The original documents are located in Box 59, folder "Revenue Sharing" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

ACTION MEMORANDUM WASHINGTON LOG NO.: Revenue sharing

Date: March 28, 1975 Time:

FOR ACTION: The Vice President
~~Phil Buchen~~ xxxxxxxxxxxxxxx:
Jim Cannon Jack Marsh
Alan Greenspan Bill Seidman
Jim Lynn

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, April 1, 1975 Time: noon

SUBJECT:

Simon memo (3/26/75) re: Advancing the June Revenue Sharing Payment

ACTION REQUESTED:

____ For Necessary Action

____ Prepare Agenda and Brief

X ____ For Your Comments

X ____ For Your Recommendations

____ Draft Reply

____ Draft Remarks

REMARKS:

On the assumption that the General Counsel of the Treasury agrees that the Treasury Department can make the July revenue sharing payment on April 4, I would recommend that the Secretary's request be granted.

Phil Buchen

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jerry H. Jones
Staff Secretary

THE SECRETARY OF THE TREASURY
WASHINGTON

March 26, 1975

MEMORANDUM FOR THE PRESIDENT

Advancing the June Revenue Sharing Payment

We are now scheduled to mail Federal revenue sharing payments to the states and municipalities of $1-1/2 billion on April 4 and another $1-1/2 billion in the first week of July. Under the law these payments could be made earlier but not later. If a decision were to be made today or tomorrow the amount now scheduled for July could be combined and included in the April 4 mailing for all recipients.

I recommend you authorize this advance of the July payment.

It would not increase our total outlays over the coming 4 months but it would move a portion of the payment earlier in the period when the stimulus to the economy would be more helpful. The shift in payment would also be -- and would be widely recognized to be -- a responsible effort to help states and municipalities whose financial situations have been hit by the recession. This would be particularly true of the largest municipality, New York City, which faces a serious threat of being unable to avoid default on payment of a half billion dollars of securities maturing on April 14. Such a default would have a most unfortunate impact on confidence in our economy in general and on the credit markets in particular. Insofar as New York City is concerned the proposed action would not cure the problem but would be a significant contribution to a broader effort which we are attempting to work out with New York State and the financial community.

There will be some states and municipalities who have no urgent need for these funds but in those cases the funds will be reinvested in the capital market to relieve the congestion being caused by current corporate and Federal borrowing.

William E. Simon

Eva:

Please type para.
on form, and I'll
add my signature.

P

THE WHITE HOUSE

WASHINGTON

March 29, 1975

MEMORANDUM FOR: Phil Buchen

FROM: Rod Hills

On the assumption that the General Counsel of the Treasury agrees that the Treasury Department can make the July revenue sharing payment on April 4, I would recommend that the Secretary's request be granted.

Revenue sharing

March 29, 1975

MEMORANDUM FOR: Phil Buchen

FROM: Rod Hills

On the assumption that the General Counsel of the Treasury agrees that the Treasury Department can make the July revenue sharing payment on April 4, I would recommend that the Secretary's request be granted.

EMBARGOED FOR RELEASE UNTIL 2:00 PM, EDT APRIL 25, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE CONGRESS OF THE UNITED STATES:

I am today transmitting to the Congress proposed legislation to extend and revise the State and Local Fiscal Assistance Act of 1972. The act, and the General Revenue Sharing program which it authorizes, expires on December 31, 1976. I strongly recommend that the Congress act to continue this highly successful and important new element of American Federalism well in advance of the expiration date, in order that State and local governments can make sound fiscal plans.

The Value of Federalism

The genius of American government is the Federal system of shared sovereignty. This system permits and promotes creativity and freedom of action simultaneously at three levels of government. Federalism enables our people to approach their problems through the governments closest to them, rather than looking to an all-powerful central bureaucracy for every answer.

With the Federal Government heavily committed to international affairs, the Nation's defense, the state of the economy and the energy problem, we need strong, effective State and local governments to meet the everyday needs of our people -- for good police and fire protection, education, transportation, sanitation, and the basic services of a well-governed society.

In 1972, when General Revenue Sharing was passed, the Federal partnership was in trouble. The Federal Government, with its highly efficient taxing system, then collected some two-thirds of the Nation's total tax revenues. Federal revenues, particularly because of the income tax, grew with the economy. However, State and local revenues are more dependent on real property taxes and sales taxes. These governments had to meet rising demands for services and costs through endless rounds of tax increases. Simply stated, revenues had grown fastest at the Federal level, while needs were growing fastest at the State and local levels.

more

The Federal Government, then as now, sought to help States and communities meet their needs through Federal aid. For the most part, this aid is in the form of categorical grants -- that is, narrowly defined, closely controlled grants for specific purposes. Today, over one thousand of these categorical grants are available for almost every imaginable objective.

However, the necessity to go to Washington for the solution to many local problems has had a stifling effect on the creativity and accountability of State and local governments. Along with Federal aid comes Federal restrictions which limit local initiative and flexibility.

Furthermore, until the concept of block grants was developed, States and localities were limited to categorical grants which were designed to lead State and local governments in new directions. Consequently, the recipients, all too often, headed in the direction where the grant monies were available, rather than where their genuine needs existed.

Finally, much of the aid the Federal Government makes available has to be matched by State and local funds. The impact of this requirement is often to aggravate rather than to alleviate a State or local government's financial plight.

This was the situation the executive branch and the Congress faced in 1972 -- a Federal system endangered by the growing impoverishment of two out of the system's three partners. This is the situation that the Federal Government wisely met, by the passage of General Revenue Sharing.

This program has been a resounding success. Since its enactment, General Revenue Sharing has provided nearly $19 billion to 50 States and some 39,000 local governments -- money which these governments could use as they saw fit to meet their priority needs.

These Federal revenue sharing dollars have meant new crime fighting equipment and more police on the street, help for essential mass transportation, a better environment, improved fire protection and many other useful public activities. If some communities have not used their revenue sharing funds wisely, they are a miniscule fraction of governments which have used this money well.

The current revenue sharing act has also enabled individuals and citizen groups to play their part in determining the use of these Federal funds in their communities by placing the decision on the use of these funds at the local rather than the Federal level. This citizen participation strengthens our democracy in the best possible way. It is my intention to strengthen our efforts to encourage the widest possible citizen participation.

The Need Goes On

General Revenue Sharing has also been the keystone of additional efforts to reform Federal aid. The new block grant programs, more decentralized grant management,

joint funding projects and grant integration, improved program information and executive reorganization have all been included in a large-scale effort to make better sense of and to get greater results from the billions granted to State and local governments.

The General Revenue Sharing program enacted in 1972 turned a corner. It caught a serious problem in time and helped us get back on the road to a sounder Federalism, of shared rights and responsibilities.

Many State and local governments are facing deficits with the prospect of having to raise additional taxes or cut services. Our States and localities are facing these adverse developments at a time when their fiscal responsibilities have mounted due to the impact of inflation on their expenditures and the tax burdens placed on citizens. Further, the present high unemployment is taking its toll in terms of lower tax receipts and higher costs on States and communities. This combination of financial pressures is likely to continue to bear down on these governments for the foreseeable future.

Many units of governments, particularly in distressed urban areas, count on these funds for their budget planning. If the flow of shared revenues were to be turned off or scaled down, the results would be immediate and painful. Our efforts to revive the economy would suffer a serious blow. States, cities, counties and small communities would have to either cut back essential services causing increased public and related private unemployment or tax more or borrow more -- thus defeating the objectives of our national efforts to reduce the total tax load and revive the economy.

