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THE PRESIDENT HAS SEEN....

THE WHITE HOUSE

WASHINGTON

July 16, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: MAX FRIEDERSDORF *M.C.*

*ACF*

SUBJECT: S.1849, Emergency Petroleum Allocation Act

Per your request I am attaching a Congressional Record tear sheet on the vote yesterday extending for six months the Emergency Petroleum Allocation Act (S.1849). Of the eight members not voting, we consider Senator Eastland, Goldwater, and Morgan as prime possibilities as votes to sustain your veto. Also from the 62 voting for the bill we believe the following Senators would be possibly persuaded to vote to sustain.

Allen  
Beall  
Harry Byrd  
Nunn  
Pearson  
Percy  
Roth  
Stafford  
Stennis  
Talmadge  
Weicker  
Mathias  
Bentsen  
Johnston

decisions if we are allowed to have other votes.

There is a strong desire on the part of many Senators, if not all Senators, on this side to look at each issue as it comes, to compromise where compromise is possible, to vote with the other side wherever that is possible within one's conscience on these issues. I think that should be noted in terms of the very close vote that just occurred.

Mr. HUGH SCOTT. Mr. President, I continue to say that there are issues on which we should consider possible stipulation, possible compromise. This clearly was one of them. This and the next one are the ones made by the Washington Post.

It is no wonder that the majority wants to steamroller us, not only on this issue but on the next one as soon as they can get to it, because that knocks out the one possible proposal of compromise that might have had some merit here that we could have gone into.

In answer to the charge that there was no steamroller, indeed there was. This issue passed, just before the announcement of the vote, by a majority, I believe, of three votes. Then four votes were changed. Of course, I would never, ever, refer to how they were changed, but four votes were changed.

Mr. SYMINGTON. Will the Senator yield?

SEVERAL SENATORS. Regular order, Mr. President.

The PRESIDING OFFICER. The Senator's minute has expired.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. Symington have 1 minute.

Mr. MOSS. Mr. President, reserving the right to object.

Mr. HUDDLESTON. I object.

The PRESIDING OFFICER. The objection is heard.

**EMERGENCY PETROLEUM ALLOCATION EXTENSION ACT OF 1975**

The Senate resumed the consideration of the bill (S. 1849) to extend the Emergency Petroleum Allocation Act.

The PRESIDING OFFICER. The Senate will now proceed to vote on S. 1849, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 1849) to extend the Emergency Petroleum Allocation Act.

The PRESIDING OFFICER. The question is, Shall the bill, as amended, pass? The clerk will call the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Mississippi (Mr. EASTLAND), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Montana (Mr. METCALF) are necessarily absent.

I further announce that the Senator from Ohio (Mr. GLENN), and the Senator from North Carolina (Mr. MORGAN) are absent on official business.

I further announce that, if present and voting, the Senator from Ohio (Mr. GLENN), the Senator from North Caro-

lina (Mr. MORGAN), the Senator from Minnesota (Mr. HUMPHREY) and the Senator from Vermont (Mr. LEAHY) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER) is absent on official business.

I further announce that, if present and voting, the Senator from Arizona (Mr. GOLDWATER) would vote "nay."

The result was announced—yeas 62, nays 29, as follows:

[Rollcall Vote No. 281 Leg.]

**YEAS—62**

Abourezk	Hart, Philip A.	Nelson
Allen	Haskell	Allen
Beall	Hathaway	Pastore
Bentsen	Hollings	Pearson
Biden	Huddleston	Pell
Brooke	Inouye	Percy
Bumpers	Jackson	Proxmire
Burdick	Javits	Randolph
Byrd	Johnston	Ribicoff
Harry F., Jr.	Kennedy	Roth
Byrd, Robert C.	Leahy	Schweiker
Cannan	Magnuson	Sparkman
Case	Mansfield	Stafford
Chiles	Mathias	Stennis
Church	McClellan	Stevenson
Clark	McGovern	Stone
Cranston	McIntyre	Symington
Culver	Mondale	Talmadge
Eagleton	Montoya	Tunney
Ford	Moss	Welcker
Hart, Gary W.	Muskie	Williams

**NAYS—29**

Baker	Garn	McGee
Bartlett	Gravel	Packwood
Bellmon	Griffin	Scott, Hugh
Brook	Hansen	Scott,
Buckley	Hatfield	William L.
Curtis	Helms	Stevens
Dole	Hruska	Taft
Domenici	Laxalt	Thurmond
Fannin	Long	Tower
Fong	McClure	Young

**NOT VOTING—8**

Bayh	Goldwater	Metcalf
Eastland	Hartke	Morgan
Glenn	Humphrey	

So the bill (S. 1849), as amended, was passed as follows:

**S. 1849**

An act to extend the Emergency Petroleum Allocation Act

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**TITLE I**

**SHORT TITLE**

SEC. 101. This title may be cited as the "Emergency Petroleum Allocation Extension Act of 1975".

