The original documents are located in Box 39, folder "Voting Rights (2)" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

[May 1975]

VOTING RIGHTS

Voting Rights
Rottweger

Powerful piece of Fed legislation,

1965 - Care about how should be continued
Courts recognized validity of act

I Special provisions

II Nationwide ban on testing for literacy -

States or political subdivisions | any test less than 50% of ~~qualified~~ VAP (voting age population) registered or voting - in 1964

How imp.
voting most effect of
Committee yrs Xxx
10 yrs (vs 5)

~~w/ tax~~
II – Jitney test personally bound

Oxford –

* Upcoming issues

Choices to P –

(Senate & House placing unusual reliance on Atty Genl)

1) Straight extension

2) V coverage – should extend to Chicanos & Indians

3) House position [Texas etc]

3) against II & for amendment

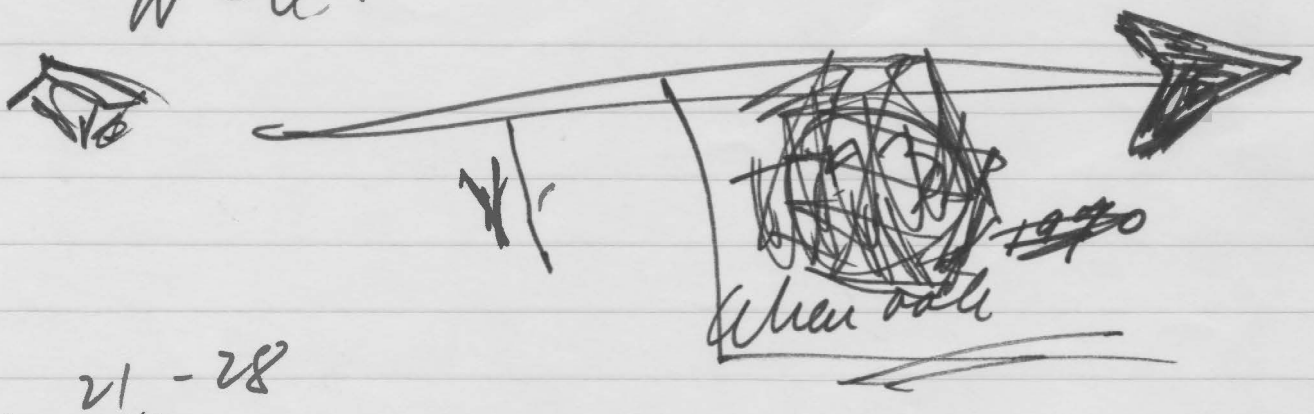
would need to

~~date~~

If he wants to

influence the

vote 2-3 weeks



Leader
4 May 21 - 28

Final legislation

June 20 a Thursday

Final ~~Bill~~
Passage

(August 6 VA expiration
date)

cc: to Parsons

THE WHITE HOUSE

WASHINGTON

May 16, 1975

MEMORANDUM FOR: JIM CANNON

THRU: MAX L. FRIEDERSDORF M.L.G.
VERN LOEN VL

FROM: CHARLES LEPPERT, JR. CLJr

SUBJECT: Rep. Wiggins' Substitute to H.R. 6219, to amend Voting Rights Act of 1965.

Attached for your information is the Amendment in the nature of a substitute to be offered by Rep. Charles Wiggins (R-Calif.) to H.R. 6219 during consideration by the House of Representatives.

This substitute amendment was introduced in the House of Representatives by Rep. Wiggins as H.R. 6985, on Wednesday, May 14, 1975.

cc: Doug Bennett

File
Voting Rights

HR 6985

Amendment in the Nature of a Substitute to H.R. 6219, as Reported

Offered by Mr. Wiggins

In H.R. 6219 strike out all after the enacting clause and insert in lieu thereof the following: That this Act may be cited as "The Voting Rights Extension Act of 1975".

Sec. 2. Section 4(a) of the Voting Rights Act of 1965 is amended by striking out "ten years" each time it appears and inserting in lieu thereof "eleven-year-and-180-day period".

Sec. 3. Effective February 6, 1977:

(a) Section 4 of the Voting Rights Act is amended to read as follows:

"Sec. 4. (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color or national origin, the requirements of section 5 shall apply to any State with respect to which the determinations have been made under subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no voting qualification, or prerequisite to voting or standard, practice, or procedure with respect to voting is in effect during or preceding the filing of

the action where such qualification, prerequisite, standard, practice, or procedure does have or is likely to have the purpose or the effect of denying or abridging the right to vote on account of race or color or national origin: Provided, That for purposes of this section no State or political subdivision shall be determined to have engaged in the use of such qualifications, prerequisites, standards, practices, or procedures for the purpose or with the effect of denying or abridging the right to vote on account of race or color or national origin if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

"An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The Court shall retain jurisdiction of any action pursuant to this subsection until determinations are made by the Director of the Census pursuant to subsection (b) following the next general federal election after the filing of the action and shall reopen the action upon motion of the Attorney General alleging that such qualifications, prerequisites, standards, practices, or procedures have been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or national origin.

