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THE WHITE HOUSE
WASHINGTON

May 10, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: BRENT SCOWCROFT
WILLIAM SEIDMAN

FROM: JAMES E. CONNOR *JEC*

SUBJECT: Arab Boycott and Related
Discrimination

The President reviewed your memorandum of May 6, 1976 on the above subject and approved the following option but with reservations indicated below:

Option 1 - Maintain the position outlined in your November 20 statement and strongly oppose all additional legislation as unnecessary and counter-productive, but do not indicate that you would necessarily veto any additional legislation thus leaving open the possibility of compromise later if sufficient opposition to the legislation does not develop.

The President approved OMB's recommendation against strong public opposition to any legislation and not to signal a veto at this time.

The President also approved The Counsel's Office recommendation that the stated position not be changed until we have clear indications that (a) Congress will act and (b) a change in position will produce a better result than holding firm.

Please follow-up with appropriate action.

cc: Dick Cheney

THE WHITE HOUSE
WASHINGTON

May 6, 1976

MR PRESIDENT:

Arab Boycott and Related
Discrimination

In addition to the staff recommendations outlined in the attached memorandum, David Lissy was requested to outline the views of the Jewish Community - these are at TAB C.

Jim Connor

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THE WHITE HOUSE

WASHINGTON

May 6, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: BRENT SCOWCROFT *BS*
L. WILLIAM SEIDMAN *LWS*

SUBJECT: Arab Boycott and Related Discrimination

The decisions announced in your statement of November 20, 1975 on the related issues of the Arab boycott and religious discrimination have been implemented. The Federal Reserve Board has issued a letter to member banks outlining their obligations with respect to Arab boycott and discrimination measures. The Justice Department has filed a civil anti-trust suit charging the Bechtel Corporation with refusing to deal with any U.S. sub-contractors on the Arab League boycott list and requiring its sub-contractors, in turn, not to deal with U.S. firms on the boycott list. The Department of Commerce has decided to release publicly letters charging United States firms with a violation of its regulations pertaining to the Arab boycott. The Department of Commerce has also ceased circulating tender offers requesting bids on projects from American firms if they contain a request to comply with the boycott.

In addition, several state governments have adopted laws on the boycott issue, some of which go well beyond the policy guidelines approved by you. We have also engaged in extensive discussions with Arab Governments and Israel on the entire question, including numerous exchanges through diplomatic channels and during Secretary Simon's March trip to the Middle East. Secretary Simon in his discussions with both Arab and Israeli leaders distinguished between the boycott and religious discrimination. He stated clearly that you desired an end to the boycott and that you felt that the only effective, peaceful way to end the boycott was to resolve the Arab-Israeli conflict. He also stated that we would oppose legislation directed to the boycott.

The cumulative effect of these actions has been mixed. The Arab Governments, as well as American businesses, appear to understand and accept the anti-discrimination aspect of our policy. Saudi Arabia has taken steps to distinguish between religious discrimination and its political attitude toward Israel, and to ease somewhat the process of obtaining visas for persons of the Jewish faith, even though some problems

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E.O. 12356, Sec. 3.4

MR 94-8, # 33 NSC Mr. 5/3/94

By *KSH* NARA, Date *6/27/94*

remain.

There have also been several specific indications of greater flexibility in the application of boycott regulations and some firms have been or soon will be removed from the list. Yet, there has also been some disruption of United States commercial dealings with the Arab world, primarily due to reluctance by American firms to risk possible legal action.

Arab Governments, to varying degrees, have resented our boycott related actions, although thus far they are generally cooperating in quiet, gradual efforts to minimize difficulties. Despite this quiet cooperation, high-level Arab leaders (particularly in Saudi Arabia and Kuwait) indicate they are prepared to retaliate commercially against United States business if we continue to apply what they view as unwarranted public pressure.

This memorandum seeks your guidance on the Administration's position on several pieces of pending legislation dealing with various aspects of the boycott/discrimination issue, all of which would, to various degrees, move the United States into a considerably tougher anti-boycott position than embodied in your November 20 statement. A summary of all the pending bills is attached at Tab A.

