

DRAFT PRESIDENTIAL STATEMENT ON VOTING RIGHTS

Last November I stated my strong belief that the Voting Rights Act should and must be extended to ensure that the most precious of rights-- the right to vote-- is protected for all our citizens. Now, as the Senate Judiciary Committee begins its consideration of legislation to accomplish this worthy goal, I want to again stress my firm commitment to an extension of the Voting Rights Act.

This Administration has been concerned, though, that certain ambiguities in the extension bill passed by the House of Representatives could lead to a restructuring of election systems at all levels of government to ensure that election results reflect a minority group's percentage of the total population. This type of proportional representation, if it transpired, would run directly contrary to the traditional electoral principles of our country.

It is my understanding that a compromise amendment will soon be introduced in the Judiciary Committee that will attempt to address the above concern, and several of the other legitimate concerns raised regarding the House-passed bill. In particular, we have reviewed the compromise language proposed for Section 2 of the Act; we feel it now contains adequate protections against the possibility of proportional representation, and we support it.

As I have previously stated, we are also committed to a reasonable bailout provision in the Act, and to a limitation on extension of the pre-clearance provisions that will allow for automatic review of the need to continue such requirements in the future.

With calmness and in a spirit of cooperation that does not yield to partisanship, we must move forward with an extension of the Voting Rights Act before certain of its provisions expire. I am encouraged by the efforts shown to accommodate the legitimate concerns raised in consideration of this issue, and look forward to being able to sign, in the near future, an extension of the Voting Rights Act that will restate our Nation's basic commitment to safeguard the voting rights of all Americans.

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D.G.  
May 3, 1982

DRAFT STATEMENT ON VOTING RIGHTS

Voting is one of the most cherished of our birthrights as American citizens. When practiced, it enriches our democracy; when threatened, it must be protected [— even at the point of bayonet.]

On November 6th of last year, in recognition of the significant contribution that the Voting Rights Act of 1965 had made in protecting the voting rights of minority citizens, I called for a 10-year extension of that law. No previous extension had been as long. I also asked that the bilingual provision in the law be extended so that it is concurrent with the other special provisions of the act.

The matter is now before the Senate Judiciary Committee, which has held extensive hearings and is preparing to report out a bill to the floor of the Senate. There appears to be nearly unanimous support in the committee for some form of extension.

*A principal*  
~~One~~ concern that ~~has been voiced by many of the members and~~ *I and others have expressed regarding* ~~has been shared by my administration~~ *is whether* the bill that has previously passed the House would create a new set of problems in trying to solve some old ones. Specifically and most importantly, there has been a concern that the standard of proof introduced in voting rights cases might lead to proportional representation in many election districts. Such proportional representation would, of course, be alien to the traditional political principles of our country.

*majority of the Judiciary Committee*

Fortunately, a ~~group of Republican and Democratic senators~~ led by ~~Senator Robert Dole~~ has worked hard in recent days to fashion a constructive, bipartisan compromise that addresses this ~~key question~~. <sup>Concern.</sup> In this regard, the ~~"Dole amendment"~~ <sup>their compromise</sup> would greatly strengthen the safeguards against proportional representation while also protecting the basic right to vote.

Today, I not only want to salute the efforts of those who have forged this compromise but I also want to give it my heartfelt support. My hope is that it will now pave the way toward swift ~~enactment of the bill~~ <sup>enactment of the Voting Rights Act</sup> by the entire Congress.

I recognize that there are other concerns about the bill now before the Judiciary Committee. <sup>among these is denial for reamendment</sup> Should they be ~~addressed~~ <sup>bailout prov.</sup> brought up in further debate, I hope they will be resolved <sup>such concerns</sup> in the same bipartisan, constructive spirit.

The all-important goal now is to enact ~~this basic~~ <sup>an</sup> extension of the law as quickly as possible so that we can put it into effect and ensure all of our citizens that we are committed to protecting their most sacred rights. As I said in my statement of November 6th: "The right to vote is the crown jewel of American liberties, and we will not see its luster diminished."

