

The original documents are located in Box 8, folder “Congressional - Voting Rights Act (2)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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Dick Parsons' office called to invite you to the signing ceremony for the Voting Rights Act extension at 12:00 noon Wednesday, August 6 in the Rose Garden. In case of rain it will be held in the Cabinet Room. No confirmation is necessary.



5/22

~~Ken,~~

~~Mr. Buchen has not seen~~

~~Shirley~~

Eva - -

Phil should see this promptly.
aside from the substance of
Pottinger's suggestions, I am concerned
with (1) communications with operational
personnel of Justice by the Domestic
(over)

See
R.Hills



Council rather than this office or
directed by the President; and

(2) the apparent bypass of the

AG.

Ken.

THE WHITE HOUSE
WASHINGTON

Red:

Here is memo
you said you would
review and
discuss with Ken
whose handwritten
note to Eva is attached

P.



19 MAY 1975

MEMORANDUM FOR

Mr. James M. Cannon
Assistant to the President
for Domestic Affairs
The White House

Subject: Voting Rights Act

In the week of June 2, 1975 the House begins, under an open rule (with three hours of debate) its consideration of H.R. 6219 which the House Judiciary Committee reported out on May 8, 1975. The Senate Judiciary Subcommittee on Constitutional Rights has scheduled mark-up for June 2, 1975. While the Act is still in a state of flux, certain issues have emerged, providing the following options.

I. Time Span of Extension.

The President proposed a five year extension of both the special provisions 1/ of the Act and the national ban on the use of tests or devices as a prerequisite to registration and voting. H.R. 6219 provides for a ten year extension of the special provisions and converts the nationwide ban on tests or devices into a permanent ban. While we should continue to endorse a five year extension, I believe it would be appropriate to make clear that we

1/ As you recall, these consist of

(1) Attorney General power to dispatch examiners to register voters; (2) same with regard to observers to watch election day activities; and (3) the requirement that all covered states and counties submit new election laws to the Attorney General or the federal district court in D.C. for approval.

cc: Phil Buchen
Jack Calkins



regard the difference between a five year extension and a ten year extension to be one of degree and that we would not quarrel with a legislative judgment to go with a ten year extension. However we should point out that by making permanent the national ban on tests or devices Congress is taking a course which presents more risks in terms of constitutionality; and that it would make more sense to tie the extension of the special coverage with the nationwide ban on literacy tests, so that both are extended for the same time period. Even the Civil Rights Commission, which supports a ten year extension of the special coverage, has asked for only a ten year extension of the ban on tests or devices.

II. Expansion of the Act.

The main issue which has emerged is whether the Act should be expanded to provide further protections for Mexican-Americans and American Indians (and for other national origin minorities such as Puerto Ricans and Asian Americans). Title II of H.R. 6219 would expand the special provisions of the Act to cover jurisdictions which (1) conducted English-only elections in 1972; (2) had five percent or more voting age population comprised on the above minority groups; and (3) had less than 50% voter participation in the 1972 Presidential election. Such a provision would cover the states of Texas and Alaska and about 40 counties in Arizona, California, Colorado, Florida, New Mexico and Oklahoma.

A related provision, Title III of H.R. 6219, would ban English-only elections in jurisdictions in which 5% or more of the voting age population belongs to one of the above minority groups. (This provision does not trigger the special provisions of the Act.) A ban on English-only elections would merely codify existing case law, and we have therefore taken the position that it would be unobjectionable. We have said that the matter of expanding the special provisions of the Act to Spanish-speaking and other national origin minorities depends uniquely upon Congressional examination of its need, and have explicitly declined to take an



Administration position on the need for or appropriateness of such legislation. In response to questioning, we have advised the Congress that in our view such a provision would be constitutional.

III. Other Provisions.

Three other related proposals have been made either informally or formally. First, H.R. 6219 would amend Section 3 of the Voting Rights Act to provide that a finding of a violation of the Fourteenth or Fifteenth Amendment in a private voting suit could trigger application of the special provisions of the Act (at present such a finding under the Fifteenth Amendment in a suit brought by the Attorney General can trigger the special provisions).

Second, Congressman Wiggins has proposed to completely revamp the special coverage of the Act by providing that after each federal election all states or political subdivisions with under 50% voter participation would be brought under the special provisions of the Act.