Enactment of Federal revenue sharing was a wise decision in 1972. Its continuation is imperative now. Before deciding to recommend extension of this program, I directed that an exhaustive study be made of the present program to identify its strengths and weaknesses. This assessment has been carried out and has taken into account the views of the Congress, State and local government officials, interested citizen bodies and private study groups analyzing government policy. I will also consider any significant findings which may yet emerge from studies presently underway.

Based on our review of this work, I am now proposing to the Congress legislation which will maintain the basic features of the existing revenue sharing program while offering several improvements.

The principal elements of the renewal legislation I am proposing are:

-- The basic revenue sharing formula is retained. Experience to date suggests the essential fairness of the present formula and I recommend its retention.

-- Funds will be authorized for five and three-quarters years. The effect of this provision is to conform the time period to the new Federal fiscal year.

-- The current method of funding with annual increases of $150 million will be retained to compensate, in part, for the impact of inflation. Over the five and three-quarters years, this level will produce a total distribution of Federal revenues of $39.85 billion. By the final year, the revenues shared will have increased by $937 million over the current level of payments.

-- Recognizing the need to raise the existing per capita constraint on the basic formula, my proposal would permit those hard-pressed jurisdictions now constrained by the per capita limitation to receive more money. The impact of this change on other communities would be minimized by phasing the change in five steps and by the increase of $150 million annually.

-- To strengthen the civil rights provisions of the existing statute the proposed legislation would authorize the Secretary of the Treasury to invoke several remedies to enforce the nondiscrimination provisions of the act. This would be accomplished by stating explicitly that the Secretary has authority to withhold all or a portion of entitlement funds due a State or unit of local government, to terminate one or more payments of entitlement funds, and to require repayment of entitlement funds previously expended in a program or activity found to have been discriminatory. This change will further enhance the Secretary's ability to ensure that none of our citizens is denied on grounds of race, color, sex or national origin the benefits of any program funded in whole or in part through revenue sharing.

-- To strengthen public participation in determining the use of shared revenues, the proposed legislation requires that recipient governments must provide a procedure for citizen participation in the allocation of revenue sharing monies.

-- The Administration proposal would also make reporting requirements more flexible to meet varying needs from community to community. The legislation would grant the Secretary of the Treasury greater latitude in determining the form of reports and the kind of information required of recipients. Similarly, he would have more flexibility to determine the method by which recipient governments must publicize their use of funds.

-- Finally, the proposal requires a reconsideration of the program two years before its expiration.

Early Renewal is Important

I urge the Congress at its earliest convenience to begin deliberations on the renewal of the State and Local Fiscal Assistance Act of 1972. Effective planning at the State capitols, city halls, and county courthouses will require action in this first session of the 94th Congress. In fact, in the fall of 1975 many of our States and local governments will be preparing their fiscal year 1977 budgets. It will be essential for them to know at that time whether General Revenue Sharing funds will be available to them after December, 1976.

The expiration of the present General Revenue Sharing Law is coincident with the year in which the Nation celebrates its bicentennial. There could be no more practical reaffirmation of the Federal compact which launched this Country than to renew the program which has done so much to preserve and strengthen that compact -- General Revenue Sharing.

GERALD R. FORD

THE WHITE HOUSE,

April 25, 1975.

# # # #

EMBARGOED FOR RELEASE
UNTIL 2:00 P.M. EDT

APRIL 25, 1975

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE

PRESS CONFERENCE
OF
EDWARD SCHMULTS
UNDER SECRETARY OF TREASURY
AND
GRAHAM WATT
DIRECTOR OF THE
OFFICE OF REVENUE SHARING

THE BRIEFING ROOM

10:32 A.M. EDT

MR. GREENER: As Ron mentioned yesterday, the President will be transmitting to Congress at 2:00 today proposed legislation, which will extend and improve the General Revenue Sharing Act of 1972.

You should have by now the President's message to Congress, a fact sheet, letters of transmittal to the House and Senate, and a Treasury booklet containing Q's and A's. Also, there should be a section-by-section analysis, and I think we are running short of those. They are in the bins now.

We have here this morning to summarize the legislation and answer your questions Mr. Edward Schmults, Under Secretary of the Treasury Department, and Mr. Graham Watt, Director of the Office of Revenue Sharing.

I would like to remind all of you again that since the President will be making his remarks at 2:00 on this legislation to the State legislators, and since the legislation will not be transmitted to the Hill until that time, all material for the briefing is embargoed until 2:00.

MR. SCHMULTS: As Bill indicated, to my right is Graham Watt, the Director of the Office of Revenue Sharing, who has done such a first-rate job in administering the program for the first years of its operation.

The present revenue sharing program is probably the most thoroughly studied Federal assistance program in history. The formula under which it operates, and the manner in which the program has been administered have been carefully scrutinized by various Congressional committees, by the Comptroller General, and by a wide variety of privately funded and Government supported independent studies.

MORE

Many of these assessments were reviewed by an interagency task force, of which I was a part, and which made recommendations to the President about the future of revenue sharing.

Today, as Bill Greener indicated, the President is transmitting to the Congress a revenue sharing program under the following very broad outlines, which I will indicate now, and they are indicated also in the material that you have there.

First of all, the program would be continued for five-3/4 years. The odd fraction is to take into account the transition to the new Federal fiscal year. This will mean that the program will be extended to September 1982.

There would be a requirement that the Executive present new proposals to the Congress about the future of the program two years prior to its 1982 expiration so that in the light of further experience and future priorities, a well-reasoned decision could be made about the continuation of the program after 1982.

Such a review would also give State and local recipients advance notice of Congress' intentions.

The President proposes to continue the $150 million annual stair-step increases in the funding levels. The $150 million increase for the last six months, under the present plan, will be spread over the first full 12 months of the new program. The increase will provide some adjustment for inflation without contributing excessively to Federal costs.

MORE

The present 3-factor, 5-factor formulas for interstate and intrastate distribution are to be retained in view of the fact they represent a carefully arrived at balancing of interest.

The President has also concluded that the present one-third and two-third split of shared revenues between State and local governments should continue in that it represents a reasonable and easily applied standard.

The present 145 percent maximum restraint is to be raised to 175 percent in five steps. This constraint says no jurisdiction can receive a payment on a per capita basis which is greater than the 145 percent of the average per capita payments going to other jurisdictions within its State.

By relaxing this restraint, some jurisdictions with a very low income, high tax effort, or both, will receive a higher level of funding.

The President has decided that the 20 percent minimum per capita restraint should be retained in its present form. The amount of money that would be freed by lowering or eliminating this constraint, as some have suggested, would be about $47 million a year. This is a relatively small amount.

Eliminating the constraint would remove almost 1,400 local governments from the program and we think this would be undesirable.

The strong anti-discrimination requirements and the existing compliance powers of the Secretary of the Treasury are to be retained. In addition, the Secretary will be expressly authorized in the statute, itself, to withhold all funds or that part of the funding used in a discriminatory program or activity.

He will be authorized to require repayment of funds that are used in a discriminatory manner, and he will be authorized to terminate eligibility for further payments.

The President has decided that the priority expenditure requirements and the prohibition against the use of general revenue sharing funds to obtain Federal matching grants should be continued in their present form. These restrictions were added by the Congress to the current law and have not proved to be unduly burdensome to local governments.

MORE

With respect to the planned and actual use reports -- these are short-form reports on one page of paper that governments have to file with the Office of Revenue Sharing -- the Secretary of the Treasury is to be granted full discretion to determine the form, content and the manner of publication of these reports so that he will be able to tailor the reporting and publicity requirement to the type and size of jurisdiction.

As a consequence, we feel these reports would be more useful to local citizens and the Federal Government.

Finally, in the area of public participation, the President is proposing that recipient governments be required to give assurance that the process by which expenditure of general revenue sharing funds is determined includes a public hearing or other means by which residents can participate in the decision.