"If the Attorney General determines that he has no reason to believe that any such qualifications, prerequisites, standards, practices, or procedures are in effect or are likely to be effective with the purpose or with the effect of denying or abriding the right to vote on account of race or color or national origin, he shall consent to the entry of such judgment.

"(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a state for which the Director of the Census determines that racial or language minority citizens of voting age comprise more than 5 per centum of the voting age population of such State or political subdivision and that less than 50 per centum of such racial or language minority citizens of voting age voted in the most recent general federal election. The provisions of subsection (a) shall continue in effect until the Director of the Census makes determinations pursuant to this subsection following the next general federal election after which time such provisions shall only apply based upon determinations pertaining to the most recent general federal election at that time. The Director of the Census is directed to make determinations pursuant to this subsection to the greatest degree possible within 60 days after a general federal election is held.

"A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

"(c) As used in this Act, the phrase 'general federal election' shall mean any general election held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

"(d) As used in this section, the phrase 'racial or language minority citizens' means citizens of the United States who are Negroes or persons of Spanish heritage as those terms are defined by the Bureau of the Census."

(b) Section 5 of the Voting Rights Act is amended to read as follows:

"Sec. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequiste, standard, practice, or procedure does not have the purpose and will not have the effect

of denying or abridging the right to vote on account of race or color or national origin, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of such a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period

which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court."

Sec. 4. Section 3 of the Voting Rights Act is amended by--

(1) striking out "fifteenth amendment" each time it appears and inserting in lieu thereof "fourteenth amendment or fifteenth amendment";

(2) striking out "race or color" each time it appears and inserting in lieu thereof "race or color or national origin";

(3) striking out "test or device" each time it appears and inserting in lieu thereof "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting";

(4) striking out "tests or devices" each time it appears and inserting in lieu thereof "such voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting";

(5) striking out "except that neither" and inserting in lieu thereof "or upon good cause shown to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication

by the Attorney General that no objection will be made, nor";

(6) adding at the end thereof the following: "In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of such a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section.";

(7) striking out "deem appropriate" and inserting in lieu thereof "deem appropriate, but in no event after determinations are made by the Director of the Census pursuant to Section 4 (b) following the next general federal election from the date of the order,";

(8) striking out "deems necessary." and inserting in lieu thereof "deems necessary, but in no event after determinations are made by the Director of the Census pursuant to Section 4 (b) following the next general federal election from the date of the order.";

(9) striking out "different from that in force or effect at the time the proceeding was commenced", effective February 6, 1977; and

(10) striking out "Attorney General" the first three times it appears and inserting in lieu thereof the following "Attorney General or an aggrieved person".

Sec. 5. Section 201(a) of the Voting Rights Act of 1965 is amended by--

(1) striking out "Prior to August 6, 1975, no" and inserting "No" in lieu thereof; and

(2) striking out "as to which the provisions of section 4(a) of this Act are not in effect by reason of determinations made under section 4(b) of this Act." and inserting in lieu thereof a period.

Sec. 6. Section 14 of the Voting Rights Act of 1965 is amended by adding at the end thereof the following new subsection:

"(e) In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.".

Sec. 7. Title II of the Voting Rights Act of 1965 is amended by adding at the end thereof the following new section:

"Sec. 207. (a) Congress hereby directs the Director of the Census forthwith to conduct a survey to compile registration and voting statistics: (i) in every State or political subdivision with respect to which the prohibitions of section 4(a) of the Voting Rights Act of 1965 are in effect, for every general federal election

after January 1, 1974; and (ii) in every State or political subdivision for any election designated by the United States Commission on Civil Rights. Such surveys shall elicit citizenship, the race or color, and national origin, of each person of voting age and the extent to which such persons are registered to vote and have voted in the elections surveyed.

"(b) In any survey under subsection (a) of this section no person shall be compelled to disclose his political party affiliation, or how he voted (or the reasons therefor), nor shall any penalty be imposed for his failure or refusal to make such disclosures. Every person interrogated orally, by written survey or questionnaire, or by any other means with respect to such information shall be fully advised of his right to fail or refuse to furnish such information except with regard to information required by subsection (a), with regard to which every such person shall be informed that such information is required solely to enforce nondiscrimination in voting.

"(c) The Director of the Census shall, at the earliest practicable time, report to the Congress the results of every survey conducted pursuant to the provisions of subsection (a) of this section.

"(d) The provisions of section 9 and chapter 7 of title 13 of the United States Code shall apply to any survey, collection, or compilation of registration and voting statistics carried out under subsection (a) of this section."

Sec. 8. Section 11(c) of the Voting Rights Act of 1965 is amended by inserting after "Columbia," the following words: "Guam, or the Virgin Islands,".

Sec. 9. Section 5 of the Voting Rights Act of 1965 is amended--

(1) by striking out "except that neither" and inserting in lieu thereof the following: "or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor"; and

(2) by inserting immediately after the words "failure to object" a comma; and

(3) by inserting immediately before the final sentence thereof the following: "In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section.".