*including reasonable limitations -*

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(1grafinsert; xxx president said., pickup6thgraf: sen. charles reagan hopes legislation can be passed before memorial day)<

By ED ROGERS=

WASHINGTON (UPI) — A coalition of conservative and liberal senators Monday announced a compromise breakthrough on extending the 1965 Voting Rights Act, and President Reagan promptly gave it his "heartfelt support."<

Sens. Robert Dole, R-Kan., and Charles Grassley, R-Iowa, representing committee conservatives, and Sens. Edward Kennedy, D-Mass., Dennis DeConcini, D-Ariz., and Howard Metzenbaum, D-Ohio, announced the compromise at a news conference.<

They were joined by Benjamin Hooks, chairman of the Leadership Conference on Civil Rights, who said the compromise to break a deadlock in the Senate Judiciary Committee is supported by the civil rights community.<

Reagan, in a statement released by the White House, saluted the effort to reach a compromise and gave it "my heartfelt support."<

"My hope is that it will now pave the way toward swift extension of the Voting Rights Act by the entire Congress," the president said.<

Gergen said Reagan reached his decision during a meeting Monday afternoon with Attorney General William French Smith. Gergen said the president hopes the extension can be passed before Memorial Day.<

Sen. Charles Mathias, R-Md., who with Kennedy negotiated the compromise with Dole during the past three weeks, could not be present at the news conference, it was announced.<

The group claimed it has the support of 13 of the committee's 18 members. Negotiations are continuing for the support of chairman Strom Thurmond, R-S.C.<

Thurmond responded by saying the compromise "is a step in the right direction" but flatly declared it "does not prohibit proportional representation."<

"I would like to support the bill if these matters could be corrected and I hope that an agreement can be reached on these two points," he said in a statement.<

An issue that had stalled committee action was raised by liberals' insistence on adopting a "results test" to determine whether a government or voting system is illegally discriminatory.<

Conservatives wanted to maintain an existing "intent" test instead.<

Civil rights groups say intent is extremely difficult, if not impossible, to prove.<

Conservatives argued that a results test would jeopardize any government in which minority candidates do not win elections in proportion to their population ratios and would lead courts to mandate election by racial quotas across the nation.<

The compromise proposal would retain the proposed results test but says election results are to be only one yardstick, and would forbid courts to require proportional representation as a remedy.<

"We hope that the president, the Department of Justice and the administration will embrace the agreement and support a strong and undiluted Voting Rights Act," Kennedy said.<

Dole said coalition members "believe that a voting practice or procedure which is discriminatory in result should not be allowed to stand, regardless of whether there exists a discriminatory purpose."<

"However," Dole added, "we also feel that legitimate concerns have been expressed about whether the results standard could be interpreted by the courts as a mandate for proportional representation."<

The compromise also includes a proposal by Metzenbaum to establish the right of the blind and disabled to assistance at the polls.<

New legislation is needed primarily to extend an enforcement provision that requires jurisdictions with histories of pre-1965 discrimination to get prior federal approval for any change in voting laws or practices.<

Unless Congress acts, this key provision expires Aug. 6.<

The Senate compromise would extend this provision for 25 years,

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The Senate compromise would extend this provision for 25 years, subject to congressional review after 15 years, and also would allow covered jurisdictions to bail themselves out before then by achieving good compliance records.<

The bail-out terms are identical to those adopted by the House. Conservatives have argued the terms are so strict that no jurisdiction could ever comply with them.<

Committee conservatives, backed by the Reagan administration, have backed a bill that would extend the provision 10 years, with no bail-out provision.<

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THE WHITE HOUSE

Office of the Press Secretary

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For Immediate Release

May 3, 1982

STATEMENT BY THE PRESIDENT

Voting is one of the most cherished of our birthrights as American citizens. When practiced, it enriches our democracy; when threatened, it must be protected.

On November 6th of last year, in recognition of the significant contribution that the Voting Rights Act of 1965 had made in protecting the voting rights of minority citizens, I called for a 10-year extension of that law. No previous extension had been as long. I also asked that the bilingual provision in the law be extended so that it is concurrent with the other special provisions of the act.

The matter is now before the Senate Judiciary Committee, which has held extensive hearings and is preparing to report out a bill to the floor of the Senate. There appears to be nearly unanimous support in the committee for some form of extension.

A principal concern that I and others have expressed about the bill that has previously passed the House is whether it would create a new set of problems in trying to solve some old ones. Specifically and most importantly, we have questioned whether the standard of proof introduced in voting rights cases would lead to proportional representation in many election districts. Such proportional representation would, of course, be alien to the traditional political principles of our country.

