that New York maintained a test or device which had "the purpose or the effect of denying or abridging the voting rights of New York's non-English speaking citizens of Puerto Rican birth...." (Motion to affirm, p. 10).

The proponents of additional legislation have suggested two major legislative needs in this area. First, they point out that some states in which large numbers of non-English speaking Puerto Ricans, Mexican-Americans or Native Americans reside conduct English-only elections, despite the existence of some court rulings that such minorities are entitled to bilingual elections*/. Second, they have alleged that other forms of discrimination against these minorities are sufficiently prevalent in some non-covered states to warrant expanding the special coverage provisions to cover such states.

Our study to date discloses that there is a wide range of approaches taken by the states to the problem of ensuring non-English speaking citizens the right to an informed vote. We have made an informal survey, covering a majority of the states. We looked

*/ Puerto Rican Organization for Political Action v. Kusper, 490 F. 2d 575 (N.D. Ill. 1973); Arroyo, et. al. v. Tucker, et al., 372 F. Supp. 764 (E.D. Pa. 1974); Torres v. Sachs, ___F. Supp.___ (Case No. 73 Civ. 3921, S.D.N.Y., September 26, 1973); Lopez v. Dinkins, __F. Supp.__ (Case No. 73 Civ. 695, S.D.N.Y., March 21, 1973); Marquez v. Falcey, ___F. Supp.___ (Civ. No. 1447-73, D.N.J., October 9, 1973).

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at state statutes and contacted state secretaries of state. In some states there has been no provision whatever made to take into account the existence of a substantial minority of non-English speaking voters (see, for example, the cases referred to above relating to New York). In other states, statutes allow non-English speaking voters to have a translator (e.g., Texas Election Law §8.13a) */ or to have assistance in marking the ballot (e.g., Illinoos Election Code, Ch. 46, §7-48; Minn. Stat. §206.20). In Arizona, although state law is silent on the subject, the State Attorney General, by letter Of October 3, 1974 (attached as Exhibit 25) assured me that the state would provide bilingual notice and allow assistance in marking the ballots of non-English speaking and illiterate voters. The State of New Mexico requires that all state constitutional amendments

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*/ It is not clear whether Texas law, prior to the decision in Garza v. Smith, 320 F. Supp. 131 (W.D. Tex. 1970), remanded for entry of fresh judgment, 401 U.S. 1006, dismissed, noting continuing jurisdiction in the District Court, 450 F. 2d 790 (5th Cir. 1971), allowed the translator to enter the voting booth. Recent developments in Texas are outlined in a letter from the Secretary of the State of Texas, attached as Exhibit 34 .

be printed in Spanish and English (N.M. Stat. Ann. § 3-16-5); a sample ballot is attached as Exhibit 26). The states of California and New Jersey recently enacted laws providing for bilingual sample ballots. The New Jersey requirement applies to all election districts in which the primary language of 10% or more of the registered voters is Spanish (P.L. 1974, Chapter 30 and 51), while the California requirement applies statewide (Calif. Elections Code § 14201.5). New Jersey requires such districts to have at least two Spanish speaking election officials and California requires that bilingual election officials be recruited in those precincts with a 3% or more non-English speaking voting age population (Calif. Election Code § 1611). Attached as Exhibit 27 are a report from the California Secretary of State's office, dated October 31, 1974 showing that § 1611 has not yet been fully implemented, and a copy of Spanish language instructions and sample ballot used in California. We have been told that some other states, such as

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Colorado, some counties in Florida, Idaho, Kansas, Massachusetts, and Washington, also print voting instructions or materials in Spanish. According to the Secretary of State's office in Indiana, voter instructions are posted in Polish in Blake County, Indiana. Our survey thus reflects:

> (1) There is a growing sensitivity in many states to the rights of non-English speaking voters;
>
> (2) A few states with large numbers of Spanish speaking voters have failed to take effective action to secure their right to vote; and
>
> (3) There is a need for a more thorough and systematic review of the problem.

The practices of the states relating to English-only elections take on added significance if one looks at the statistics relating to voting by Spanish origin persons and the related statistics showing the number of Spanish origin elected officials and the range of civil rights suits which have been necessary to protect the rights of Spanish origin persons. For example, according to the Bureau of the Census, while 73.4% of white voting age population (VAP) and 65.5% of the black VAP were registered to vote in November 1972, only 49.4% of the Spanish origin VAP were registered. The available figures are set forth in Exhibit 29. However, comparable figures are not available for states or political subdivisions so that it is difficult to pinpoint the areas

where the problem of non-participation by Spanish origin voters is greatest. Our study of the State of Texas voting and census figures for 1972 reflect that counties with high Mexican-American population had slightly lower voting participation that counties with low Mexican-American populations; the disparity becomes somewhat greater if the combined black and Mexican-American figures are compared with the white "Anglo" figures. See Exhibit 35.