Sec. 10. Section 203 of the Voting Rights Act of 1965, is amended by striking out "section 2282 of title 28" and inserting "section 2284 of title 28" in lieu thereof.

Sec. 11. Title III of the Voting Rights Act of 1965 is amended to read as follows:

"TITLE III--EIGHTEEN-YEAR-OLD VOTING AGE

"Enforcement of Twenty-Sixth Amendment

"Sec. 301. (a)(1) The Attorney General is directed to institute, in the name of the United States, such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the twenty-sixth article of amendment to the Constitution of the United States.

"(2) The district courts of the United States shall have jurisdiction of proceedings instituted under this title, which shall be heard and determined by a court of three judges in accordance with section 2284 of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

"(b) Whoever shall deny or attempt to deny any person of any right secured by the twenty-sixth article of amendment to the Constitution of the United States shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"Definition

"Sec. 302. As used in this title, the term 'State' includes the District of Columbia."

Sec. 12. Section 10 of the Voting Rights Act of 1965 is amended--

(1) by striking out subsection (d);

(2) in subsection (b), by inserting "and section 2 of the twenty-fourth amendment" immediately after "fifteenth amendment"; and

(3) by striking out "and" the first time it appears in subsection (b), and inserting in lieu thereof a comma.

Sec. 13. Section 6 of the Voting Rights Act of 1965 is amended by striking out "fifteenth amendment" each time it appears and inserting in lieu thereof "fourteenth or fifteenth amendment".

Sec. 14. Section 2, the second paragraph of section 4(a), and sections 4(d), 5, 6, and 13 of the Voting Rights Act of 1965 are each amended by inserting immediately after "on account of race or color" each time it appears "or national origin".

THE WHITE HOUSE

WASHINGTON

May 17, 1975

MEMORANDUM FOR : JIM CAVANAUGH
DICK PARSONS

FROM : JIM CANNON

SUBJECT : Voting Rights Memorandum

Please incorporate the Pottinger memorandum on Voting Rights with the one due on Wednesday on the same subject.

Jack Parsons
include with?

ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington

MAY 19 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.

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 plitical 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

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_/ 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 electorial 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 then 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.

Stan

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

DOMESTIC COUNCIL CLEARANCE SHEET

DATE: _____

JMC action required by _____

TO : JMC

VIA:

FROM :

SUBJECT:

COMMENTS:

Put in a folder "Jim Rhodes" and in Pending Box

DATE: _____

RETURNTO:

Material has been:

_____ Signed and forwarded
_____ Changed and signed (copy attached)
_____ Returned per our conversation
_____ Noted

_____

_____
JIM CANNON

THE WHITE HOUSE

WASHINGTON

May 21, 1975

MEMORANDUM FOR: Jim Cannon

FROM: Dick Parsons D.

SUBJECT: Voting Rights -- Status Report

You requested a couple of paragraphs on the status of the Voting Rights Act extension.

As you know, in late January the President submitted to the Congress legislation to extend for five years (1) the "special" provisions of the Voting Rights Act of 1965, and (2) the national ban on literacy tests as a prerequisite to registration for voting.

In the course of its deliberations, the Congress has shown an inclination to modify this legislation in four significant ways:

1. To extend for 10 years the "special" provisions of the Voting Rights Act of 1965.

2. To make permanent the national ban on literacy tests as a prerequisite to registration and voting.

3. To broaden the "special" provisions of the Voting Rights Act of 1965 to cover jurisdictions heavily populated by Mexican-Americans or Native Americans (essentially the States of Texas and Alaska) and about 40 counties in Arizona, California, Colorado, Florida, New Mexico and Oklahoma.

4. To impose a ban on English-only elections in jurisdictions with substantial language-minority voting age populations.

Both Houses of Congress are about to take up this issue. Several options are available to the President if he should decide to make his views known on any one or more of the above-noted Congressional modifications.

I will prepare a more detailed decision memorandum, covering the available options, if you desire.

POTTINGER MATERIAL

JMC:

Copies have gone to Parsons and Jim Cavanaugh .

Nook: met w/ Clarke Reed

p

Department of Justice
Washington

MAY 19 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.

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(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.

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.

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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

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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:

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

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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 plitical 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

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_/ 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 electorial 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 then 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.

Stan

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

Congress of the United States

House of Representatives

Washington, D.C. 20515

May 23, 1975

Voting Rights

To: Legislative Assistants

From: John Mercer
Legislative Assistant to Congressman Wiggins

Subject: Voting Rights Act Extension

The legislation to extend the 1965 Voting Rights Act will be considered when the House returns in June.

Congressman Wiggins has introduced H.R. 6985 to extend and expand the Voting Rights Act of 1965. His bill is intended to be a substitute for H.R. 6219, Congressman Don Edwards' Voting Rights bill and will be offered as such when Mr. Edwards' proposal goes to the floor of the House.

Attached is a memorandum I have prepared explaining the intent and purpose of the legislation.

Also, you will find a copy of the bill printed in the Congressional Record of Monday, May 19, on page H4293, and a section by section analysis of its effect in the Congressional Record of Wednesday, May 21, page H4567.

If you should have any questions, please do not hesitate to call me at X54111.