During the past week, a majority of the Judiciary Committee has worked hard to fashion a constructive, bipartisan compromise that addresses this concern. In this regard, their compromise would greatly strengthen the safeguards against proportional representation while also protecting the basic right to vote.

Today, I not only want to salute the efforts of those who have forged this compromise but I also want to give it my heartfelt support. My hope is that it will now pave the way toward swift extension of the Voting Rights Act by the entire Congress.

I recognize that there are other concerns about the bill now before the Judiciary Committee. Among these is a desire for a reasonable bail-out provision. Should such concerns be brought up in further debate, I hope they will be addressed in the same bipartisan, constructive spirit.

The all-important goal now is to enact an extension of the law as quickly as possible so that we can put it into effect and assure all of our citizens that we are committed to protecting their most sacred rights. As I said in my statement of November 6th: "The right to vote is the crown jewel of American liberties, and we will not see its luster diminished."

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Eds: Top 12 grafs with formal announcement of compromise; subs  
5th graf pvs for transition; deletes 12-13 grafs pvs, now redundant<

By MIKE SHANAHAN=

Associated Press Writer=

WASHINGTON (AP) - Thirteen of the 18 members of the Senate Judiciary Committee agreed Monday to support a bipartisan compromise extending key provisions of the 1965 Voting Rights Act.

Supporters hailed the agreement as a major step toward final congressional approval of a voting rights extension before important sections expire in August.

The key figure in fashioning the compromise, Sen. Bob Dole, R-Kan., said he hopes that both President Reagan and Strom Thurmond, R-S.C., chairman of the judiciary panel, also will support the compromise.

Under the compromise proposal, minorities would have no specific right to representation in proportion to their numbers. But if a judge found a pattern of discrimination, his ruling could establish a voting system that corresponds to the proportion of minority voters.

A judge also would be required to consider the "totality of circumstances," not just the election results in city, county or state balloting.

The agreement was reached after several days of intensive negotiations which included face-to-face meetings between Thurmond and NAACP Director Benjamin Hooks, who described the compromise as "good, fair and effective."

The NAACP and all other major civil rights groups have reluctantly agreed to support the compromise to lure conservative Republicans who challenged a voting rights extension approved by the House last fall.

Thurmond so far has declined to support the compromise, but sources said he probably will vote for the proposal when it reaches the Senate floor later this spring.

Even without Thurmond's help, the compromise is expected to be approved by both the judiciary committee and the full Senate after some opposition from archconservatives like Jesse Helms, R-N.C.

The Reagan administration, especially Attorney General William French Smith, also is known to oppose the compromise. But Dole said he had talked with White House officials on Monday and that the compromise was being considered by Reagan.

Senate Majority Leader Howard E. Baker Jr. called it "a step in the right direction ... but we still have ways to go."

In addition to Dole and Hooks, others participating in the announcement of the compromise include liberal Sens. Edward M. Kennedy, D-Mass., Howard Metzenbaum, D-Ohio., and Dennis DeConcini, D-Ariz.; and conservative Charles Grassley, R-Iowa.

The Judiciary Committee on Tuesday is expected to consider the voting rights bill, which generally is regarded as the most successful piece of civil rights legislation enacted in the 1960s.

Although there is general agreement in the Senate that the statute should be extended, conservatives have taken issue with a provision included in the bill approved by the House last fall.

Under that provision, if actions by local or state officials had the effect, or result, of diluting minority voting strength, a judge could rule that discrimination occurred.

Senate conservatives said the House-endorsed standard of proof could result in court-ordered quotas requiring that the racial makeup of a city council or state legislature conforms to the proportion of black, Hispanic or Indian voters in a voting jurisdiction.

Committee chairman Thurmond and conservative Sen. Orrin Hatch, R-Utah, prefer a standard of proof under which a judge must find that state or local officials intended to discourage or bar black voters from going to the polls.

Civilrights leaders said that could require them to determine what local or state politicians, some of them now dead, were

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Civil rights leaders said that could require them to determine what local or state politicians, some of them now dead, were thinking when they established voting procedures or jurisdictional lines which discriminate.

An earlier version of the extension endorsed by Kennedy and Mathias had 65 Senate sponsors, but civil rights leaders were fearful that conservatives might block final congressional approval by using Senate rules covering filibusters and other delaying tactics.