Finally, staff members of the Senate Constitutional Rights Subcommittee have suggested that in the absence of expansion of the special provisions, Congress direct the Attorney General to investigate those jurisdictions which would have been specifically covered under the expansion provision of H.R. 6219, and to bring suits where appropriate. Under this approach, if we won such a suit the special provisions would then be triggered.

Should he respond to inquiries from the leadership in both Houses on this matter, may I recommend that the President consider the following positions:

1. Extension of 1970 Act

As the President has already indicated, extension of existing provisions is paramount, and no amendments should be permitted to jeopardize seriously this objective.



2. Time span of extension

Prefer five year extension, but indicate that eight or ten year extension is not critical enough to invoke a veto.

3. Time span of national ban on test or devices

Indicate same here, but point out the importance of trying to avoid legislating a permanent ban (as opposed to five or ten year ban) given that a permanent ban raises more risk as to its constitutionality.

4. Expansion of the special provisions to non-English speaking minorities

Continue to maintain neutrality on the matter, pointing to the unique importance of congressional debate and judgment on the issue. The President may wish to indicate, if he believes it appropriate, that if expansion passes both Houses, it would not be the basis for a veto.

5. Authority to bring private voting law suits to trigger special provisions; congressional direction to Attorney General to investigate national origin minority voting rights violations

These two suggestions, coupled with two others discussed here, constitute a comfortable position in the event that the Congress balks at expansion of the special provisions on its own motion. From a separation of powers viewpoint,



I question the wisdom of the President openly inviting the Congress to direct the Executive Branch to undertake investigations. On the other hand, the result is not unwieldy, and it invokes federal attention on a case-by-case basis without triggering automatic and massive federal presence.

The President could, if he wishes, also state publicly that he is directing the Justice Department to undertake this same action independent of congressional direction to do so. (The Justice Department presently has authority to investigate and sue jurisdictions not covered by the special provisions of the Act and, if successful, thereby trigger application of the special provisions. This authority, known as "Section 3," has almost never been used to date.) Such a program, coupled with endorsement of the ban on the English-only elections in heavily non-English speaking voter jurisdictions, would be a substantial step forward on behalf of the Spanish-speaking community, and a fairly effective compromise between those favoring full expansion and those favoring no action whatsoever.

IV. Wiggins proposal.

Since we have just received it, we have not yet had an opportunity to determine what its nationwide impact would be. We are undertaking that analysis on an expedited basis. It is worth noting here that it appears to present some problems in terms of practicalities (it may greatly increase the Justice Department's present workload) and in terms of constitutionality (because coverage is not dependent upon the existence of any discriminatory practice).



As a political matter, the proposal appears to be attractive to the South because it is likely to be national in its impact rather than regional, as the present Act is. Conversely, because it so radically alters the present Act, it is likely to be seen on the Hill as a threat to successful extension of the present Act, and therefore as a repeat of the alleged "southern strategy" attempt to defeat the Act in 1970.

With regard to the question of the regionalism of extending the present Act, the sense I get from discussion with southern legislators and political figures, including Clarke Reed, is that from the viewpoint of actual federal impact, extension of the Act is not as controversial or undesirable now as it was five or ten years ago, but that from the viewpoint of singling out the South for disparate treatment, extension is seen as politically "unfair" in a general sense of the word. There are two possible mitigating factors, which the President could consider in this regard: (1) the President could privately and publicly endorse the provision allowing private parties to invoke Voting Rights Act coverage if they are successful in showing Fifteenth Amendment violations wherever they exist, including the North; and (2) the President could, as indicated above, direct the Attorney General to use previously dormant Section 3 authority to investigate for discrimination in the North, just as the Act presently does so automatically in the South. Or if Congress directs

/ On the contrary, because the Voting Rights Act has led to the replacement of multi-member at-large districts with single-member districts, minority parties, including the Republican party, see the Act as a definite boost to possible electoral gains.



Executive Branch investigations on behalf of Spanish-speaking minorities not presently covered by the special provisions, the President could use that occasion to go beyond such a directive and direct similar investigations nationwide.

In talking to Clarke Reed about this today, he was pleased with the prospect of Presidential direction of this kind, and strongly urged that a position of this kind be made public at some point. I also tried this position on Clarence Mitchell to see if he felt that civil rights leaders and others favoring extension would regard a direction by the President of this kind to be a repeat of a 1970 southern strategy move. He did not think so, and had no problem with it. Misinterpretation of this kind would be totally avoided, of course, if the President's public direction to investigate northern discrimination came at the time of his signing a new extension bill, rather than before its passage.