A Statement on H.R. 6985
A Proposal for an Extension of the
Voting Rights Act

Background

Control of the registration and voting procedures, pertaining to both state and federal elections, is constitutionally delegated to each state. However, the unfortunate history of this country has been that in some areas of the nation certain citizens have been wrongfully denied their right to vote, by state action, on account of their race, color, or national origin. To remedy that situation, the Voting Rights Act of 1965 was enacted by Congress, for a five-year period, and then extended in 1970 for another five-year period.

The idea behind the Voting Rights Act, and its extension, was to apply "special remedies" to those jurisdictions which evidenced discrimination in election procedures against that segment of our citizenry which had experienced the most pervasive denial of their voting rights, namely Black Americans. Because control over all phases of registration and voting procedures was then so completely within the grasp of the states, as it had been for almost 200 years, and because there were seemingly limitless ways in which states that so desired could discourage, or even prevent, certain citizens from voting, very strong medicine indeed was required in order to eradicate the evil of voting rights discrimination. That medicine, in the form of federally imposed "special remedies", was so strong and so contrary to our tradition of exclusive state jurisdiction over all phases of election procedures, that it was found desirable to target those remedies toward only those jurisdictions which, by means of a federally imposed test, demonstrated a high likelihood of discriminatory activity against our Black minority.

This test became known as the "triggering mechanism". A jurisdiction, such as a state or political subdivision, which failed the test would "trigger" the "special remedies". In 1965, when the Voting Rights Act was first passed, the trigger was set as follows: If, on November 1, 1964, a jurisdiction had in effect a literacy test or similar "test or device" as a prerequisite to registration or voting, and if less than 50% of its total voting age population had voted in the November 1964 Presidential election, then the "special remedies" would be applied to that jurisdiction. In other words, under the law it was to be presumed that a "test or device" was being used discriminatorily against Black citizens if less than 50% of the entire voting age population voted.

Once triggered, the following "special remedies" went into effect in the jurisdictions:

(1) The literacy test, or similar device, was automatically suspended,

(2) All election procedures were frozen, with preclearance by the United States Attorney General required for any changes, and

(3) The Attorney General was authorized to send in federal examiners (to list eligible voters) and federal observers (to oversee elections) whenever he deemed it appropriate.

There was an exception to all of this written into the Act, known as the "Bail-out" Provision. That is, a covered jurisdiction could remove itself from the "special remedies" imposition if it could prove, in the United States District Court for the District of Columbia, that the "test or device" had in fact not been used in a discriminatory manner during the ten years preceeding the exemption request.

In 1970, legislation was enacted extending the Voting Rights Act (and its "special remedies") for five more years, temporarily banning all literacy tests and similar devices nationally for five years, and applying the original Act's same triggering mechanism to 1968 (i.e., a "test or device" in effect on November 1, 1968, and less than a 50% turnout in the 1968 Presidential election). That expanded trigger applied only to uncovered jurisdictions -- those covered by the 1964 trigger would automatically be covered for still another five years, unless they could satisfy the "Bail-out" Provision.

In light of the recent case of Virginia v. United States, that "Bail-out" Provision has become effectively meaningless for those seven Southern states covered in 1965, and at which the original Act was aimed: Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia. The result of the decision in that case is that Southern states which had separate schools for Blacks in the early 1960's are now precluded from showing that their literacy tests were not used discriminatorily, thus locking in those states for the duration of the Act.

This, then, brings us to the year 1975, and the pending expiration of the Voting Rights Act in August of this year. Before analizing the two legislative alternatives most strongly under consideration by the House of Representatives, both of which would extend and expand in different manners voting rights protection, it is perhaps appropriate to consider the progress made under the present Act.

By any analysis, that progress has been substantial. As the Judiciary Committee's Report points out, before 1965 only 6.7 percent of the Black voting age population of Mississippi was registered, while 63.2 percent of such persons were registered in 1971-72, with similar dramatic increases in Black registration being noted in the other Southern states. Additionally, the report observes that it was estimated that a mere 72 Blacks served as elected officials in all eleven Southern states in 1965, while by April 1974, the total of Black elected officials in just the seven Southern states covered by the Act had increased to 963.

The point to be demonstrated by these statistics is not that no further voting rights legislation is needed, nor is it even that a weakening of the Act is justified. Rather, the proper conclusion is that the "special remedies" feature of the Act is truly effective in erradicating, or at least greatly reducing, state voting rights discrimination in those jurisdictions whose misconduct has been such that the triggering mechanism of the Act was fired.

But even if one were to conceed that no voting rights discrimination whatsoever presently exists in any of the covered jurisdictions, that would not be sufficient justification for weakening or eliminating federal voting rights legislation. The sponsors of both pieces of legislation under consideration agree that, in those jurisdictions where voting rights discrimination may be presumed to exist, the "special remedies" provision is sufficiently strong medicine to correct the situation. The point of contention, then, concerns the question of which jurisdictions, and upon what basis, shall we attach a presumption of voting rights discrimination. (A peripheral issue is the question of which specific minority groups should the Act be tailored to specially protect.) Specifically, the central question is: Should we change the triggering mechanism? Thus, follows an analysis and comparison of the major differences between the two voting rights bills under consideration by the House of Representatives.