Since the voting rights statute was enacted, more than 1 million blacks or other minorities have registered to vote. The most important provisions of the act expire in August.

Helms and a fellow North Carolina Republican, Sen. John East, last week used Senate rules to block the committee from considering the voting rights extension.

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97TH CONGRESS }  
2d Session }

COMMITTEE PRINT

VOTING RIGHTS ACT

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R E P O R T

together with  
ADDITIONAL VIEWS

OF THE  
SUBCOMMITTEE ON THE CONSTITUTION  
TO THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE  
NINETY-SEVENTH CONGRESS  
SECOND SESSION

ON

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APRIL 1982

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REMARKS PREPARED FOR GOVERNOR WILLIAM P. CLEMENTS, JR.  
U. S. SENATE JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION  
WASHINGTON, D.C. / FEBRUARY 4, 1982

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CHAIRMAN HATCH AND MEMBERS OF THE SUBCOMMITTEE ON THE CONSTITUTION:

IT IS A PRIVILEGE TO BE HERE TODAY AS EXTENSION OF THE VOTING RIGHTS ACT IS UNDOUBTEDLY THE MOST SIGNIFICANT CIVIL RIGHTS ISSUE FACING CONGRESS.

DURING MY FIRST BID FOR GOVERNOR OF THE STATE OF TEXAS IN 1978, ON NUMEROUS OCCASIONS I PUBLICLY ENDORSED AND SUPPORTED THE VOTING RIGHTS ACT. I AM HERE TODAY TO TELL YOU THAT AS GOVERNOR, MY SUPPORT OF THE ACT HAS NOT WAIVERED. THE VOTING RIGHTS ACT HAS BEEN GOOD FOR TEXAS.

THERE IS NO DOUBT THAT TEXAS CAME UNDER THE PROVISIONS OF THE VOTING RIGHTS ACT IN 1975 BECAUSE OF A RECORD OF PAST, OFTEN SYSTEMATIC, DISCRIMINATION AGAINST MINORITY VOTING. THERE IS EQUALLY NO DOUBT THAT SUCH PRACTICES TO A GREAT EXTENT HAVE BEEN ABANDONED. ALTHOUGH TEXAS' COVERAGE UNDER SECTION 5, THE PRECLEARANCE PROVISION OF THE ACT, REMAINS IN FULL FORCE AND EFFECT UNTIL 1985, NONETHELESS, ISOLATED INSTANCES OF DISCRIMINATION REMAIN AND I BELIEVE THAT EXTENSION OF THE VOTING RIGHTS ACT IN TEXAS WILL HELP TO ERADICATE THEM.

THE REQUIREMENTS OF THE VOTING RIGHTS ACT DO NOT FOR THE MOST PART, TOUCH NOR DO THEY INCONVENIENCE NON-MINORITY VOTERS IN TEXAS. TO MINORITY CITIZENS, THOUGH, THE ACT IS A VERY REAL GUARANTEE THAT THEIR RIGHT TO VOTE WILL BE PROTECTED. I FEEL THAT THIS PRECIOUS PROTECTION AND ITS ESSENTIAL RESULT -- THE CONFIDENCE OF MINORITY VOTERS IN THE ELECTION PROCESS -- MUST BE CONTINUED. UNDER NO CIRCUMSTANCES WILL I SUPPORT CHANGES RESULTING IN A WEAKENING OF THE ACT.

TEXAS' RECORD UNDER THE VOTING RIGHTS ACT HAS BEEN EXCEPTIONALLY GOOD. SINCE 1975 ON A NATIONWIDE BASIS, TEXAS HAS SUBMITTED ALMOST HALF OF ALL ELECTION CHANGES THE JUSTICE DEPARTMENT HAS CONSIDERED FOR PRE-CLEARANCE, AND WE HAVE DRAWN ONLY ONE-SEVENTH OF THE OBJECTIONS MADE. FURTHERMORE, ONLY 0.8 PERCENT OF OUR SUBMISSIONS UNDER THE VOTING RIGHTS ACT HAVE DRAWN OBJECTIONS AS COMPARED TO A 3.7 PERCENT RATE OF OBJECTION FOR ALL OTHER STATES.