There are other improvements proposed, the details of which are noted in the materials which are being distributed today.

Graham Watt and I will be happy to answer any questions you might have on the program at this time.

Q Mr. Schmults, on the new civil rights requirements, or authority, that you hope to write into this, does that mean that the office now will take a more aggressive stance on civil rights compliance and also, will you seek additional staff to help on this?

MR. SCHMULTS: Well, as to the latter point, we have been seeking additional staff. In fiscal 1975, we asked Congress for 26 new positions and we got five. We are going back to them in fiscal 1976 and ask for 21 more positions, or those we didn't get in the compliance area, so we are asking for more staff.

As to whether it is going to mean a more aggressive civil rights stance, I think the point of the President's proposal is that it does clarify the powers of the Secretary of the Treasury to administer the statutes so that no revenue sharing funds are used in a discriminatory manner.

We feel that the present administration of that provision of the law by the Office of Revenue Sharing has been the right way to go and we certainly intend to strengthen that wherever we can to make it more effective.

Q Mr. Schmults, you have these powers in the present revenue sharing legislation, and a number of groups have made studies with which I am sure you are familiar, pointing out that you did not oversee the Federal revenue sharing dollar after it got into the hands of the city fathers.

You have a good mechanism for accounting procedures. You make sure no money is stolen. But you don't follow the money after it gets into the city's jurisdiction. What assurance can these people, as well as the general public, have that you are going to be more aggressive with your 26 more positions than you have been so far?

MR. SCHMULTS: I don't think that is entirely correct that we already have these powers. I think it may be unclear as to whether we have these powers. I think the statute is being strengthened by clearly specifying in the statute in the law exactly what the powers of the Secretary are. Second, there are powers to withhold funds. That is not clear in the law.

Q You have the same powers those people have, those private groups that brought court groups successfully, an example of which is in Chicago. They used the law, the same law you would have had to use; they use the civil rights laws for that. That is just an example. I can't cite any other.

MR. SCHMULTS: With respect to the Chicago case, I think we need to amend our regulations to deal with what was a gap in the regulatory structure that we saw as a result of that case. We do follow funds; we do look at funds after they are in the hands of the jurisdictions.

Revenue-sharing is entered into a cooperative State auditing program with about 38 or 40 States now, I believe, so that the use of these funds is audited both on an accounting basis and from a civil rights basis. We have entered into agreements with HEW, with EEOC and other agencies. We are working out one with HUD now so this is a cooperative effort where we plan to use other resources in the Federal Government to help us in our civil rights efforts.

Q You missed the question. I hate to be argumentative about this. I was asking why you couldn't use the same resources, the same redress that private groups who brought successful revenue-sharing suits, why you couldn't use that law just as they did?

MR. SCHMULTS: I think the procedures that we will have in the new program will be more expeditious, indeed, than court procedures because this will authorize, or the Secretary of the Treasury can have an administrative hearing now before an administrative judge and determine whether or not there has been a civil rights violation. If there has been then we think the statute has been strengthened by clearly specifying in the law itself the powers he has to remedy the situation.

Obviously, our efforts here are not to penalize jurisdictions. We hope to achieve compliance so there is mediation and conciliation involved here and we hope to bring the jurisdictions into compliance so that we don't have to invoke these remedies. Where that can't be done we certainly will take appropriate steps.

Q Mr. Schmults, did I understand the implication of your answer to be that you could rely increasingly on administrative remedies to cases of discrimination rather than to wait for court determination before shutting off money?

MR. SCHMULTS: There are a variety of remedies. One would be going the administrative law route, or administrative judge route. Another remedy would be to refer the matter as we can now to the Attorney General who presumably will bring a civil suit. Or two, we could respond or react to a civil suit brought by a private citizen similar to what has happened in the Chicago case. So there are a variety of remedies here and we would choose, if we can't effect compliance by our own process, to use that which seems best to us at the time.

MORE

Q Mr. Schmults, there have been two recent developments in the civil rights area relating to revenue sharing; one, that the Comptroller General has said that he thought because of the fungibility of revenue sharing funds that all of the Government funds should be subject to the anti-discrimination provisions of the revenue sharing law as a contingency for receiving funds; secondly, the recent Humphrey-Muskie counterfiscal bill in saying the provisions allowing the citizens to sue, they have standing to sue in Federal court, if they found that the local government was discriminating with the use of Federal monies and that the Federal Government should pay the cost if the citizens are successful in a suit.

How would the Treasury Department react to those kinds of provisions if Congress wanted to put those in the revenue sharing law?

MR. SCHMULTS: Our position now is that we do not favor the GAO position on that, that we don't think the Congress intended that revenue sharing have these enforcement or compliance powers. It is rather clear in the law, we think that where revenue sharing funds go that we ought to be looking at those programs.

Now, it is true fungibility does raise a problem. Dollars are freely interchanged, but through our auditing efforts, through the reports that are filed, we certainly intend to police the civil rights sections of the law.

As to the latter point, it is our understanding, and we wouldn't favor that proposal either, it is our understanding that citizens can sue under the Civil Rights Act of 1964, so it isn't necessary to put that in the revenue sharing law.

Q Except in the case the Federal Government would pay the costs for those suits that are won by the citizens. It would give standing pertaining to public interest or law firms, I think, much greater incentive to sue.

MR. SCHMULTS: We reviewed that proposal, and we think the stance the President has taken in the renewal program is the one to take.

Q I know you can't give a firm answer, but through the administrative route, or through reference to the Attorney General or civil suits brought by private citizens, how long would this process take, approximately, until it is resolved?

MR. SCHMULTS: It is very difficult to predict that. I suppose it would be anywhere from six months to over a year. You know, you are predicting who else intervenes and what the appeal process is. It is difficult to predict.

Q How is most of the $19 billion being spent so far? What are the priority projects for the State and local governments? A follow up. Are there any areas in which the money may not be used other than the matching fund provisions?

MR. SCHMULTS: At the State level, it can be spent for any purpose, really. Local governments can spend it for any purpose for capital needs.

There are so-called priority expenditures for the spending of revenue sharing funds for operating and maintenance expenses. These are very broad categories. They were put in the law by Congress and, as I indicated in my opening statement, they have not proved burdensome.

I think it is interesting to note at the State level 52 percent of the funds have been spent on education. This is a large amount. Over $6.4 billion have been distributed to States.

Other important categories are public transportation, health, general Government social services. At the local level, public safety leads the list with 36 percent, and then you drop down through the other priority expense categories.

Q A little slower please. Thirty-six percent for --

MR. SCHMULTS: -- at the local level was spent for public safety.

Q What does education get at the local level?

MR. SCHMULTS: At the local level, for operating and maintenance expenses, that is not a priority expenditure cateegory. You will recall that many local governments in fact do not raise funds for school districts. They are supported at the State level by special purpose governments. That is the reason why that category of expenditure is eliminated from the priority list at the local level. But there is a significant amount of funds, of revenue-sharing funds spent for education because of the large amounts spent at the State level.

Q When they spend $1 of revenue-sharing funds for education, Mr. Schmults, are they relieved from the obligation of spending an equal dollar raised from their own taxes, local taxes?

MR. SCHMULTS: There is no maintenance of effort requirement, that is right.

Q Is that written into this new legislation?

MR. SCHMULTS: No, it is not. But States can't reduce the aid that they have given to local communities in the law. That is in the present law. But if you spend $1 in revenue-sharing funds for an expenditure category, it is true that at least a dollar in effect will be spent by local governments in some other category of use.

Q With the cities' and States' problems, are you saying or now telling them they now can get out of their money problems with this bill?