Analysis

H.R. 6219, the Edwards Bill, as passed by the House Judiciary Committee, would extend the present triggering mechanism for another ten years. In addition, it would apply that same type of trigger (existence of a "test or device" and less than a 50% voter turnout) to the November 1972 Presidential election -- but would further define "test or device" to include the use of English-only voting or registration materials in those jurisdictions where more than 5 percent of the voting age citizens are of a single language minority (defined by the Edwards Bill to mean "persons who are American Indians, Asian Americans, Alaskan native, or of Spanish heritage").

In other words, the Edwards approach is to find that voting rights discrimination against certain minorities exists in those jurisdictions which use a "test or device" and which have less than a 50 percent overall voter turnout in a Presidential election. Furthermore, once a Southern state is covered by the Act -- whether that be on the basis of discrimination in the 1964, 1968, or 1972 elections -- that state is, for all practical purposes, locked into coverage by the "special remedies" provision through the year 1984. The Edwards trigger is appropriate only if it provides the most rational means for finding a presumption of discrimination against the included minorities. And the end result is appropriate only if it is fair to lock in a state well into the future for transgressions which may have occurred well in the past.

The very basis of the Wiggins Bill, however, had its genesis in the conviction that no matter how well intended was the Edwards trigger, and regardless of how well the trigger of the original Voting Rights Act had served our nation during the initial ten years of coverage, a more rationale method of finding a presumption of voting rights discrimination must exist. The sincere belief that the Edwards trigger was deficient arose from a number of observations:

(1) A Southern state which was brought under the "special remedies" provisions of the Act in 1964, would -- despite any lack of discrimination today and in the future -- be continually covered through 1984.

(2) In a Southern jurisdiction, if 100 percent of the covered minorities voted in every election, but so few Whites voted that the <u>overall</u> voter participation was less than 50 percent, a presumption of discrimination against the minorities would exist, and thus the trigger would be tripped.

(3) On the other hand, in a non-Southern state, <u>none</u> of its minorities might register or vote, and yet if White turnout was sufficient to put the overall average above 50 percent, <u>no</u> discrimination would be presumed.

(4) Since the covered Southern states are locked into the "special remedies" provision, no matter what they do, there is no incentive whatsoever for them to make any improvements in their registration or voting procedures or to encourage minority voter participation. (The Attorney General can only prevent improper changes, but he cannot impose beneficial ones.)

The Wiggins Bill, H.R. 6985, is an effort to eliminate the Reconstruction-type features of H.R. 6219, and to provide for a much more rational triggering mechanism. The Wiggins trigger finds a presumption of voting rights discrimination against

covered minorities where, in the previous general federal election, less than 50 percent of those minorities voted. This simplified mechanism has a number of advantages:

(1) The test applies nationally, to all jurisdictions equally, thus recognizing that the "special remedies" feature of the Act should be imposed wherever the relevant discrimination exists.

(2) It looks solely to the voting participation of those groups that the "special remedies" provision was designed to protect -- the covered minorities.

(3) It looks to the current, as opposed to historical, registration and voting procedures of each jurisdiction.

(4) If a jurisdiction triggers the "special remedies" provision, and if it is not able to "bail-out" by proving to the U.S. District Court for the District of Columbia that the low minority turnout was not a result of discrimination, then that jurisdiction has great incentive not only to eliminate discrimination, but also to make positive efforts to turn out minority voters in the next election. Because a jurisdiction can remove itself from such coverage two years hence, if such actions are taken.

Elaborating on this last point, the Edwards Bill would also require bi-lingual election materials in those districts with less than a 50 percent overall turnout in 1972 and a voting age population of more than 5 percent American Indian, Asian Americans, Alaskan natives, or persons of Spanish heritage. The Edwards Bill further provides that if more than 5 percent of the citizens of voting age in the jurisdiction are members of one of those "language minorities", and if the illiteracy rate of that minority group is higher than the national illiteracy rate for all persons of voting age, then for ten years the jurisdiction may not provide English-only registration and election materials. (A jurisdiction may bail-out from this last provision when the illiteracy rate of the voting age language minority drops to less than the national average.)

The Wiggins Bill, on the other hand, makes no reference to illiteracy rates. Minorities either vote or they do not, and if they do not it is up to the covered jurisdiction to take the most effective steps possible to see that they do, else coverage under the Act continues. That is the proper purpose of a Voting Rights Act. To the extent that English-only elections confuse and discourage the covered language minority, that minority group will not vote and the trigger will be tripped.