Stevenson Bill

The bill requiring the urgent formulation of an Administration position is an amendment (Title II) to the Export Administration Act proposed by Senators Stevenson and Williams and a similar bill introduced in the House by Representative Koch.

The proposed legislation would have three main effects:

(1) It would require disclosure of boycott request compliance reports submitted to the Commerce Department by U.S. firms, on the grounds that the Export Administration Act declares it to be the policy of the U.S. to oppose boycotts.

(2) It would bar religious, racial, ethnic, or sex discrimination by U.S. exporters.

(3) It would prohibit refusals by U.S. firms to do business with other firms pursuant to foreign boycott requests.

The provisions on disclosure of compliance with Arab boycott requests could have some negative effect on consumer-oriented businesses in this country, causing them either to avoid the Arab market completely or to go to third country affiliates in order to avoid a possible counterboycott.

The provisions barring discrimination are identical for all intents and purposes to the measures announced by you on November 20.

The provisions of the bill which prohibit U.S. firms from refusing to do business with other U.S. firms on the boycott list are unclear as to their intent and effect. As presently drafted these provisions are more far reaching than the Justice Department conception of the applicability of our anti-trust laws (as set forth in the Bechtel suit), and if enforced strictly would deal a serious blow to United States business with the Arab world. Even large multinational corporations now heavily engaged in the Arab world would probably shift procurement to third country affiliated or unrelated firms in order to avoid possible problems. Many smaller companies would probably terminate business with the Arab world.

Given the policy which we have followed since your November 20 statement, the Arabs will tend to view Administration acceptance of any additional legislation on the Arab boycott as a shift in the Administration's position in response to the Israeli lobby.

There has been considerable interagency review of how best to deal with the Stevenson-Williams-Koch legislation. A Working Group, chaired by the NSC staff discussed the issue at length and prepared a paper which was discussed by the EPB Executive Committee on April 30.

There is agreement that the Administration should seek to limit additional anti-boycott legislation to the absolute minimum, in accordance with your policy decision of last November which remains the best approach under present circumstances. However, there is also agreement that it may be desirable to accept a compromise with Congress in the form of a suitably amended Stevenson-Williams-Koch bill if this is necessary to avoid passage of worse legislation and if the only other alternative is a Presidential veto.

Options

Two options for dealing with the Stevenson-Williams-Koch bill are presented for your consideration.

Option 1: Maintain the position outlined in your November 20 statement and strongly oppose all additional legislation as unnecessary and counterproductive, but do not indicate that you would necessarily veto any additional legislation thus leaving open the possibility of compromise later if sufficient opposition to the legislation does not develop.

Advantages:

- o This would be fully consistent with your statement of November 20 and the position maintained by the Administration since then that no additional legislation is needed.
- o If efforts to block new legislation succeeded, it would retain Arab confidence of the Administration as well as encouraging them to ease the practical application of the boycott. It would avoid the serious danger of an Arab backlash (similar to the Soviet backlash over Jackson-Vanik) because they believed we were applying excessive public pressure.
- o It would minimize the loss of business by U.S. firms to other countries due to U.S. anti-boycott regulations.

If efforts to block new legislation failed, an opportunity would remain to choose between trying to obtain an acceptable compromise or either vetoing or acquiescing to unacceptable legislation.

Disadvantages:

- o This approach could produce a confrontation between the Administration and Congress and Jewish groups given the strong pressures which exist for some additional action.
- o It could also result in Congress pressing stronger legislation and rejecting last-minute efforts at compromise, than would have been the case were the Administration to seek a compromise from the outset.
- o This approach could place the President in the position of having either to acquiesce to the legislation or veto the bill.

Option 2: Modify your opposition to any additional legislation by beginning work immediately with key Members of Congress to reach agreement on an amended bill.

Two approaches to an amended bill have been considered. Both approaches would accept the sections of the bill on anti-discrimination and disclosure and seek clear agreement from key Members of Congress and Jewish leaders that there will be no additional legislative action.