**EXTENSION OF MANDATORY ALLOCATION PROGRAM**

SEC. 102. Section 4(g) (1) of the Emergency Petroleum Allocation Act of 1973 is amended by striking out "August 31, 1975," wherever it appears and inserting in lieu thereof "March 1, 1976."

**TITLE II**

SEC. 203. Section 11(c) (2) of the Energy Supply and Environmental Coordination Act of 1974 is amended by adding the following new subparagraph:

"(E) Price trends and related developments for coal and for other major energy sources which are not subject to direct price regulation at any level by the United States Government. As soon as practicable after the date of enactment of this subparagraph and at such times thereafter as he deems appropriate, the Federal Energy Administrator, after consultation with such other persons and agencies as he deems appropriate, shall provide an assessment of the relationship between price trends and related developments

for energy sources covered by this subparagraph and energy policies, including any recommendations he may have in connection with such assessment."

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. MANSFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 1849.

The PRESIDING OFFICER. Without objection, it is so ordered.

**ADDITIONAL STATEMENTS ON S. 1849**

**EXTENSION OF EMERGENCY PETROLEUM ALLOCATION ACT**

Mr. MOSS. Mr. President, I rise in support of S. 1849, extension of the Emergency Petroleum Allocation Act. Passage of the bill is vital to protect consumers from unjustifiable oil company price increases, to preserve the positive trends we have seen recently in the inflation rate, and to prevent a new explosion of job layoffs in industry.

At the outset, I want to make clear that our ultimate goal must be to restore free markets in energy. Free markets are unquestionably a more efficient allocator of economic resources and a more effective protection against unfair prices than Government regulation can ever be. It is equally clear, however, that there is not a free market in oil in the United States today. The price of oil, left unregulated by the Federal Government, is pegged to the monopoly price set by the OPEC cartel. That price is now around \$13.40 per barrel, and every indication points to at least another \$2 per barrel increase in the fall when the OPEC oil ministers again meet.

If the Emergency Petroleum Allocation Act is not extended, the Government's authority to control oil price increases will lapse on August 31. There will quickly follow a series of petroleum price increases which would be disastrous for the consumer, the farmer, business and the economy as a whole. At present, about 40 percent of our domestically produced oil sells at the OPEC level, \$13.40. The end of price controls will mean a rise in the other 60 percent from its present price of \$5.25 per barrel to the \$13.40 monopoly level. That will mean increases in the price of gasoline which will make the 4 cents rise of July 4 seem like peanuts. And gasoline price hikes are only the beginning.

The price of food will skyrocket, because agriculture—as every farmer knows—is energy-intensive, and fertilizer is made from petroleum products.

Home heating and electric utility bills will continue to skyrocket upward—up nearly 25 percent this past year.

The cost of all goods and services will inflate because of increased transportation and material costs.

The President has belatedly recognized that instant decontrol of oil prices is a prescription for economic disaster. I am glad to see him now supporting an

extension of the EPAA. But the administration still has a long way to go before its policy of surrendering control over U.S. energy prices to the Arab monopolists and opting to ration energy by wealth begins to acquire the outlines of a sensible course of action.

#### DETERMINATION OF SENATE ELECTION IN NEW HAMPSHIRE

The PRESIDING OFFICER. Under the previous order, the Senate will now continue with the consideration of Senate Resolution 166, which the clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 166) relating to the determination of the contested election for a seat in the United States Senate from the State of New Hampshire.

The PRESIDING OFFICER. The question is on issue No. (2), division No. 3, lines 1 through 5 on page 2. The pending amendments to this question are the amendment of the Senator from California inserting language and the amendment of the Senator from Montana to the amendment of the Senator from California.

Mr. ROBERT C. BYRD. Mr. President, the pending question then is on the adoption of the amendment by Mr. MANSFIELD to the amendment by Mr. CRANSTON?

The PRESIDING OFFICER. That is correct.

Mr. ROBERT C. BYRD. Mr. President, I have listened with great interest to references to the Washington Post editorial. I note that the following passage occurs in that editorial, and I read it:

A way to proceed from here is not hard to prescribe. In our view, the Senate should first set firm deadlines for all future debate and votes—

now that can be done by unanimous consent or by cloture.

—then proceed to vote on whether the so-called "skip-candidate" ballots ought to be counted or not.

I would ask unanimous consent, in the spirit of the passage that I have read from that editorial, that there be 2 hours of debate on that amendment tomorrow morning after the two leaders or their designees have been recognized, the time to be divided and controlled by Mr. CANNON and Mr. HATFIELD, and that a vote then proceed on the amendment, with a tabling motion in order.