MR. SCHMULTS: First of all, I think it is important to note the President has met many times with the Governors, with the mayors and other local officials and they have all said revenue-sharing is their number one priority. Maybe Jim Falk can elaborate on that a minute.

I don't think I am standing here today for the President and saying the proposal to Congress is saying that revenue-sharing is going to solve all the needs of the cities and local governments. And you shouldn't expect it to solve all the needs. You should recognize that revenue-sharing is part of a general pattern of Federal aid programs and the niche it fills is a very important niche, we think, in allowing local governments to receive some money and spend it as they see fit for locally perceived needs as they see fit.

It also reaches an awful lot of governments who receive no other Federal aid--they don't have the ability to file applications for grants and other aid programs. So we think it is a very important part of the overall scheme of Federal aid to State and local governments.

Q You are saying cities and States are still going to be in money trouble?

MR. SCHMULTS: I am saying whatever problems they have revenue-sharing will be helpful but I am not saying it will solve all their problems, no. I certainly couldn't say that.

Jim, you might take a minute and talk about this.

Q The ESEA funds, sir, States are not allowed to appropriate less when they do get ESEA funds. Am I mistaken on that? They still have to maintain their level?

MR. SCHMULTS: Yes. They have to maintain their general aid level to the local communities.

Q And ESEA is on top an additional supplemental to that?

MR. SCHMULTS: In that sense, yes.

Q That is not the case in revenue-sharing; is that correct?

MR. SCHMULTS: They have to maintain the local level of aid they have given.

MR. WATT: The gentleman is correct. ESEA funds are in addition to their basic on-going program. Revenue-sharing, however, is better characterized as general support for State and local governments and is not targeted for specific purposes such as education or welfare.

Q Mr. Schmults, in recommending that the present formula be basically retained, how do you answer the objections that it is discriminating in favor of the rural poorer States, which in some cases are getting twice as much per capita as some industrial States?

MR. SCHMULTS: I think the criticism you are referring to is that the revenue sharing formula may not adequately address the question of need. We think in many respects that is an unfair criticism, that the poorer States do receive more on the average than the richer States; that the highly urbanized areas of counties do receive more than the less urbanized counties.

Revenue sharing, to a very great extent, does address the question of need. I think we are taking a good step in that direction, though, by raising the maximum constraint percentages. That percentage, as I indicated, said some jurisdictions who would have normally received more under the basic formula cannot get it because under the present law they can't receive more than 145 percent on a per capita basis of the State average.

Now, by going to 175 percent, that constraint is substantially eliminated for most jurisdictions. We are phasing in this over a period of time so that other Governments will not lose money in the process. That happens not just as a result of phasing in the increase, but because of the $150 million annual stair-step increases.

Q Mr. Schmults, some Congressmen are talking about a permanent program of revenue sharing. How does the Administration feel about this?

MR. SCHMULTS: We took a look at that. There are a good number of people who would like to see the program made permanent. There are good reasons why it should be made permanent. The principal reason is it does provide some measure of certainty, to State and local governments -- they will know how much money they are going to get.

Of course, in a real sense, no program is permanent since a law can always be changed by Congress. In balancing the interest, we thought it would be desirable to go for 5-3/4 since it balances the needs of the State and local governments with some certainty with the need of Federal Government to take a look at the program every so often to see how well it is working and to make improvements.

We think by having it end in 5-3/4 or having it come up for renewal is really a better way of putting it, that it will be a discipline on the Executive and Congress to take a look at it and to make such improvements in the program as may be necessary.

Q How do you answer the question of suburban government officials who say that the people in their township or whatever are paying the payroll tax in the city which entitles the central city to more revenue-sharing funds while the suburb doesn't get credit for what its citizens are paying in other jurisdictions and they claim that their needs are growing and crime, and all the rest, is spreading to the suburbs? How do you answer that?

MR. SCHMULTS: Graham, you might answer that.

MR. WATT: I think it is important to note in general revenue-sharing there is a strong element of fiscal equalization -- an attempt to put more funds where the needs are greater. By and large the consensus would be in the central cities there are greater needs that have to be met, and in many cases there are fewer resources available with which to meet them. The fact that in some locations suburban residents may be paying a city income tax or city payroll tax which reflects to the tax credit of the central city in the allocation formula I think is only a further reflection of that desirability on the part of the Congress and the Administration to have general revenue-sharing help to balance the fiscal system and to help balance needs and resources.

MR. GREENER: Thank you, gentlemen.

THE PRESS: Thank you.

END (AT 10:56 A.M. EDT)

EMBARGOED FOR RELEASE UNTIL 2:00 PM, EDT APRIL 25, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

TEXT OF LETTERS FROM THE PRESIDENT TO THE
SPEAKER OF THE HOUSE OF REPRESENTATIVES
AND THE PRESIDENT OF THE SENATE

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

Enclosed is a draft of a bill, "To extend and revise the State and Local Fiscal Assistance Act of 1972."

The State and Local Fiscal Assistance Act of 1972 has provided vitally needed funding to States and over 38,000 local governments. While there appears to be no need for substantial changes, some amendments to the Act are considered desirable based upon our experience in administering the general revenue sharing program for the past two- and one-half years.

The draft bill would make such amendments. In addition to extending the Act through the fiscal year beginning October 1, 1981, the amendments clarify certain provisions of the Act, require that residents within the recipient government's jurisdiction be provided an opportunity to give their views on how revenue sharing funds should be spent, and facilitate the administration of the Act from a management point of view. The inflationary impact of this draft bill has been carefully considered.

There is also enclosed a section-by-section analysis of the draft bill and a comparative type showing the changes that would be made in the existing Act.

I urge you to bring this proposed legislation to the attention of the House of Representatives/Senate at your earliest convenience. An identical draft bill has been transmitted to the Speaker of the House of Representatives/President of the Senate.

Sincerely,

GERALD R. FORD

# # # # #

EMBARGOED FOR RELEASE
UNTIL 2:00 P.M. EDT

April 25, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

THE STATE AND LOCAL FISCAL ASSISTANCE ACT AMENDMENTS OF 1975

The President is transmitting to Congress today the State and Local Fiscal Assistance Act Amendments of 1975 which will extend and improve the General Revenue Sharing program to provide essential fiscal assistance to general purpose governments through September of 1982.

BACKGROUND

The General Revenue Sharing program was authorized by Title I of the State and Local Fiscal Assistance Act of 1972, which was signed into law on October 20, 1972. The Administration has conducted a careful study of the program, which expires at the end of 1976, considering issues raised by interested groups and the several independent studies addressing themselves to revenue sharing. This review has led the President to offer this legislation, which seeks to continue the benefits of this program, in its existing broad outlines. It also would propose certain changes to strengthen the ability of General Revenue Sharing to contribute to a vital and balanced Federal system.

IMPORTANT REASONS TO EXTEND THE PROGRAM AS PROPOSED

(1) It provides $39.85 billion to State and local general purpose governments over 5 and 3/4 years to make it possible for them to perform the essential tasks required by their residents.

- Renews a program that has already distributed almost $19 billion to nearly 39,000 State and local governments;

- These funds are used to pay for vitally needed day-to-day services and capital expenditures of benefit to a wide spectrum of Americans;

- States and communities, especially our large cities where it accounts for about 1/3 of all Federal aid, depend on shared revenues to such a degree that termination of or a decrease in funding would lead to cuts in essential services and/or counterproductive increases in taxes;

- It is vitally important that the program be renewed at the earliest possible time to assure governments planning their FY 1977 budgets in the Fall of 1975 that there will be a full year of GRS funding in FY 1977.

more

(2) It contributes to a revitalized, balanced Federal system in which States and localities can play their appropriate roles.