Approach A: Attempt to delete the section of the bill on refusal to deal in exchange for agreement to the idea of public disclosure of boycott request compliance reports, either by administrative action or by enactment of that section of the bill.

A public statement by the Administration supporting explicitly the efforts of the Justice Department to apply the Sherman Act to refusal to deal cases should be considered as a possible concession to obtain deletion of that section from the bill.

Approach B: Attempt to amend the section of the bill on refusal to deal by substituting language proposed by Justice which would substantially narrow its application and bring it into line with Justice's present concept of the applicability of the Sherman Act to refusal to deal actions by U.S. firms pursuant to the Arab boycott.

Advantages:

- o Seeking a compromise from the outset through consultations with key Members of Congress and Jewish leaders would avoid a confrontation with them and could ultimately make an acceptable compromise easier to achieve.
- o Enactment of Stevenson's legislation should substantially undercut the prospects for more harmful legislation.

The Administration could provide Congress with the precise changes it would like in the bills before they move so far down the legislative path as to make changes difficult.

Disadvantages:

- o This would appear as a retreat from the Administration position held since November 20. Once the Administration signalled a willingness to compromise, Members of Congress and others who support strong anti-boycott legislation may assume that they are in a strong position and do not need to accept a compromise.
- o Some legislation would result which, depending on its nature, could create serious difficulties for U.S. foreign policy and economic interests in the Arab world and raise additional barriers to U.S. firms doing business in Arab countries.

Decision

Option 1 NR7

Maintain the position outlined in your November 20 statement and strongly oppose all additional legislation as unnecessary and counter-productive, but do not indicate that you would necessarily veto any additional legislation thus leaving open the possibility of compromise later if sufficient opposition to the legislation does not develop.

Supported by: Treasury, Labor, Cannon, Marsh, Friedersdorf, Scowcroft, Seidman, OMB¹

Option 2 _____

Modify your opposition to any additional legislation by beginning work immediately with key Members of Congress to reach agreement on an amended bill.

Supported by: Commerce² Counsel's Office³ State⁴

NR7 (1)

OMB supports a modification of Option 1. We recommend that you maintain the position outlined in your November 20 statement. We also recommend against strong public opposition to any legislation and would not signal a veto at this time.

² A memorandum from Secretary Richardson providing the reasoning behind the Commerce support for Option 2 is attached at Tab B.

NR7 (3)

The Counsel's Office supports the concept of Option 2 but urges that your stated position not be changed until we have clear indications that (a) Congress will act and (b) a change in the President's position will produce a better result than holding firm.

⁴ In the belief that we will be faced with some new legislation on the boycott in any event, the State Department recommends following Option 2A in an effort to modify the most troublesome aspects of pending legislation.

Our efforts should be principally on determining whether we can come up with an acceptable statement by the Administration (i.e. preferably not going beyond the intent of the November 20 reference) that would result in removal of the "refusal to deal" language from the bill. Congressman Koch, the principal

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-7-

sponsor of this bill in the House, has told us that he may be open to such an approach.

We believe it essential, in any effort to seek improvement of pending legislation, that there be clear agreement with those concerned that there would be no additional legislative action.

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MAJOR ANTI-BOYCOTT LEGISLATION

SENATE BILLS

1. Stevenson-Williams Bill (S. 953)

Title I

- * Would require that U.S. firms report to the Department of Commerce on whether they intend to comply and whether they have complied with boycott requests which they receive.
- * Would require that boycott reports hereafter filed with the Department of Commerce be made public, except that commercial information regarding the value, kind, and quantity of goods involved in any reported transaction may be kept confidential.
- * Would prohibit U.S. firms from furnishing, pursuant to a boycott request, any information regarding the race, religion, or nationality of its employees, shareholders, officers, or directors, or the employees, shareholders, officers, or directors of any other U.S. company.
- * Would prohibit U.S. firms from refusing to do business with other U.S. firms pursuant to a boycott request.
- * Maximum administrative penalties applicable under the Act would be increased from \$1,000 to \$10,000. In addition, would make it clear that export privileges may be suspended for a violation of the anti-boycott provisions of the Act.
- * Would require public disclosure of Commerce Department charging or warning letters against U.S. companies for failing to comply with anti-boycott provisions of the Act.
- * Would require that the Commerce Department provide the State Department with summaries of the information contained in boycott reports for appropriate action by the State Department.