Mr. HANSEN. Mr. President, reserving the right to object, let me observe that—and I do not know what a steamroller is, I am a dirt farmer myself—I must say that any time you are able to switch votes, as was done earlier on the first vote here today, it seems to me that although I do not claim to understand how a steamroller really works, it occurred to me that the objective that was achieved of being able to switch the votes, as was done at the last minute, would bear some reasonable similarity to a steamroller.

As a consequence, I quite agree with the distinguished minority whip that really, the only way this issue is going

to be resolved is to send it back to the State of New Hampshire.

I would further observe, Mr. President, that I have no doubt but what we will have to vote on cloture several more times. I think it will be interesting to future historians to read the Record and observe how 61 or fewer than that but, anyway, a majority party, can persist in trying to impose its will on a minority despite the overwhelming conviction around the country that the only proper, decent, and fair way to resolve the issue, is not to try to steal the seat here in the Senate but rather to let the people of New Hampshire decide that issue.

Accordingly, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, reference has been made to stealing a seat. I do not think it is any more proper to accuse the Senate of attempting to steal a New Hampshire Senate seat than it would be to accuse the New Hampshire ballot law commission of having stolen the seat last fall.

Mr. MANSFIELD. Mr. President, the Constitution of the United States of America, article I, section 5, states:

Each House shall be the judge of the elections, returns, and qualifications of its own members. . .

Mr. HANSEN. Mr. President, let me observe that, that issue, that particular portion of the Constitution which has been read and reread and interpreted by more people than there are constitutional authorities, I dare say, I do not think it can be contended successfully, at least to the satisfaction of most Americans, that the framers of the Constitution and those who ratified it ever intended that the Congress of the United States was to usurp the rights of the States in determining who had won an election absent any charge of fraud or wrongdoing.

Accordingly, I do not subscribe to the very broad interpretation that is now being impliedly made with respect to this provision of the Constitution.

I point out again that if we are to assume that any time some disgruntled unsuccessful candidate for election happens to be a member of the majority party in the Senate, it is a very simple matter for him to appeal to the Senate, and if we are to succumb, as many hope we might here, to that sort of protest, then I would say that we are opening up a Pandora's box. We are vitiating the concept of the States' rights of the State of New Hampshire or any other State to determine, within the legal framework of its own laws, who won an election. That seems to be the issue here.

I just cannot believe we are going to enhance the public's opinion of our understanding of the Constitution if we go through the charade we have been indulging in here for some time. I do not feel at all that when you review this and consider the fact that the State of New Hampshire has set up legal procedures that are to be followed in the case of an election and, indeed, they have been followed—

The PRESIDING OFFICER. The Senate will please be in order. Senators will please take their seats.

The Senator from Wyoming.

Mr. HANSEN. When they have been followed, there has been a strict adherence to New Hampshire law with due respect to rulings by the Supreme Court of the State of New Hampshire. On that basis, the sequence in that, in trying to judge what the outcome of that election was, as I understand it, was, first, that Mr. Wyman had won by a rather goodly number of votes, I think some 350 or approximately that number.

Then Mr. Durkin appealed to the secretary of state and following the count by that officer, the results that were obtained unofficially in the State of New Hampshire were reversed and Mr. Durkin was declared the winner by 10 votes.

Then, further appeal to the administrative procedures that are provided in determining and resolving the outcome of a contested election.

Very properly, Mr. Wyman appealed to the ballot law review commission and on that basis a further recount was made and Mr. Wyman was declared the winner by two votes.

That final, legislatively provided for appeal procedure then was duly certificated by the Governor of the State of New Hampshire, and Mr. Wyman was declared the winner by two votes.

I make the point, Mr. President, that it makes little difference insofar as the average person around the country is concerned whether he had won by 2 votes or 200 or 2,000. The fact is that, according to New Hampshire law, which I think should rule in governing in this respect, Mr. Wyman was declared the winner. His election was duly certificated to the Senate of the United States. Mr. Durkin, understandably being unhappy, was losing the election, as indeed, I submit he did, appealed to the Senate.

He appealed to the Senate because he knew, as we all know, that the Democrats have a larger number in this body than is represented by those of us who adhere to the Republican label.

As a consequence, we now have had I do not know how many cloture votes. We will undoubtedly have more, because as long as the majority party in the Senate wants to ask for cloture, we will continue to vote on cloture.

But I note that there has not been any deviation in the issue insofar as Members' voting goes, and I suspect, in due time, even the overwhelming number of Democrats, as spoken for, as they are, by the leadership here, will conclude it might make good political sense to let the people of New Hampshire rather than the Democrats and the Republicans, divided as they are in the Senate of the United States, decide that issue.

Mr. GRIFFIN. Will the Senator yield?

Mr. HANSEN. Without losing my right to the floor—

Mr. ROBERT C. BYRD. Mr. President, do I not have the floor? I had the floor and yielded to Mr. MANSFIELD who read from the Constitution, then the distinguished Senator from Wyoming responded.