The other measure of political participation -- statistics as to elected officials -- appears to reflect that Spanish-surnamed persons are slightly more fully represented in proportion to their overall population than blacks are, but that both groups are still vastly under-represented as compared with whites. Exhibit 30 provides those figures, based on compilation of names prepared by private organizations.

Another rough measure of need is provided by looking at the extent of litigation needed to secure the rights of Spanish-speaking citizens. Other witnesses have already alluded to the various voting rights suits. In terms of the issue of responsiveness of state and local government to the Spanish origin minority, I believe it is also relevant to consider the experience of the Department of Justice in enforcing the civil rights laws as they relate to Spanish origin persons. Exhibit 31 is a list of our


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litigation in this area. It shows that we have had to take litigative action against state and local governments to prevent discrimination against Spanish origin persons in public schools, employment, voting rights and penal institutions.

In sum, although some court decisions already suggest that in order for the right to vote to be effective voters belonging to a substantial minority which speaks a language other than English should be provided election materials in their own language, some states have not reformed their voting laws to comply with those decisions.

In light of this information, and other evidence presented to the House Subcommittee on Civil Rights and Constitutional Rights and to this Subcommittee, it is our view that it would be appropriate to enact a nationwide ban on English only elections in jurisdictions with substantial concentrations of citizens whose primary language is other than English. Title III of H.R. 6219 contains such a provision. Amendment No. 343 to S. 1279 and Section 301 of Amendment No. 312 to S. 1279 contain similar provisions. Another proposed provision has been drafted by the staff of the United States Commission on Civil Rights (attached as Exhibit 36). At the request of the House Subcommittee, my staff has provided technical assistance in drafting approaches to further protecting the voting rights of non-English speaking minorities. Attached as Exhibit 37 for example, is a staff analysis of H.R. 5552; this analysis

is in large measure applicable as well to Amendment No. 312. Since I believe some of the more recent proposals improve on our initial efforts, in the interest of brevity I will only discuss the provisions contained Title III of H.R. 6219 and the Civil Rights Commission staff draft Title III of H.R. 6219, as amended, bans for a ten year period the use of certain enumerated English only election and registration materials in jurisdictions in which the Director of the Census determines (i) that more than five percent of the citizens of voting age are members of a single language minority and (ii) that the illiteracy rate of such persons as a group is higher than the national illiteracy rate. "Language minority" is defined to include persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage. "Illiteracy" is defined as failure to complete the fifth primary grade.

The title provides that any political subdivision of a state covered by operation of the Section is exempted from coverage if less than five percent of the voting age citizens of that political subdivision are of the language minority whose presence in the State caused the State to be covered by the Section. The provision also allows a covered jurisdiction to bail out if it can demonstrate in

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the District Court for the District of Columbia that the illiteracy rate of the applicable language minority group within the jurisdiction is equal to or less than the national illiteracy rate.

In sum, the Section would reach only those jurisdictions in which substantial numbers of voters are affected by English only elections, and would simply require those jurisdictions to provide bilingual or multilingual election and registration materials until such time that they can demonstrate that the illiteracy rate among persons in the protected class is equal to, or less than the national illiteracy rate.

Although it is my view that a law along the lines of this section could provide an effective remedy for the voting problems of some language minorities which are directly related to their inability to read, write, interpret, or understand the written English language, I have a few reservations concerning this particular section. First, Title III of H.R. 6219 would only be implemented in jurisdictions which have substantial Asian-American, Native American, Native Alaskan, or Spanish heritage populations. It would not provide similar protections in areas with, for example, substantial French or German-American populations. There seems to be little reason to exclude these and other language minorities from coverage under this provision.

Second, Title III provides a ten year ban on English only elections. It is my view that, as we would be entering a new area of voting rights enforcement, an initial five year ban would be more appropriate.

Third, under Title III of H.R. 6219, within a covered subdivision bilingual elections would apparently be required even in

precincts having no voters belonging to a language minority.

I will turn now to the proposal drafted by the staff of the United States Commission on Civil Rights. This proposal is in some respects more expansive, and in some respects narrower than Title III of H.R. 6219 The Civil Rights Commission draft would ban the use of English only election and registration materials in jurisdictions in which more than five percent of the citizens of voting age do not speak, read, write, or understand the English language and habitually use a single language other than English. A jurisdiction meeting these criteria would be required to provide certain election and registration materials in the language of the affected class.