- * Would require that the semi-annual reports to Congress under the Export Administration Act include an accounting of what action the Executive Branch has taken to effect the anti-boycott policy of the Act.
- * Would clarify the Act to leave no doubt that it applies to banks, other financial institutions, insurers, freight forwarders, and shipping companies.

Title II

- * Would amend section 13(d) of the Securities Exchange Act to expand the disclosure requirements imposed thereunder on those who acquire the beneficial ownership of more than 5% of any equity security by requiring disclosure of the following:

- (a) The residence, nationality, and nature of the beneficial ownership of the person acquiring the securities. (The latter would include, for example, whether the beneficial owner has the right to direct the voting of the securities, the receipt of dividends, or the proceeds of sale);
- (b) The background and nationality of each associate of the purchaser who has a right to acquire additional shares of the insurer.

- * Would impose new disclosure requirements as follows:

Every holder of record, of, and any other person having an interest in, 2% or more of a class of any equity security, would be required to file reports as prescribed by the SEC at such time as the SEC may require. - The SEC would have authority to make such exceptions to the above as are not inconsistent with the public interest or the protection of investors.

The 2% threshold is to be reduced to 1% on September 1, 1976 and to 1/2 of 1% on September 1, 1977. However, the SEC may extend or shorten such periods if the SEC, after public comment, concludes that such change is not inconsistent with the public interest or the protection of investors.

The bill was originally reported out of the Senate Banking and Currency Committee on February 6, 1976. However, it was decided to defer full Senate action until legislation to provide a simple extension of the Export Administration Act was considered, at which time the two pieces of legislation would be combined. This did, in fact, occur at the subcommittee level on April 27 when the extension bill, S. 3084, was favorably reported to the full Committee with the Stevenson-Williams bill incorporated in it.

2. Ribicoff Bill (S. 3138)

The bill would deny tax benefits on foreign source income to taxpayers who participate in or cooperate with the boycott of Israel. These benefits include the foreign tax credit and tax deferral, and DISC. The denial would apply to that foreign source income derived through direct or indirect dealings with boycotting countries.

The bill is pending before the full Senate Finance Committee where no action is currently scheduled.

HOUSE BILLS

It is anticipated that those House bills pending before the International Relations Subcommittee on International Trade and Commerce will be considered as amendments to legislation to extend the Export Administration Act scheduled to come before the full committee some time in June.

1. Bingham Bill (H. R. 4967)

The bill would prohibit US companies from answering or complying in any way with boycott requests.

The bill is pending before the IRC Subcommittee on International Trade and Commerce.

2. Drinan Bill (H. R. 5913, 5997, 6431, 6661 and others)

The bill would make it unlawful for any US exporter to engage in such practices as:

--furnishing information to a foreign agent concerning the race, religion or national origin of its employees or the employees of firms with which it does business;

--furnishing information on business dealings with a boycotted country or firm; or refusing, because of dealings with a foreign agent, to do business with a boycotted country or firm.

The bill would require the Secretary of Commerce to revoke the export license of any exporter violating these provisions.

The legislation is pending before the IRC Subcommittee on International Trade and Commerce.

3. Koch Bill (H. R. 11464)

This bill is almost identical to the Stevenson-Williams Bill and has been dually referred to the House International Relations Committee and Interstate and Foreign Commerce Committee.

4. Holtzman Bill (H. R. 5246 and others)(almost 100 cosponsors)

The bill would prohibit any business enterprise from using economic coercion to induce another not to do business with, employ or otherwise discriminate against (on the basis of race, religion, etc.) any US or foreign person in respect to its activities in the United States. The bill would also make it unlawful to yield to such coercion or take discriminatory action to prevent the coercion from ever occurring.