THIS RECORD, COUPLED WITH CHANGES IN STATE LAW, SUCH AS THE REQUIRED USE OF BILINGUAL ELECTION MATERIALS AND THE FACT THAT LEADERS OF MINORITY ORGANIZATIONS HAVE STATED THAT MINORITY VOTER REGISTRATION IN TEXAS HAS INCREASED SIGNIFICANTLY SINCE 1975, CLEARLY DEMONSTRATE THE PROGRESS TEXAS HAS MADE IN ENSURING THAT ALL MINORITY CITIZENS ARE OFFERED THE UNQUALIFIED RIGHT TO VOTE.

LET ME CITE SOME EXAMPLES WHICH CLEARLY INDICATE THE POSITIVE EFFECT OF THE VOTING RIGHTS ACT IN TEXAS.

-- THE MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, A MAJOR HISPANIC INTEREST GROUP HAS REFERRED TO THE VOTING RIGHTS ACT AS "THE CORNERSTONE OF HISPANIC EFFORTS TO SECURE MEANINGFUL POLITICAL ACCESS THROUGH THE SOUTHWEST."

-- A RECENT STUDY BY THE SOUTHWEST VOTER REGISTRATION EDUCATION PROJECT SHOWED A 29.5 PERCENT INCREASE IN HISPANIC VOTER REGISTRATION NATIONWIDE BETWEEN 1976 AND 1980. IN THE SOUTHWEST, HISPANIC REGISTRATION ROSE 44 PERCENT.

-- THE APRIL 4, 1981 ELECTION OF HENRY G. CISNEROS AS MAYOR OF SAN ANTONIO MADE HIM THE FIRST MEXICAN-AMERICAN MAYOR OF ANY MAJOR U.S. CITY.

-- A 1980 STUDY BY THE TEXAS ADVISORY COMMITTEE TO THE U.S. CIVIL RIGHTS COMMISSION SUGGESTED THE VOTING RIGHTS ACT HAS HAD A POSITIVE EFFECT IN INCREASING MEXICAN-AMERICAN AND BLACK REPRESENTATIONAL PROPORTIONS. IN INSTANCES WHERE THE VOTING RIGHTS ACT HAS NOT APPLIED, THERE HAS BEEN LITTLE OR NO CHANGE.

-- FINALLY, ON JANUARY 22, 1982, I WAS JOINED NOT ONLY BY DAVID A. DEAN, SECRETARY OF STATE, BUT ALSO BY AN UNPRECEDENTED COALITION CONSISTING OF THE TEXAS STATE DIRECTORS OF THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS, AMERICAN G. I. FORUM, IMAGE, THE NAACP, AND THE LEAGUE OF WOMEN VOTERS FOR THE PURPOSE OF COLLECTIVELY AND UNEQUIVOCALLY ENDORSING EXTENSION OF THE VOTING RIGHTS ACT AS IT IS CURRENTLY CONSTITUTED AND APPLIED TO TEXAS. THE UNION OF THESE ORGANIZATIONS FOR THE PURPOSE OF ENDORSING AN EXTENSION OF THE VOTING RIGHTS ACT SENDS A VERY CLEAR MESSAGE TO THE CONGRESS AND TO YOUR SUBCOMMITTEE: THE VOTING RIGHTS ACT HAS BEEN GOOD FOR TEXAS AND THE ACT SHOULD BE EXTENDED AS PRESENTLY CONSTITUTED. IN FACT, OSCAR MORAN, THE TEXAS STATE DIRECTOR OF THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS RECENTLY STATED "THE VOTING RIGHTS ACT HAS BEEN GOOD FOR TEXAS AND LULAC SUPPORTS A 10-YEAR EXTENSION OF THE ACT AS PRESENTLY CONSTITUTED -- WHEN THE MACHINE IS WORKING, LET'S NOT FINE TUNE IT."

I APPLAUD PRESIDENT REAGAN'S ENDORSEMENT OF A 10-YEAR EXTENSION OF THE VOTING RIGHTS ACT. AS GOVERNOR OF TEXAS, I ALSO APPLAUD HIS POSITION IN FAVOR OF "REASONABLE" BAIL-OUT PROVISIONS FOR STATES AND OTHER POLITICAL SUBDIVISIONS.