- General Revenue Sharing has slowed the march of ever greater power and control over the lives of our citizens to Washington;

- State and local governments can better perform those public tasks for which they are best suited as a result of sharing in the advantages of the Federal tax system;

- GRS strengthens the ability of the Federal system to respond to the diversity of our large nation and to preserve our essential freedoms.

(3) State and local budgets as a whole are currently in a deficit situation.

- State and local governments have had to face the impact of rising costs along with the effects of unemployment on both expenditures and tax receipts. For the first quarter of 1975, deficits on State and local general fund account stood at approximately $10 billion;

- There is little doubt that GRS is vitally needed to prevent cuts in essential services accompanied by increased unemployment, and tax increases -- all of which would contradict our efforts to further economic recovery;

- State and local budgets are likely to remain under severe pressure in the foreseeable future.

(4) The General Revenue Sharing program has given more balance to our system of Federal assistance to State and local governments.

- The program has provided a badly needed source of assistance distributed by formulas responsive to need and tax effort which elected State and local officials can use to meet needs which they identify;

- Funds can be spent freely without trying to meet burdensome and restrictive Federal requirements;

- Shared revenues reach many smaller governments which are either ineligible for or not knowledgeable about most of the other forms of assistance or are unable to deal with the often complex procedures associated with these grants.

(5) Allocation of shared revenues in the States and communities has focused public attention on the governmental process at these levels of government.

- The program has for many citizens served as a lesson in how to influence public decisions in the States and localities;

- Elected officials familiar with a wide scope of State and local issues and responsive to voters, as opposed to program-oriented bureaucrats in Washington, make most decisions about the use of shared revenues.

(6) The President's proposal would strengthen the current program in several important ways.

- The ceiling on local entitlements would be raised to allow the formula to work in a less constrained fashion;
- An assurance that means for citizen participation are available would be required;
- The Secretary of the Treasury would be given greater flexibility in requiring the reporting and publicity of uses of shared funds so as to improve the effectiveness of these requirements and make them less burdensome;
- The remedies available to the Secretary of the Treasury in preventing the discriminatory use of GRS funds would be clarified.

# # # # #

4/26/75 - copies of exchange of correspondence with Cong. Esch and backup material re revenue sharing given to Dudley Chapman (at Mr. Buchen's request).

THE WHITE HOUSE
WASHINGTON

You will want to call Cong. Esch

Called him 3/26/75

I have asked the Congressional office to hand deliver the letter.

Congressional
See
Revenue
Sharing
for backup)

THE WHITE HOUSE

WASHINGTON

March 25, 1975

Dear Congressman Esch:

Your letter of March 8 to the President concerning the Ferndale Michigan School District case was forwarded to my office for further response.

If the Secretary of the Treasury determines that a person in the United States has been denied the benefits of any program or activity funded by revenue sharing funds, then the Secretary may

(a) refer the matter to the Attorney General who may bring a civil action;
(b) terminate revenue sharing funds to the activity or program; or
(c) take other appropriate action as provided by law.

It is my understanding that the Secretary has only determined to refer this matter to the Attorney General. No decision has been made to seek a termination of any revenue sharing funds at this time. If the Secretary decides to seek a termination at a later date of some or all of these revenue sharing funds to effect compliance then a very definite procedure must be followed. That procedure is set forth in 31CFR §51.32(f).

When a case of this kind is referred to the Department of Justice, the Attorney General may decide to file suit to seek compliance. At any stage during litigation the Department will consider any new school desegregation plan proposed by the Ferndale School District. Furthermore, such consideration will be in accordance with the congressional mandate which is found in the Esch Amendment in the Equal Education Opportunities Act of 1974.

At this time it would be premature for a Federal court to become involved in determining whether a particular plan is proper under the law because no final judicial decision has been rendered. However, if the Department obtains a court order as the result of such

litigation, then the Federal courts will become involved in finding the appropriate remedy.

I do hope that this discussion answers the questions which you raised in your letter. The persons at the Department of Justice who are responsible for this case are most willing to meet with you to discuss their actions.

Most Sincerely,

Philip W. Buchen
Counsel to the President

The Honorable Marvin L. Esch
House of Representatives
Washington, D.C. 20515

March 11, 1975

Dear Marv:

Thank you for your March 8 letter to the President outlining the circumstances concerning the Ferndale School District, and the contemplated legal action against it by the Department of Justice.

You may be assured your letter will be presented for prompt review.

With kindest regards,

Sincerely,

Vernon C. Loen
Deputy Assistant
to the President

The Honorable Marvin L. Esch
House of Representatives
Washington, D.C. 20515

bcc: w/incoming to Philip Buchen for further handling. Note--
March 10 referral of letter from Cong. James Blanchard on
same case.
bcc: w/incoming to James Cavanaugh - FYI

VCL:EF:VO:vo

MARVIN L. ESCH
REPRESENTATIVE IN CONGRESS
2D DISTRICT, MICHIGAN

COMMITTEES:
EDUCATION AND LABOR
SCIENCE AND TECHNOLOGY

WASHINGTON OFFICE:
2353 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
PHONE: (202) 225-4401

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

DISTRICT OFFICES:
200 EAST HURON
ANN ARBOR, MICHIGAN 48108
PHONE: (313) 665-0618

9 EAST FRONT STREET
MONROE, MICHIGAN 48161
PHONE: (313) 242-7580

15273 FARMINGTON ROAD
LIVONIA, MICHIGAN 48154
PHONE: (313) 261-6080

March 8, 1975

The Honorable Gerald R. Ford
The President
The White House
Washington, D. C. 20500

Dear Mr. President:

The purpose of this letter is to request that you immediately review the potential cutoff to Michigan of over $90 million in Revenue Sharing funds as a result of the Ferndale School case.

The contemplated action by the Justice Department and the Office of Revenue Sharing raises several significant questions:

(1) Should all of the citizens of Michigan be penalized for a situation over which they have absolutely no control? It appears to me that such a proposal is a prime example of the unwarranted intervention of the Federal bureaucracy. Certainly, this is a far-fetched idea developed by unresponsive bureaucracy and clearly not intended by the Congress.

(2) Should the Justice Department attempt to impose their direct interpretation of remedies upon the Ferndale School system without allowing the remedies proposed by the local school officials to be tried? Under the so-called Esch Amendment (Section 214 of the Education Amendments of 1974), certain remedies for school desegregation, which would prohibit cross district busing and would encourage neighborhood schools, were provided. Among these was permitting students to transfer from one school to another. Should not a school system be allowed to try this remedy first or should a parent, black or white, be forced to send his child away from his neighborhood school against their will in order to achieve an arbitrarily determined balance? Simply stated, should there be any freedom of choice left for the parent, black or white?

(3) Should the policy of the Justice Department be to require specific policies and procedures for desegregation independent of guidance of the Court? In Ferndale, while the Court clearly indicated that the Grant School was segregated, there was never a specific remedy mandated by the Court.

The Honorable Gerald R. Ford

March 8, 1975

As the author of the major amendment dealing with the protection of neighborhood schools, I know of your past efforts in support of our proposals and in your agreement with the philosophy that while we must assure that every citizen must have equal educational opportunities under our Constitution, we must also provide leadership to encourage the continuation of our neighborhood schools.

I believe that the proposed cutoff of Revenue Sharing funds to Michigan, as well as current suggestions of the Justice Department, is totally unwarranted and unbecoming the Ford Administration. I know that you will want to immediately ask the new Attorney General for a review of the situation outlined here in order that the basic thrust of your Administration, i.e., continuing emphasis on local decision-making, can be continued.