The Wiggins Bill confers special protection only on Blacks and persons of Spanish heritage (a specific designation used by the Bureau of the Census). Those are the two groups which the great volume of evidence indicates have experienced the sort of massive discrimination that the tough "special remedies" provision of the Voting Rights Act is designed to cure. The other minorities of the Edwards Bill -- American Indians, Asian Americans, and Alaskan natives -- can make no such conclusive case. However, it must be emphasized that they, like any other American citizens, are not omitted from individual coverage under the Voting Rights Act. As that legislation would be extended, by both the Wiggins and the Edwards Bills, either the Attorney General "or an aggrieved person" may bring suit to prevent a jurisdiction from any practice which has the purpose or effect of denying any individual the right to vote on account of race or color. In other words, any minority group or individual could bring suit to enforce the protections of the Fourteenth and Fifteenth Amendments. (It should be pointed out that without sufficient evidence of widespread voting rights discrimination -- as in the case of Blacks and persons of Spanish heritage -- the Voting Rights Act itself would be open to challenge as being unconstitutionally discriminatory for arbitrarily giving special protection to some minority groups but not to others, especially when general, individual protection is already provided for in the Act.)

Other features of the Wiggins Bill should be noted. For one, it is permanent legislation and would not expire in 1985. Also, a state could become covered by the "special remedies" provision as a result of one federal election, remove itself from such coverage after the next (by turning out a large minority vote), and then come under coverage again two years later. In other words, once removed from coverage, a state must nonetheless continue to refrain from discriminatory voting procedures. Futhermore, the Wiggins Bill, as in H.R. 6219, provides for a permanent, nationwide ban on literacy tests.

QUESTIONS AND ANSWERS
REGARDING THE VOTING RIGHTS ACT EXTENSION

1. Isn't the Wiggins Bill just a desperate, last minute attempt to "gut" the Voting Rights Act? Isn't the Edwards Bill more progressive?

No, but that's an understandable initial reaction. However, careful and objective analysis will reveal the Wiggins Voting Rights Bill to be the more progressive. It is permanent legislation, unlike the Edwards Bill which offers minorities protection only until 1985. It applies nationally, while the Edwards Bill, with few exceptions, is tailored to cover the South. Futhermore, it actually encourages covered states to take positive steps to increase minority voter participation. And additionally, it precludes the opportunity for a large White voter turnout offsetting a suspiciously low minority voter turnout.

2. If the Voting Rights Act has been so successful, why make such a substantial change?

The Wiggins change is largely in the triggering mechanism. At one time it was relevant to look to election practices in 1964 and 1968, but no longer. Such historical discriminatory practices are of little relevance today, just as lack of such voting rights discrimination ten years ago should not serve to excuse such practices in the 1974 elections.

3. The triggering mechanism isn't the only significant part of the Edwards Bill. H.R. 6219 also contains provisions permanently banning all literacy tests, or similar "tests or devices", nationally; it allows an "aggrieved person" or the Attorney General to bring suit in Federal Court to uphold a specific individual's voting rights; it retains the very effective "special remedies" provisions of the original 1965 Act; it puts the burden on a state which triggers coverage to prove lack of significant discrimination; and it requires the collecting of minority voting statistics for purposes of detecting voting rights discrimination.

So does H.R. 6985, the Wiggins substitute.

4. Under the Wiggins Bill, couldn't a covered jurisdiction simply enact the necessary remedial legislation, sufficient to turn out a high number of minority voters in one federal election -- thereby removing itself from the Acts "special remedies" -- and then turn around and discriminate again?

No, because special coverage could be reimposed pursuant to sec. 3 in an action by either the Attorney General or an aggrieved person. Also, to the extent a voting change actually does result in a low minority voter turnout, then the jurisdiction will find itself covered once again by the Act's "special remedies" provision.

5. Isn't there already provision in the present law (and in the Edwards extention) for removing a state from under coverage of the Act when it proves that the low voter turnout was not a result of discrimination?

Yes, but the decision in the recent case of Virginia v. United States precludes that "bail-out" provision from applying to states which historically had separate schools for Blacks -- i.e., the Southern states.

6. Isn't there incentive now for a covered state to change its voting laws and procedures?

No, because those states -- the Southern states -- are, by virtue of Virginia v. United States, locked in, no matter what they do. The Wiggins substitute would give them incentive to conduct effective voter registration and "get-out-the-vote" drives among the minorities.

7. Isn't the Edwards Bill better, because it covers more minority groups?

No, because massive voting rights discrimination has been proved to exist only against Blacks and persons of Spanish heritage, so as to justify their special recognition in the law. A law with more expanded "special protection" might be ruled unconstitutional for denying recognition to Jews, German-Americans, Italian-Americans, etc. And remember, any "aggrieved person" can himself bring suit (or ask the Attorney General to do so) to prevent voting rights discrimination.

8. The Edwards Bill looks to illiteracy rates and bi-lingual ballots. Why doesn't the Wiggins Bill?

The purpose of the Voting Rights Act is not to cure illiteracy in this country; rather, it should look to instances of unconstitutional

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denial of voting rights. A state should encourage all its eligible citizens to vote, and the Wiggins Bill gives states the incentive to take all such necessary steps, including the use of bi-lingual ballots where truly appropriate.