With regard to expansion of special provisions to the Spanish-speaking, I talked to Senator Tower on Friday and he has not yet made up his mind as to what position he will take. From our discussion, I would guess that he will be neutral or will vote against expansion, but given his concern for Spanish-speaking voters in his state, even if he votes against expansion he appears likely not to be wholly unsympathetic to such a provision.

I have not yet spoken with John Rhodes, but will do so as promptly as possible, pursuant to our earlier conversation.

Let me know what of the foregoing is unclear, or how I can be of further help.

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division



THE WHITE HOUSE

WASHINGTON

July 18, 1975

Dear Hugh:

As I said to you during our discussion yesterday, it is most important that Congress extend the temporary provisions of the Voting Rights Act before the August recess.

These provisions expire August 6, 1975, and they must not be allowed to lapse.

My first priority is to extend the Voting Rights Act. With time so short, it may be best as a practical matter to extend the Voting Rights Act as it is for five more years; or, as an alternative, the Senate might accept the House bill (H.R. 6219), which includes the important step of extending the provisions of the Act to Spanish-speaking citizens and others. To make certain that the Voting Rights Act is continued, I can support either approach.

However, the issue of broadening the Act further has arisen; and it is my view that it would now be appropriate to expand the protection of the Act to all citizens of the United States.

I strongly believe that the right to vote is the foundation of freedom, and that this right must be protected.

That is why, when this issue was first being considered in 1965, I co-sponsored with Representative William McCulloch of Ohio a voting rights bill which would have effectively guaranteed voting rights to eligible citizens throughout the whole country.



After it became clear at that time that the McCulloch-Ford bill would not pass, I voted for the most practical alternative, the Voting Rights Act of 1965. In 1970, I supported extending the Act.

Last January, when this issue first came before me as President, I proposed that Congress again extend for five years the temporary provisions of the Voting Rights Act of 1965.

The House of Representatives, in H.R. 6219, has broadened this important law in this way: (1) The House bill would extend the temporary provisions of the Act for ten years, instead of five; and (2) the House bill would extend the temporary provisions of the Act so as to include discrimination against language minorities, thereby extending application of the Act from the present seven States to eight additional States, in whole or in part.

In light of the House extension of the Voting Rights Act for ten years and to eight more States, I believe this is the appropriate time and opportunity to extend the Voting Rights Act nationwide.

This is one nation, and this is a case where what is right for fifteen States is right for fifty States.

Numerous civil rights leaders have pointed out that substantial numbers of Black citizens have been denied the right to vote in many of our large cities in areas other than the seven Southern states where the present temporary provisions apply. Discrimination in voting in any part of this nation is equally undesirable.

As I said in 1965, when I introduced legislation on this subject, a responsible, comprehensive voting rights bill should "correct voting discrimination wherever it occurs throughout the length and breadth of this great land."

I urge the Senate to move promptly--first, to assure that the temporary provisions of the Voting Rights Act do not lapse. As amendments are taken up, I urge you to make the Voting Rights Act applicable nationwide. Should the Senate extend the Act to American voters in all 50 states, I am confident the House of Representatives would concur.



I shall be grateful if you will convey to the members of the Senate my views on this important matter.

Sincerely,

Gerald R. Ford

The Honorable Hugh Scott
United States Senate
Washington, D.C. 20510



THE WHITE HOUSE
WASHINGTON

Release that was passed
out which you will
probably want to see.



FOR IMMEDIATE RELEASE

JULY 23, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

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(MORE)



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Sincerely,

GERALD R. FORD

#



Voting Rights

7/23/75
4:05 p.m.

Mr. Parsons:

Mary said John Calhoun called you --
has a report of conversations with the
NAACP and Urban League on voting
rights -- thought you might want to call
him.

L.O. 298



voting

Thursday 7/24/75

1:45 Ken Lazarus called to say they're up on the Hill and have been since this morning and will continue to hand around. He said there will not be any more amendments. They're not pushing any. It will go on its way as it is. There may be one -- a parochial question in Florida, but not any political thing. Everything is cool on the western front!

But they will stay up there and keep an eye on things.