HOWEVER, TO QUALIFY MY LAST STATEMENT, SHOULD THERE BE A "REASONABLE" BAIL-OUT PROVISION ACCEPTABLE TO THE TEXAS MINORITY ORGANIZATIONS MENTIONED PREVIOUSLY THAT DOES NOT IN ANY WAY JEOPARDIZE THE INTEGRITY AND INTENT OF THE VOTING RIGHTS ACT, THEN AND ONLY THEN WILL I SUPPORT THE PROVISION. TO MY KNOWLEDGE, NO "REASONABLE" BAIL-OUT PROVISION HAS BEEN OFFERED THAT IS ACCEPTABLE TO ALL TEXAS PARTIES.

THE BAIL-OUT PROVISIONS, SET FORTH IN H. R. 3112 ARE SO STRINGENT AND CUMBERSOME, IT IS DOUBTFUL THAT ANY COVERED JURISDICTION COULD BECOME EXEMPT. FOR EXAMPLE, THE PROPOSED HOUSE LEGISLATION PROVIDES THAT EVERY JURISDICTION IN A COVERED STATE MUST BE GRANTED BAIL-OUT BEFORE THE STATE CAN ACHIEVE BAIL-OUT. IT COULD, THEREFORE, TAKE ONLY ONE OF TEXAS' 254 COUNTIES TO PREVENT THE STATE FROM BECOMING EXEMPT OR ONE OUT OF 1,102 SCHOOL DISTRICTS IN THE STATE OF TEXAS FROM PREVENTING THE STATE FROM BAILING OUT. THEREFORE, I CANNOT SUPPORT THE "BAIL-OUT" PROVISION IN H.R. 3112.

I ALSO SUPPORT PRESIDENT REAGAN'S ENDORSEMENT THAT THE BILINGUAL BALLOT PROVISION OF THE CURRENT VOTING RIGHTS ACT BE EXTENDED SO THAT IT IS CONCURRENT WITH OTHER SPECIAL PROVISIONS OF THE ACT.

THE USE OF SPANISH, IN ADDITION TO ENGLISH, FOR REGISTRATION AND VOTING ON THE TEXAS BALLOT HAS AFFORDED FULL MINORITY PARTICIPATION IN TEXAS' ELECTORAL PROCESS AND IT MUST BE CONTINUED. THE BILINGUAL BALLOT PROVISION ENSURES FULL PARTICIPATION BY TEXAS' HISPANIC POPULATION IN THE STATE'S ELECTION PROCESS.

WITH RESPECT TO SECTION 2, I AM IN FAVOR OF EXTENDING THE ACT AS IS. I WOULD AGAIN LIKE TO QUOTE MR. MORAN OF LULAC, "LET'S NOT MESS UP A MACHINE WHICH HAS WORKED WELL IN THE PAST." THE U.S. SUPREME COURT HAS RULED THAT SECTION 2 IS NO MORE THAN A RESTATEMENT OF THE 15<sup>TH</sup> AMENDMENT OF THE U. S. CONSTITUTION AND THE TESTS TO PROVE THAT LAWS ARE UNCONSTITUTIONAL ARE THE SAME AS CHALLENGING THE VALIDITY OF THE ACT UNDER THIS SECTION. ONE MUST ~~MEET~~ <sup>SATISFY</sup> THE SAME ~~TESTS~~ <sup>STANDARD</sup> AS CHALLENGING IT UNDER THE 14<sup>TH</sup> OR 15<sup>TH</sup> AMENDMENT OF THE U.S. CONSTITUTION.

EXTENSION OF THE VOTING RIGHTS ACT AS IT IS PRESENTLY CONSTITUTED FOR TEN YEARS SHOULD BE THE CORRECT DECISION FOR THIS SUBCOMMITTEE TO REACH. IF IN FACT, A "REASONABLE" BAIL-OUT PROVISION IS OFFERED, WHICH MEETS THE SATISFACTION OF ALL OF THE TEXAS PARTIES AND DOES NOT DILUTE THE INTENT OF THE ACT, THEN I WILL SUPPORT SUCH A PROVISION. FINALLY, THE "INTENT" STANDARD FOR DETERMINING DISCRIMINATION MUST BE RETAINED.

I WILL CONTINUE FULL COOPERATION WITH FEDERAL AUTHORITIES. OUR GOAL, OVER THE COURSE OF THE ACT'S EXTENSION PERIOD, IS TO REACH A POINT WHERE ALL TEXANS HAVE FULL CONFIDENCE THAT THEIR RIGHT TO VOTE IS FULLY PROTECTED WITHOUT NEED FOR INDEFINITE FEDERAL OVERSIGHT.