One problem of the Edwards Bill is that it lumps together, as one "language minority" group persons who speak many different languages and dialects. For instance, it requires bi-lingual ballots when 5 percent or more of a jurisdiction is "Asian American" -- but that group will likely include Japanese-Americans, Chinese-Americans, Filipino-Americans, etc. In which language (and indeed, which dialect) would the ballot and related materials be printed? Also, regarding the requirement of bi-lingual ballots for Alaskan natives and American Indians, many languages are here again involved -- most of which don't even have any written form! That is why it is best left to each jurisdiction to determine the most effective means of encouraging minority voter participation.

9. Couldn't a minority group vote in excess of 50 percent and still be experiencing voting rights discrimination?

Yes, but as under the current law too, such "exotic" discrimination may be remedied by the case-by-case approach of sec. 3. A presumption of discrimination simply cannot be justified in that instance in light of the past record concerning voting rights.

10. Under the Wiggins Bill, wouldn't presently covered states be immediately "bailed out"?

No, they would still be covered, at least through the 1976 Presidential election.

11. Under the Wiggins Bill, what happens if the low minority voter turnout is not due to discrimination? Is the trigger still "pulled"?

Yes, but then the burden of proof is merely shifted to the state (or political subdivision), which may then go before the United States District Court for the District of Columbia. There, if

lack of significant discrimination can be shown (with all interested parties being able to participate), "special remedies" coverage is not imposed.

12. Doesn't the Wiggins Bill require the Bureau of the Census to keep extensive minority voter participation statistics, something it does not now do to a significant degree?

Yes, but so does section 403 of the Edwards Bill.

13. If the Wiggins Bill, H.R. 6985, is so clearly superior, why is there opposition to it?

Largely because of emotional ties to a triggering mechanism which proved very effective in the past. Such resistence to change is normal, and to be expected, but should not prevent us from taking a dispassionate, non-partisan look at the Bill, and judge it strictly on its merits.

Furthermore, hearings were never heard on the Wiggins proposal, as finally evolved, but that was because the Congressman did not serve on the appropriate Subcommittee, and had little time or opportunity to fully develop his approach prior to going before the Rules Committee. In any event, the lateness of the presentation of his substitute is sufficient reason to justify suspicion and intense scrutiny -- but not for rejecting it out of hand. As clearly superior legislation, it should be passed.

Amendment in the Nature of a Substitute to H.R. 6219, as Reported

Offered by Mr. Wiggins

In H.R. 6219 strike out all after the enacting clause and insert in lieu thereof the following: That this Act may be cited as "The Voting Rights Extension Act of 1975".

Sec. 2. Section 4(a) of the Voting Rights Act of 1965 is amended by striking out "ten years" each time it appears and inserting in lieu thereof "eleven-year-and-180-day period".

Sec. 3. Effective February 6, 1977:

(a) Section 4 of the Voting Rights Act is amended to read as follows:

"Sec. 4. (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color or national origin, the requirements of section 5 shall apply to any State with respect to which the determinations have been made under subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no voting qualification, or prerequisite to voting or standard, practice, or procedure with respect to voting is in effect during or preceding the filing of

the action where such qualification, prerequisite, standard, practice, or procedure does have or is likely to have the purpose or the effect of denying or abridging the right to vote on account of race or color or national origin: Provided, That for purposes of this section no State or political subdivision shall be determined to have engaged in the use of such qualifications, prerequisites, standards, practices, or procedures for the purpose or with the effect of denying or abridging the right to vote on account of race or color or national origin if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

"An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The Court shall retain jurisdiction of any action pursuant to this subsection until determinations are made by the Director of the Census pursuant to subsection (b) following the next general federal election after the filing of the action and shall reopen the action upon motion of the Attorney General alleging that such qualifications, prerequisites, standards, practices, or procedures have been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or national origin.

"If the Attorney General determines that he has no reason to believe that any such qualifications, prerequisites, standards, practices, or procedures are in effect or are likely to be effective with the purpose or with the effect of denying or abriding the right to vote on account of race or color or national origin, he shall consent to the entry of such judgment.

"(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a state for which the Director of the Census determines that racial or language minority citizens of voting age comprise more than 5 per centum of the voting age population of such State or political subdivision and that less than 50 per centum of such racial or language minority citizens of voting age voted in the most recent general federal election. The provisions of subsection (a) shall continue in effect until the Director of the Census makes determinations pursuant to this subsection following the next general federal election after which time such provisions shall only apply based upon determinations pertaining to the most recent general federal election at that time. The Director of the Census is directed to make determinations pursuant to this subsection to the greatest degree possible within 60 days after a general federal election is held.

"A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

"(c) As used in this Act, the phrase 'general federal election' shall mean any general election held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

"(d) As used in this section, the phrase 'racial or language minority citizens' means citizens of the United States who are Negroes or persons of Spanish heritage as those terms are defined by the Bureau of the Census."

(b) Section 5 of the Voting Rights Act is amended to read as follows:

"Sec. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequiste, standard, practice, or procedure does not have the purpose and will not have the effect

of denying or abridging the right to vote on account of race or color or national origin, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of such a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period

which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court."