With best wishes,

Sincerely,

Marvin L. Esch
Member of Congress

MLE:rg

Revenue sharing

THE WHITE HOUSE

WASHINGTON

May 13, 1975

MEMORANDUM FOR:

The Honorable William E. Simon
Secretary of the Treasury
Department of the Treasury

Enclosed for your further appropriate handling is a letter from the Executive Director of the Illinois Municipal League forwarding a Resolution of the League's Board of Directors concerning General Revenue Sharing. Receipt of the Resolution has been acknowledged.

P.W.B.

Philip W. Buchen
Counsel to the President

Enclosures

Revenue Sharing

THE WHITE HOUSE

WASHINGTON

May 13, 1975

Dear Mr. Sargent:

On behalf of the President, I would like to acknowledge receipt of your letter dated May 7 enclosing the resolution on General Revenue Sharing which was recently passed by the Board of Directors of the Illinois Municipal League.

You may be assured of our interest in knowing of the Board's opinion. Also, I am taking the liberty of forwarding this Resolution to the Department of the Treasury in which the Office of Revenue Sharing is located.

With appreciation.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

Mr. Steven Sargent
Executive Director
Illinois Municipal League
1220 South Seventh Street
Springfield, Illinois 62703

Shirley

Monday 5/19/75

Jay said a letter which is or about to
go out from Pottinger -- under the Attorney
General's signature???
pertains to the Ferndale Segregation issue.

Tom Keeling is supposed to get a copy
for Jay as soon as he gets a copy that
is signed and ready to go..

He will either call Jay or me and we are
to arrange to get it to Mr. Buchen.

(May call tomorrow while Jay is out of town)

Eva

May 21, 1975

MEMORANDUM FOR

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

Subject: Inquiries by Congressman Esch concerning action by the Department of Justice with respect to the School District of the City of Ferndale, Michigan

I understand that Congressman Esch has raised with the President a question of the propriety of the position of the Justice Department in the Ferndale, Michigan desegregation case.

The essential factors in this case are as follows:

1. Ferndale has 3,527 elementary students, of which only 8 percent are black. Virtually all of these children (94 percent) have been deliberately placed in one school, the Grant school.

2. There is no dispute whatsoever as to the de jure nature of the school district's segregation. The school district had a full hearing in 1970 before an Administrative Hearing Officer and lost; the district appealed to the Departmental Reviewing Authority and lost; the district appealed to the Secretary of HEW and lost; the district appealed to the United States Court of Appeals and lost; the district then appealed to the United States Supreme Court and certiorari was denied.

3. The Ferndale school system has had 6 years to desegregate this one school. It has refused to negotiate any plan whatsoever with HEW, the Department of Treasury (under the Revenue Sharing Act), or the Justice Department, until December of last year.

4. The only remaining issue is what kind of remedy should be proposed. It should be clear that this is not a busing case. There are three virtually all-white schools within 1.4 miles of the all-black Grant school, at least two of which are within walking distance. In other words, the Grant school can be fully desegregated on a constitutional basis within a neighborhood school concept, and without the necessity for busing. Compared to virtually all other urban school districts which I have seen, the methods for desegregating this small district are the easiest.

In addition, because busing is not required, Ferndale can come into constitutional compliance by methods consistent with the priorities set in the Esch Amendment to the Equal Educational Opportunity Act of 1974 (this Amendment sets priorities for desegregation methods, starting with the least difficult and ending with busing as a last resort).

5. The school district has proposed to operate a free choice "open classroom" program at the Grant school, and to offer the black students attending that school a free choice to transfer to any of the nine white elementary schools. Enrollments for next year have already been made, and under the school district's proposal, there would be two programs, rather than a unitary program, operating at Grant with the racial compositions indicated below:

School	Grades	Black	White	Total
Grant	a. K-6 - open classroom	27	170	197
	b. K-6 - traditional	234	0	234

Only one black student chose to transfer from the Grant school. The faculty in the traditional program at Grant would remain virtually all black.

We informed the school officials (and Congressman Esch) that the open classroom program would be acceptable as part of a complete desegregation plan, but that the present proposal, as a whole, was clearly not acceptable because it would maintain "within school segregation" in clear violation of section 204(a) of the Equal Educational Opportunity Act of 1974 and in clear violation of the Fourteenth Amendment.

In our various communications with school board officials, with Congressmen Esch and Blanchard, and in meetings with Congressman Blanchard and the Attorney General, the Department has consistently maintained that it would be as flexible and generous toward the school district's proposal as it lawfully could be, but that we could not compromise clear constitutional standards and expose the Department and the Administration to embarrassing liability for failing to enforce the law. At the same time, we have consistently offered to negotiate for an acceptable plan and file it as a consent decree, thereby avoiding litigation over this issue. That offer, of course, still stands.

Our most recent efforts to obtain an acceptable plan was undertaken shortly after the effective date of the EEO Act of 1974. We sent the school board a notice letter on November 13, 1974, explaining that it was obliged under various federal laws and the Fourteenth Amendment to take steps to desegregate the Grant school. We have also informed Congressmen Esch and Blanchard of this clear conclusion.

At the school board attorney's request, we extended the time for response. On December 10, 1974, he informed us that the board was considering a number of alternative plans. We granted further extensions for a month and

a half, and on January 30-31, 1975, an attorney from the Education Section of the Civil Rights Division met with the representatives of the school district in Ferndale and discussed their proposals informally. We again requested that the board promptly send a formal proposal to the Justice Department.

On February 11, 1975, the board attorney sent us a letter explaining the open classroom proposal, and on February 21, 1975, we informed the board again that its proposal was not a constitutionally acceptable desegregation plan. The board then requested a meeting in Washington, and such a meeting was arranged through Congressman Blanchard's office for March 6, 1975. At that meeting, in addition to the school officials and attorneys from the Civil Rights Division, Congressman Blanchard and an aide of Senator Griffin were in attendance. None of the participants approached the meeting as a negotiation session, but as an attempt to convince Department attorneys to accept the board's earlier proposal. Justice attorneys again informed Ferndale officials that the proposal was clearly not constitutional nor acceptable, and therefore not one that we legitimately could accept.

The board has not requested other meetings on the matter, but there have been a number of further efforts by Congressmen Esch and Blanchard to influence the Department not to file suit.1/ At his request, I met with Congressman Blanchard on March 21, 1975, and again explained to him why the board's proposal was not lawful or acceptable. He then requested and obtained a meeting with the Attorney General personally which I attended on April 10, 1975. At that time we again explained the deficiencies of the board's proposal.

1/ As you probably know, there have also been a number of other previous contacts with White House officials.

On April 24, 1975, Congressmen Blanchard and Esch sent a letter to the Attorney General requesting the Department to delay filing suit in Ferndale in light of certain developments in the Detroit desegregation case. On May 19, 1975, the Attorney General responded to the Congressmen stating that we had considered the matters that they had raised, and that while we would continue to negotiate with school officials for an acceptable plan and consent decree to avoid litigation, we were legally obliged to file suit because of the inadequacies of the plan as proposed. (Attorney General Levi's letter is attached.)

On May 19, 1975, I was informed by the Attorney General's office that he signed the complaint and forwarded it to us for filing. It should be understood that the Attorney General personally has reviewed this case and finds no alternative to filing in light of refusal of the board to propose a constitutional plan.

This case is extraordinary enough to warrant just a couple of additional comments.