THERE IS NO DOUBT THAT IF EACH OF US COULD SIT DOWN AND DRAFT A VOTING RIGHTS ACT THAT THERE WOULD BE AS MANY VARIATIONS AS THERE ARE DRAFTS. THE MESSAGE I BRING TO YOU FROM TEXAS TODAY IS THAT THE CURRENT VOTING RIGHTS ACT HAS BEEN GOOD FOR TEXAS. THE GROUPS I MENTIONED AND MYSELF STRONGLY URGE YOUR EXPEDITED ACTION TO EXTEND THE ACT AS IS. ELECTION YEAR IS UPON US. MINORITY GROUPS NEED TO BE ASSURED OF THEIR CONTINUED PROTECTION.

LET'S NOT PROCRASTINATE FURTHER AND SPEND ENDLESS TIME DECIDING WHETHER THE CURRENT VOTING RIGHTS ACT WILL BE MADE MORE LIBERAL OR MORE CONSERVATIVE, MORE RESTRICTIVE OR LESS RESTRICTIVE. LET THE POLITICAL DEMAGOGUERY END AND EXTEND THE VOTING RIGHTS ACT IMMEDIATELY AS IS.

I WILL BE PLEASED TO RESPOND TO ANY QUESTIONS THE SUBCOMMITTEE MEMBERS MAY HAVE.

THANK YOU.

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In conclusion, I want to make clear that the Administration will support any strong voting rights bill approved by the Senate, including either a straight 10 year extension of the current Voting Rights Act, or a 10 year version of the House bill, provided it is modified so that it reflects the principles I have outlined in my testimony.

# WHITE HOUSE STAFFING MEMORANDUM

DATE: 1/25/82 ACTION/CONCURRENCE/COMMENT DUE BY: \_\_\_\_\_

SUBJECT: Q. & A. RE VOTING RIGHTS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GERGEN	<input type="checkbox"/>	<input checked="" type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HARPER	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>BAKER</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	JAMES	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY / GARRETT	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ANDERSON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROLLINS	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CANZERI	<input type="checkbox"/>	<input type="checkbox"/>	WILLIAMSON	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CLARK	<input type="checkbox"/>	<input type="checkbox"/>	WEIDENBAUM	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/> SS	BRADY/SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
DOLE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<u>BRADLEY</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Remarks:

Attached are the Q. & A. we just received from Justice.

*JAB*  
*See p. 4*  
*especially*  
*gc*

*also p. 5 re*  
*boilant*

Richard G. Darman  
 Assistant to the President  
 and  
 Deputy to the Chief of Staff  
 (x-2702)



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 25, 1982

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E.O. 12958 Sec. 1.3(a)

By NARA CCS Date 7/25/02

MEMORANDUM

TO: Craig L. Fuller  
Director of Cabinet Administration

FROM: Robert A. McConnell  
Assistant Attorney General

Enclosed are the Q's and A's that relate to the Attorney General's Voting Rights Testimony.

Enclosure

cc: Ken Duberstein  
Assistant to the President  
for Legislative Affairs

Pam Turner  
Special Assistant  
Office of Legislative Affairs

# DRAFT

Q. What are the major differences between the Administration position on extension and the bill to extend the Voting Rights Act which has passed the House?

A. The major difference is that we actually support extension of the existing Voting Rights Act. The House bill in fact makes major changes in the Act. Our experience has not indicated the need for these changes.

The most significant change is in §2. The House bill would substitute an effects test for the intent test which has been in §2 since the beginning. We support retaining the intent test for §2. It is critical to an understanding of the Act to distinguish between §2 and §5 in talking about the intent/effects issue. Section 2 is a permanent provision, and no action is necessary to retain its protections. Section 5 applies only to selected jurisdictions and only to election law changes, while §2 applies nationwide and to existing systems and practices regardless of when they were established. Section 5 already contains an effects test, and we support its retention.

Q. Why should the law have a different test for §2 than for §5? Why not have some consistency in the law?

A. There is no inconsistency whatever in having an intent test for §2 and an effects test for §5, as is the case with the existing Voting Rights Act. The different sections are addressed to different problems. It makes sense to have an effects test for election law changes in certain areas which suffer from a history of election law discrimination. Section 2 is not so limited. It applies not only to changes but to existing systems, and not only to certain areas but nationwide. The law has worked smoothly with an intent test for §2 and an effects test for §5. The Supreme Court in the Mobile v. Bolden decision saw no inconsistency in this, and our experience has revealed none.