There are three major differences between the Commission draft and Title III of H.R.6219. The Commission draft is based on actual illiteracy in the English language, rather than on the arbitrary definition

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(less than five years of schooling) used in Title III. In addition the Commission draft would not require determinations as to coverage to be made by the Director of the Census. Rather, jurisdictions would be covered by the proposed section in one of three ways. First, the jurisdiction could itself decide that it was covered and voluntarily provide bilingual materials Second, members of the protected class could request the jurisdiction to provide bilingual materials and if that failed, bring suit.

Third, the Department of Justice could bring suit under section 203 of the Voting Rights Act, as amended by section 302 of the proposed draft. The determination made by the court would not be based solely on Census materials that do not actually indicate whether people know English or not but would be based on a showing that a language problem actually exists. Finally, the Commission draft would cover jurisdictions which have substantial populations

of any non-English speaking citizens; it would not cover precincts not having such concentrations.

In summary, we recommend that a provision along the lines of either Section 301 of H.R. 939 or the Civil Rights Commission staff proposal be enacted to protect the voting rights of non-English speaking citizens.

Let me turn next to the question of expansion of the special provisions of the Voting Rights Act to jurisdictions with substantial Spanish heritage or American Indian populations, along the lines proposed in H.R. 6219, Senate Amendments 312, 344 and 345. In my testimony before the House Subcommittee some six weeks ago I suggested that if a strong case were made of widespread deprivations of the right to vote of non-English speaking persons, beyond those outlined above, expansion of the special provisions of the Act might be warranted. I outlined the spotty information which we had been able to gather up to that time, and concluded that the difficult question was whether the hearings before the Congressional committees would develop sufficient evidence to warrant expansion of coverage, or whether it would be necessary to await the results of the thorough investigation of these problems which the Civil Rights Commission recently decided to conduct. Since that time considerable testimony has been presented to this Subcommittee and to the House Subcommittee. The House Subcommittee has made its legislative determination that the evidence warrants expansion. In light of the other remedies available and in light of the stringent nature of the special provisions, the Department of Justice has concluded that the evidence does not require

expansion based on the record currently before us. In reaching this conclusion, we have compared the evidence presented in 1975 with the evidence which in 1965 convinced the Congress to adopt the Voting Rights Act. The 1965 evidence was far more compelling, and if the standard of 1965 is to be applied now, we believe that the most appropriate exercise of legislative discretion is to forego expansion at this time. I recognize that reasonable persons may differ in their evaluations of such factual questions or of the appropriate standard. My remarks are addressed to our evaluation of the evidence, and should not be construed as casting a cloud on the constitutionality of expansion of the special remedies of the Act to other jurisdictions.

In reaching our conclusion we were also influenced by the view that progress could be accomplished by the Department of Justice to protect the voting rights of Spanish heritage Americans and Native Americans through the use of Section 3 of the Act. Although the use of Section 3 would seem to require the kind of case by case process of litigation which was required prior to passage of the Voting Rights Act, under Section 3 preclearance of voting changes, and the appointment of federal examiners and observers may be required where the Attorney General proves violations of the Fifteenth Amendment. Our Voting Section is therefore now engaged in a program to proceed under that section to protect the rights of Spanish heritage, Native American, and black voters.

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We recognize that there is support in the Congress for expanding the coverage of the special provisions of the Voting Rights Act, and as the Department of Justice would be charged with the responsibility of enforcing such expanded provisions, I would like to briefly discuss some of the technical aspects of such legislation. Amendment No. 344 to S. 1279 contains provisions in Section 204 which specify with some precision the method to be used to determine whether a state or political subdivision is covered by operation of the coverage provisions. H.R. 6219 does not contain such a provision. In our view such language is advisable for several reasons. First it spells out exactly when, in what order, and by whom the determinations shall be made. Second, it places the burden of collecting evidence concerning English-only elections on the State or political subdivision. The determination that a jurisdiction employed an English only elections in 1972 is not simply a matter of reading statute books, which is how we were able to determine the use of a test or device under the Act as passed in 1965 and as amended in 1970. The Justice Department's resources would be expended traveling to these jurisdictions and going through old election records. Therefore it is important to require that jurisdictions have the burden of demonstrating to the Attorney General that they did not hold English-only elections in 1972.