The bill is pending before the Judiciary Subcommittee on Monopolies.

THE SECRETARY OF COMMERCE

WASHINGTON, D.C. 20230

May 4, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: ELLIOT L. RICHARDSON 

SUBJECT: Arab Boycott Legislation -- Obstacles and Opportunities.

You have a memorandum from Brent Scowcroft and Bill Seidman outlining options for dealing with legislation currently before Congress directed toward the Arab boycott of Israel. I want you to have my personal recommendation on the choices posed by this memorandum because they have significant political as well as policy dimensions, and because, as Secretary of Commerce, I have given the problem substantial thought and attention.

I recommend that the Administration quietly support moderate boycott-related legislation that provides for prospective disclosure of boycott reports and, if necessary, a "refusal to deal" provision limited to the theory of the Bechtel suit. I believe this to be the proper outcome on both policy and political grounds.

I am aware that there exists real concern about the effect of any boycott-related legislation on our efforts to deal constructively with Arab nations. On the other hand, it is my judgment that some legislation on this subject is inevitable this year and that it will reach your desk late this summer at a time when a veto may be politically hurtful. Senator Stevenson's bill, currently proposed as an amendment to legislation to extend the Export Administration Act, is the most moderate of pending legislative proposals. Its acceptability to the Administration must be assessed against the backdrop of the more troublesome proposals pending before Congress. It is my judgment that full opposition to the Stevenson bill could

lead to more stringent legislation, which nonetheless will be politically difficult to veto. Enactment of Stevenson's legislation should substantially undercut the prospects for more harmful legislation.

Continued public opposition by the Administration to moderate legislation such as the Stevenson bill, and its eventual veto, will be politically costly. Reluctant signature of Stevenson's bill will result in no political credit. Quiet "nonopposition" to an appropriately amended version of the Stevenson (or Koch) bill could garner considerable political credit from Jewish groups without giving real offense to Arab nations. It also would permit negotiations aimed at improving the objectionable portions of the Stevenson bill. Such a stance could be complemented by consultations with Jewish groups seeking their support and understanding for this course of action, in light of Middle East diplomatic considerations. Preliminary discussions I have had with such groups convince me that this course of action can work both to garner substantial political credit and to diminish prospects for passage of more damaging legislation.

I also should emphasize that I believe that disclosure of boycott reports is correct from a policy standpoint. By giving the cover of confidentiality to boycott reporting, the Commerce Department unavoidably fosters a perception that it is helping to enable a boycott which contravenes a national policy declared by Congress.

THE WHITE HOUSE

WASHINGTON

May 5, 1976

MEMORANDUM FOR: JIM CONNOR
FROM: DAVID LISS 
SUBJECT: Anti-Boycott Legislation

In reviewing the memorandum on this subject, I believe the President should know that my conversations within the Jewish community lead me to believe that a compromise such as outlined in Option 2 is attainable.

There is a growing sense among a broad cross section of the leadership of the Jewish community that there has been too much friction of late between the Administration and the community. It is apparent that the Administration is "winning." A move to reach a compromise on the Stevenson bill is not likely to be seen as a sign of weakness on our part but rather as an expression of interest.

The President is addressing the American Jewish Committee next Thursday evening. His remarks will need to be of a substantive nature. I believe that would be a good forum to announce a decision to support prospective disclosure and consideration of a modification of the refusal to deal section along the lines of the option in the Seidman/Scowcroft memo. At the same time, the President could explain why the present Stevenson language is not acceptable. If we act now, the President can get a lot of personal credit. If we act after the debate has become more heated I am afraid we will not be perceived as having taken an initiative.

As we have discussed, there are growing prospects for very substantial support for the President from the Jewish community. You are well aware of the significance of this. We clearly cannot solve our problems on all issues of concern to the community but here is a chance for reasonably modest action not inconsistent with basic Administration policy.