The proposed segregated within school plan of Ferndale is esentially indistinguishable from plans that have been proposed for years by many southern school districts. Those plans have uniformly been rejected by the courts, by HEW, and by the Justice Department, and there can be no question that this kind of within school desegregation was prohibited by the Congress in the EEO Act of 1974. It is not an exaggeration to say, as I have said repeatedly to Congressman Blanchard, that should the Justice Department accept a segregated school plan of this kind, fairness would require the Department to acknowledge to hundreds of southern school districts that such plans are now acceptable throughout the South as well. Doing so, of course, would constitute a nightmare of "unraveling" of law enforcement which I doubt even Congressmen Esch or Blanchard are ready to advocate.

In more than five years of law enforcement in this business covering hundreds of school districts throughout the country, I have never seen a case more easily resolved factually, nor a school district more intransigent and hostile -- perhaps excepting Boston -- than the Ferndale school system. This case is more than half a decade old. The Ferndale school board has been on notice since 1969 that the Grant school is unlawfully segregated. Two complete school years have passed since the board exhausted its judicial appeals, yet prior to our notice letter of November 13, 1974, the school board had not even considered any steps to eliminate segregation. On the contrary, the board has chosen to lose its federal financial assistance from HEW rather than desegregate this one relatively small school.

The facts and law are so clear in this case that for the Justice Department to delay action without good cause, or for the White House to be induced to "carry the mail" for Ferndale and counsel delay (which it has not) in my judgment would mean nothing but embarrassment, and trouble for all of us.

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

Attachment

cc: Mr. Buchen
Mr. Friedersdorf
The Attorney General

May 19, 1975

Honorable Marvin L. Esch
House of Representatives
Washington, D. C. 20515

Dear Congressman Esch:

I am writing in response to your expression of views relating to possible court action by the Department of Justice with respect to the public schools of the School District of the City of Ferndale, Michigan. My office and the Civil Rights Division have given careful consideration to the matters you have raised.

First, I understand that you have asked about this Department's position on the applicability to the Ferndale matter of § 215(a) of the 1974 Education Amendments (the Esch Amendment), 20 U.S.C. § 1714. It is our view that Congress, although limiting court-ordered transportation of students to the school closest or next closest to their place of residence, made clear in § 203, 20 U.S.C. § 1702, that it did not intend to limit relief found necessary by courts to achieve full enforcement of the Fourteenth Amendment. We will therefore be guided by § 1714 to the extent that it is consistent with the Fourteenth Amendment. Fortunately, we believe that in this case appropriate relief can be fashioned which can meet the requirements of both the Fourteenth Amendment and the Esch Amendment.

Second, we are aware of the pending motions in the Detroit school case and have considered their relationship to our proposed suit. Our opinion is that further delay in filing would neither be warranted nor in the interest of the Ferndale school district. Should the question of inter-district relief arise sometime in the future in the Detroit case, we will take appropriate steps to ensure that the Ferndale school officials are not subjected to conflicting court orders.

I appreciate your concern and wish to assure you that this Department will, as in the past, work closely with the responsible school officials to resolve any problems that might arise from the implementation of a desegregation plan. The desegregation plans previously proposed by the Ferndale school board, however, do not satisfy the requirements of federal law and the Fourteenth Amendment, and I have therefore determined that this Department must file suit in order to obtain the necessary compliance. We will, of course, continue to negotiate with the Board in an effort to resolve this matter by the entry of a consent decree if agreement can be reached.

Thank you for providing me with your views on the Ferndale school system. Please do not hesitate to contact us if you have any further questions on this matter.

Sincerely,

Edward H. Levi
Attorney General

mt

May 19, 1975

Honorable James Blanchard
Member of Congress
House Office Building
Washington, D.C. 20515

Dear Congressman Blanchard:

We were pleased to meet you on April 10, 1975 to obtain your views on possible court action by this Department with respect to the public schools of the School District of the City of Ferndale, Michigan. The matters which you raised at that meeting have been given careful consideration by my office and by the Civil Rights Division.

We appreciate the concerns which you expressed and wish to assure you that the attorneys of this Department will, as in the past, work closely with the responsible school officials to resolve any problems that might arise from the implementation of a desegregation plan that fully complies with federal law and the Fourteenth Amendment. As we discussed at our meeting with you, if there had been an acceptable plan devised, this would have been included in a consent decree which could have been filed at the same time as the suit was filed. No such acceptable plan, however, has been proposed. The plans proposed by the Ferndale Board to date do not meet the requirements of federal law, and we have, therefore, determined that this Department must file suit in order to obtain the necessary compliance.

We are aware of the pending motions in the Detroit school case and have considered their relationship to our proposed suit. Our honest opinion is that further delay in filing would neither be warranted nor in the interest of the Ferndale school district. Should the question of interdistrict relief arise in the future in the Detroit case we will, of course, take appropriate steps to insure that the Ferndale school officials are not subjected to conflicting court orders. We will, of course, continue to negotiate with the Board in an effort to resolve the suit by the entry of a consent decree if we can reach agreement.

Thank you for providing me with your views on the Ferndale school system. Please do not hesitate to contact us if you have any further questions on this matter.

Sincerely,

Edward H. Levi
Attorney General

May 22, 1975

MEMORANDUM FOR

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

Subject: Ferndale, Michigan

I understand that Congressman Blanchard, and perhaps Congressman Esch, have requested the Justice Department to delay filing suit against Ferndale until after a school board election and millage vote are held on June 9, 1975. In anticipation of the possibility that the President or White House staff may receive further protests or expressions of outrage about our filing suit, let me provide the following information:

1) A millage proposal identical to the one proposed for June 9 was defeated less than 30 days ago (April 28, 1975). The defeat occurred without regard to a Justice Department law suit since, of course, one was not on file.

2) The millage proposal, if passed would yield approximately $461,000 for the 1975-76 fiscal year, of which $114,000 would be used for the "open classroom program" proposed as a desegregation plan. The argument runs that if the law suit provokes defeat of the millage, it would provoke defeat of funding at least part of an acceptable desegregation plan.

However, by refusing to desegregate the Grant school, the school board has voluntarily given up at least $250,000 in federal education funds each year since 1972-73. By complying with the law, regardless of the passage or defeat of the millage proposal, Ferndale would receive more federal financial assistance than presently budgeted for the open classroom program.

3) As for the school board election, it is difficult to speculate about what effect, if any, filing suit is likely to have. Mr. Blanchard contends that the present school board is more "progressive" than their opponents and should be re-elected. Four of seven seats are to be filled June 9; eight candidates are running for the four seats. At least three of the eight candidates support the tax increase and the open classroom program and therefore, at least in Ferndale terms, are the progressives whom Mr. Blanchard hopes to see elected. It would therefore appear that only one progressive need be elected in order to maintain a majority of progressives on the seven person board. I find it difficult to imagine that filing suit or not filing suit would control the election to this extent. In any event, our experience with similar arguments in other communities has revealed no pattern of control of this kind.

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

cc: Mr. Buchen
Mr. Friedersdorf
The Attorney General

Duplicate to Dudley sent 5/24

May 22, 1975

MEMORANDUM FOR

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

Subject: Ferndale, Michigan

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J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

cc: Mr. Buchen
Mr. Friedersdorf
The Attorney General

THE WHITE HOUSE

WASHINGTON

May 21, 1975

MEMORANDUM FOR: PWB

FROM: JTF

SUBJECT: FERNDALE, MICHIGAN SCHOOL DISTRICT CASE

Attached is a memorandum to Jim Cannon from Stan Pottinger which has attached the letter to Congressman Esch from the Attorney General of which we spoke.

May 21, 1975

MEMORANDUM FOR

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

Subject: Inquiries by Congressman Esch concerning action by the Department of Justice with respect to the School District of the City of Ferndale, Michigan

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Our most recent efforts to obtain an acceptable plan was undertaken shortly after the effective date of the EEO Act of 1974. We sent the school board a notice letter on November 13, 1974, explaining that it was obliged under various federal laws and the Fourteenth Amendment to take steps to desegregate the Grant school. We have also informed Congressmen Esch and Blanchard of this clear conclusion.