H.R. 6219 adds the Fourteenth Amendment as one of the constitutional bases for these provisions. As I discussed earlier, it is our belief that the persons protected by these provisions are protected by the Fifteenth Amendment. See Exhibit 32. However, not everyone is in agreement with that determination, and it is my view that the use of the Fourteenth in addition to the Fifteenth Amendment is reasonable. However, Sections 205 and 401 of H.R. 6219 in conjunction, would allow an aggrieved person, suing to enforce the guarantees of either the Fourteenth or Fifteenth Amendments to request that the district court invoke the special provisions of the Act, including the provision of examiners and the preclearance of voting changes. This language would give the district court jurisdiction in a Fourteenth Amendment reapportionment case in which no discrimination based on race, color or national origin is alleged, for example, to invoke the special remedies of the Act. Therefore, I believe that Section 3 as amended by the House Subcommittee bill is dangerously overbroad, and we do not support that portion of H.R. 6219 as written.

If Congress feels further legislation to protect Spanish surname and American Indian voting rights is necessary, it might be appropriate to consider some other means of affording private persons the right to request Section 3 remedies in a voting discrimination suit. Such a provision should, in our view have limitations upon it. For instance such a provision might require that the action be a class action alleging systematic violations of voting rights on account of race, color or national origin. It could require that whenever a person requests remedies under Section 3, he shall notify the Attorney General, and the Attorney General shall have the right to

intervene. (Section 401 (c) of Amendment No. 345 to S. 1279 contains such a provision). Such a provision should also provide that any private action seeking to invoke the remedies of Section 3 be brought before a three judge district court.

IV. I would like next to turn to several additional new provisions included in H.R. 6219, to S. 903 and to a bail out provision which the Department of Justice drafted at the request of Congressman Butler.

Section 402 of H.R. 6219 provides that in any action or proceeding to enforce the voting guarantees of the Fourteenth or Fifteenth Amendment, the court, in its discretion may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs. Many other civil rights statutes presently provide for the awarding of attorneys fees to the prevailing party. It is our view that statutory authority for the awarding of attorneys' fees in voting rights cases is reasonable and appropriate.

Section 403 of H.R. 6219 requires the Director of the Census to conduct statistical surveys of voter registration and participation by race color or national origin in every jurisdiction covered by operation of Section 4 of the Act after every federal election or in any jurisdiction for any election designated by the Commission on Civil Rights. We agree with the desirability of having accurate voting statistics in order to evaluate the performance of

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jurisdictions under the Voting Rights Act, and for the purpose of assessing the need for further action. However we do not know of the cost or feasibility of this provision and must defer to the Director of the Census on these issues.

Section 404 of H.R. 6219 amends Section 11(c) to provide criminal penalties for the giving of false information in registering or voting for delegates from Guam and the Virgin Islands. This amendment would bring Section 11(c) up to date by including all jurisdictions with delegates in its coverage.

Section 405 of H.R. 6219 codifies 28 C.F.R. 51.22 which by regulation established a procedure for the Attorney General to expedite his appraisal of a Section 5 submission for good cause shown. See Exhibit 7. This Section does no more, and no less than 5122; however, in our view it is beneficial to codify the regulation to remove any question as to the Attorney General's authority to expedite the Section 5 procedures in appropriate cifcumstances. Let me emphasize that both 28 C.F.R. 51.22 and Section 405 of H.R. 6219, protect the right of the Attorney General to reevaluate his determination at any time within the 60 day period if new information comes to his attention.

In the hearings on extension the issue has been raised whether Section 4 of the Voting Rights Act needs an additional bail out provision in light of recent court decisions such as Virginia v. United States. At the request of Congressman Butler the Civil Rights Division drafted such a bail out provision which we felt was consistent with the

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goals of the Act. See Exhibit 38. However, it has been and continues to be our view that the present bail out structure is adequate and that additional bail out provisions therefore are not necessary.

Finally I would like to comment on S.903 which among other things would repeal Sections 4 and 5 of the Voting Rights Act. As I have already stated, although it is my view that there have been substantial gains made under the Voting Rights Act to date, much more needs to be done. To repeal Sections 4 and 5 of the Act at this date would be to leave an essential task - the eradication of discrimination in voting on account of race - only partially completed. Therefore I strongly oppose S. 903.

In conclusion, I believe that the most urgent task of the Committee relating to the Voting Rights Act is to agree promptly on a bill extending §4 and §201 for an additional 5 years. Prompt action is necessary to ensure that the special coverage provision and the nation-wide suspension of tests and devices are not allowed to expire. The second task, of equal importance, if not subject to the same time constraints, is consideration of the need for additional coverage to protect the rights of Mexican-Americans, Puerto Ricans, and Native Americans. I would urge that provisions along the lines proposed in the Civil Rights Commission staff draft be adopted. The question of expansion of the special provisions to other jurisdictions should be revisited if the Civil Rights Commission study or our experience in future litigation demonstrates that the existing protections are inadequate.