Sec. 4. Section 3 of the Voting Rights Act is amended by--

(1) striking out "fifteenth amendment" each time it appears and inserting in lieu thereof "fourteenth amendment or fifteenth amendment";

(2) striking out "race or color" each time it appears and inserting in lieu thereof "race or color or national origin";

(3) striking out "test or device" each time it appears and inserting in lieu thereof "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting";

(4) striking out "tests or devices" each time it appears and inserting in lieu thereof "such voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting";

(5) striking out "except that neither" and inserting in lieu thereof "or upon good cause shown to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication

by the Attorney General that no objection will be made, nor";

(6) adding at the end thereof the following: "In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of such a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section.";

(7) striking out "deem appropriate" and inserting in lieu thereof "deem appropriate, but in no event after determinations are made by the Director of the Census pursuant to Section 4 (b) following the next general federal election from the date of the order,";

(8) striking out "deems necessary." and inserting in lieu thereof "deems necessary, but in no event after determinations are made by the Director of the Census pursuant to Section 4 (b) following the next general federal election from the date of the order.";

(9) striking out "different from that in force or effect at the time the proceeding was commenced", effective February 6, 1977; and

(10) striking out "Attorney General" the first three times it appears and inserting in lieu thereof the following "Attorney General or an aggrieved person".

Sec. 5. Section 201(a) of the Voting Rights Act of 1965 is amended by--

(1) striking out "Prior to August 6, 1975, no" and inserting "No" in lieu thereof; and

(2) striking out "as to which the provisions of section 4(a) of this Act are not in effect by reason of determinations made under section 4(b) of this Act." and inserting in lieu thereof a period.

Sec. 6. Section 14 of the Voting Rights Act of 1965 is amended by adding at the end thereof the following new subsection:

"(e) In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.".

Sec. 7. Title II of the Voting Rights Act of 196[illegible] is amended by adding at the end thereof the following new section:

"Sec. 207. (a) Congress hereby directs the Director of the Census forthwith to conduct a survey to compile registration and voting statistics: (i) in every State or political subdivision [redacted] for every general federal election

after January 1, 1974; and (ii) in every State or political subdivision for any election designated by the United States Commission on Civil Rights. Such surveys shall elicit citizenship, the race or color, and national origin, of each person of voting age and the extent to which such persons are registered to vote and have voted in the elections surveyed.

"(b) In any survey under subsection (a) of this section no person shall be compelled to disclose his political party affiliation, or how he voted (or the reasons therefor), nor shall any penalty be imposed for his failure or refusal to make such disclosures. Every person interrogated orally, by written survey or questionnaire, or by any other means with respect to such information shall be fully advised of his right to fail or refuse to furnish such information except with regard to information required by subsection (a), with regard to which every such person shall be informed that such information is required solely to enforce nondiscrimination in voting.

"(c) The Director of the Census shall, at the earliest practicable time, report to the Congress the results of every survey conducted pursuant to the provisions of subsection (a) of this section.

"(d) The provisions of section 9 and chapter 7 of title 13 of the United States Code shall apply to any survey, collection, or compilation of registration and voting statistics carried out under subsection (a) of this section."

Sec. 8. Section 11(c) of the Voting Rights Act of 1965 is amended by inserting after "Columbia," the following words: "Guam, or the Virgin Islands,".

Sec. 9. Section 5 of the Voting Rights Act of 1965 is amended--

(1) by striking out "except that neither" and inserting in lieu thereof the following: "or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor"; and

(2) by inserting immediately after the words "failure to object" a comma; and

(3) by inserting immediately before the final sentence thereof the following: "In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section.".

Sec. 10. Section 203 of the Voting Rights Act of 1965, is amended by striking out "section 2282 of title 28" and inserting "section 2284 of title 28" in lieu thereof.

Sec. 11. Title III of the Voting Rights Act of 1965 is amended to read as follows:

"TITLE III--EIGHTEEN-YEAR-OLD VOTING AGE

"Enforcement of Twenty-Sixth Amendment

"Sec. 301. (a)(1) The Attorney General is directed to institute, in the name of the United States, such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the twenty-sixth article of amendment to the Constitution of the United States.

"(2) The district courts of the United States shall have jurisdiction of proceedings instituted under this title, which shall be heard and determined by a court of three judges in accordance with section 2284 of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

"(b) Whoever shall deny or attempt to deny any person of any right secured by the twenty-sixth article of amendment to the Constitution of the United States shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"Definition

"Sec. 302. As used in this title, the term 'State' includes the District of Columbia."

Sec. 12. Section 10 of the Voting Rights Act of 1965 is amended--

(1) by striking out subsection (d);

(2) in subsection (b), by inserting "and section 2 of the twenty-fourth amendment" immediately after "fifteenth amendment"; and

(3) by striking out "and" the first time it appears in subsection (b), and inserting in lieu thereof a comma.

Sec. 13. Section 6 of the Voting Rights Act of 1965 is amended by striking out "fifteenth amendment" each time it appears and inserting in lieu thereof "fourteenth or fifteenth amendment".

Sec. 14. Section 2, the second paragraph of section 4(a), and sections 4(d), 5, 6, and 13 of the Voting Rights Act of 1965 are each amended by inserting immediately after "on account of race or color" each time it appears "or national origin".