At the school board attorney's request, we extended the time for response. On December 10, 1974, he informed us that the board was considering a number of alternative plans. We granted further extensions for a month and

a half, and on January 30-31, 1975, an attorney from the Education Section of the Civil Rights Division met with the representatives of the school district in Ferndale and discussed their proposals informally. We again requested that the board promptly send a formal proposal to the Justice Department.

On February 11, 1975, the board attorney sent us a letter explaining the open classroom proposal, and on February 21, 1975, we informed the board again that its proposal was not a constitutionally acceptable desegregation plan. The board then requested a meeting in Washington, and such a meeting was arranged through Congressman Blanchard's office for March 6, 1975. At that meeting, in addition to the school officials and attorneys from the Civil Rights Division, Congressman Blanchard and an aide of Senator Griffin were in attendance. None of the participants approached the meeting as a negotiation session, but as an attempt to convince Department attorneys to accept the board's earlier proposal. Justice attorneys again informed Ferndale officials that the proposal was clearly not constitutional nor acceptable, and therefore not one that we legitimately could accept.

The board has not requested other meetings on the matter, but there have been a number of further efforts by Congressmen Esch and Blanchard to influence the Department not to file suit.1/ At his request, I met with Congressman Blanchard on March 21, 1975, and again explained to him why the board's proposal was not lawful or acceptable. He then requested and obtained a meeting with the Attorney General personally which I attended on April 10, 1975. At that time we again explained the deficiencies of the board's proposal.

1/ As you probably know, there have also been a number of other previous contacts with White House officials.

On April 24, 1975, Congressmen Blanchard and Esch sent a letter to the Attorney General requesting the Department to delay filing suit in Ferndale in light of certain developments in the Detroit desegregation case. On May 19, 1975, the Attorney General responded to the Congressmen stating that we had considered the matters that they had raised, and that while we would continue to negotiate with school officials for an acceptable plan and consent decree to avoid litigation, we were legally obliged to file suit because of the inadequacies of the plan as proposed. (Attorney General Levi's letter is attached.)

On May 19, 1975, I was informed by the Attorney General's office that he signed the complaint and forwarded it to us for filing. It should be understood that the Attorney General personally has reviewed this case and finds no alternative to filing in light of refusal of the board to propose a constitutional plan.

This case is extraordinary enough to warrant just a couple of additional comments.

The proposed segregated within school plan of Ferndale is essentially indistinguishable from plans that have been proposed for years by many southern school districts. Those plans have uniformly been rejected by the courts, by HEW, and by the Justice Department, and there can be no question that this kind of within school desegregation was prohibited by the Congress in the EEO Act of 1974. It is not an exaggeration to say, as I have said repeatedly to Congressman Blanchard, that should the Justice Department accept a segregated school plan of this kind, fairness would require the Department to acknowledge to hundreds of southern school districts that such plans are now acceptable throughout the South as well. Doing so, of course, would constitute a nightmare of "unraveling" of law enforcement which I doubt even Congressmen Esch or Blanchard are ready to advocate.

In more than five years of law enforcement in this business covering hundreds of school districts throughout the country, I have never seen a case more easily resolved factually, nor a school district more intransigent and hostile -- perhaps excepting Boston -- than the Ferndale school system. This case is more than half a decade old. The Ferndale school board has been on notice since 1969 that the Grant school is unlawfully segregated. Two complete school years have passed since the board exhausted its judicial appeals, yet prior to our notice letter of November 13, 1974, the school board had not even considered any steps to eliminate segregation. On the contrary, the board has chosen to lose its federal financial assistance from HEW rather than desegregate this one relatively small school.

The facts and law are so clear in this case that for the Justice Department to delay action without good cause, or for the White House to be induced to "carry the mail" for Ferndale and counsel delay (which it has not) in my judgment would mean nothing but embarrassment, and trouble for all of us.

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

Attachment

cc: Mr. Buchen
Mr. Friedersdorf
The Attorney General

bcc: Mr. French

May 19, 1975

Honorable Marvin L. Esch
House of Representatives
Washington, D. C. 20515

Dear Congressman Esch:

I am writing in response to your expression of views relating to possible court action by the Department of Justice with respect to the public schools of the School District of the City of Ferndale, Michigan. My office and the Civil Rights Division have given careful consideration to the matters you have raised.

First, I understand that you have asked about this Department's position on the applicability to the Ferndale matter of § 215(a) of the 1974 Education Amendments (the Esch Amendment), 20 U.S.C. § 1714. It is our view that Congress, although limiting court-ordered transportation of students to the school closest or next closest to their place of residence, made clear in § 203, 20 U.S.C. § 1702, that it did not intend to limit relief found necessary by courts to achieve full enforcement of the Fourteenth Amendment. We will therefore be guided by § 1714 to the extent that it is consistent with the Fourteenth Amendment. Fortunately, we believe that in this case appropriate relief can be fashioned which can meet the requirements of both the Fourteenth Amendment and the Esch Amendment.

Second, we are aware of the pending motions in the Detroit school case and have considered their relationship to our proposed suit. Our opinion is that further delay in filing would neither be warranted nor in the interest of the Ferndale school district. Should the question of inter-district relief arise sometime in the future in the Detroit case, we will take appropriate steps to ensure that the Ferndale school officials are not subjected to conflicting court orders.

I appreciate your concern and wish to assure you that this Department will, as in the past, work closely with the responsible school officials to resolve any problems that might arise from the implementation of a desegregation plan. The desegregation plans previously proposed by the Ferndale school board, however, do not satisfy the requirements of federal law and the Fourteenth Amendment, and I have therefore determined that this Department must file suit in order to obtain the necessary compliance. We will, of course, continue to negotiate with the Board in an effort to resolve this matter by the entry of a consent decree if agreement can be reached.

Thank you for providing me with your views on the Ferndale school system. Please do not hesitate to contact us if you have any further questions on this matter.

Sincerely,

Edward H. Levi
Attorney General

mt

May 19, 1975

Honorable James Blanchard
Member of Congress
House Office Building
Washington, D.C. 20515

Dear Congressman Blanchard:

We were pleased to meet you on April 10, 1975 to obtain your views on possible court action by this Department with respect to the public schools of the School District of the City of Ferndale, Michigan. The matters which you raised at that meeting have been given careful consideration by my office and by the Civil Rights Division.

We appreciate the concerns which you expressed and wish to assure you that the attorneys of this Department will, as in the past, work closely with the responsible school officials to resolve any problems that might arise from the implementation of a desegregation plan that fully complies with federal law and the Fourteenth Amendment. As we discussed at our meeting with you, if there had been an acceptable plan devised, this would have been included in a consent decree which could have been filed at the same time as the suit was filed. No such acceptable plan, however, has been proposed. The plans proposed by the Ferndale Board to date do not meet the requirements of federal law, and we have, therefore, determined that this Department must file suit in order to obtain the necessary compliance.

We are aware of the pending motions in the Detroit school case and have considered their relationship to our proposed suit. Our honest opinion is that further delay in filing would neither be warranted nor in the interest of the Ferndale school district. Should the question of interdistrict relief arise in the future in the Detroit case we will, of course, take appropriate steps to insure that the Ferndale school officials are not subjected to conflicting court orders. We will, of course, continue to negotiate with the Board in an effort to resolve the suit by the entry of a consent decree if we can reach agreement.

Thank you for providing me with your views on the Ferndale school system. Please do not hesitate to contact us if you have any further questions on this matter.

Sincerely,

Edward H. Levi
Attorney General