Q. The effects test in the South, where you have admitted there is a need for special protections, only covers election law changes, not practices or systems in existence in 1965. Shouldn't a results test be put into §2 to reach discriminatory practices in the South which were already in place when the Voting Rights Act was enacted?

- A. Congress, when it enacted the Voting Rights Act in 1965, did in fact attack directly the existing practices in the South which Congress thought operated to deny blacks the right to vote. Literacy, educational, morality, and other qualification tests used to prevent blacks from voting were declared to be illegal. Congress thus carefully considered existing practices in the South, and directly cured those which were discriminatory. Congress then enacted an effects test for election law changes in selected jurisdictions in the South, and an intent test for election practices nationwide. We continue to believe that this is the proper approach. It has been tried and found effective. It would seem odd to legislate against existing practices more stringently now, after there has been so much progress, than Congress did in 1965.
- Q. The House Report, however, states that the Mobile v. Bolden decision was erroneous and that an effects test for §2 will restore the original understanding disturbed by the Court ruling. Do you agree?
- A. Not at all. We fully agree with Justice Stewart's opinion in Mobile v. Bolden. Justice Stewart, carefully examining the legislative history, correctly concluded that Congress enacted §2 in order to enforce the guarantee of the Fifteenth Amendment that the right to vote shall not be denied or abridged on account of race or color. Indeed, the prohibition in §2 is a paraphrase of the constitutional prohibition. As Justice Stewart's scholarly opinion demonstrates, the Supreme Court's decisions have always made clear that proof of discriminatory purpose was necessary to establish a violation of the Fifteenth Amendment. Congress therefore intended when it enacted §2 to include an intent test.
- Q. Why does the Fifteenth Amendment, and, by your reasoning and the reasoning of Justice Stewart's opinion in Mobile v. Bolden, §2, have this unusual intent test?
- A. The intent test is not an unusual exception; it is the general rule in the civil rights area. For example, the equal protection clause of the Fourteenth Amendment, the basis for many of the historic civil rights advances, contains the same intent requirement contained in the Fifteenth Amendment and §2 of the Voting Rights Act.

- Q. Why is it necessary that §2, a statutory provision, track the requirements of the Fifteenth Amendment, a constitutional provision?
- A. As Justice Stewart demonstrated in Mobile v. Bolden, that was in fact the desire of Congress when it enacted §2. The goal of §2 is to enforce the Fifteenth Amendment guarantee, so it makes eminent sense to follow the legal grounds for a violation of the Amendment in the statute. A departure may be called for in special circumstances where special enforcement problems exist, as Congress recognized when it legislated an effects test for a temporary period for selected jurisdictions in §5. A similar departure of general applicability in §2 would represent a radical change in the law, severing the statute from its constitutional moorings, and creating grave uncertainty in its application.
- Q. What is so bad about such uncertainty?
- A. There is the very real danger that elections across the nation, at every level of government, would be disrupted by litigation and thrown into court. Results and district boundaries would be in suspense while courts struggled with the new law. It would be years before the vital electoral process regained stability. The existing law has been tested in court and has proved to be successful. There is no need for unsettling change.
- Q. Why do you object to the effects test for §2 in the House bill?
- A. Primarily because our experience in securing the right to vote through §2 as it exists in the Voting Rights Act has been very successful, and no basis has been established for any change. In reviewing the Voting Rights Act last summer in the course of preparing recommendations to the President, I met personally with scores of civil rights leaders as well as state officials in order to obtain their views. The one theme that emerged from these discussions was clear: the Act has been the most successful civil rights legislation ever enacted, and it should be extended unchanged. As the old saying goes, if it isn't broken, don't fix it.
- Q. Is there anything substantively wrong with an effects test for §2?
- A. Legal "tests" are not plucked out of thin air but should follow logically from the goal of the legislation. I believe

the goal of the Voting Rights Act to be that no one be denied the right to vote on account of race. If this is in fact the goal, an intent test, such as in the current Voting Rights Act, logically follows: a court should look to see if official action was taken with the purpose of denying voting rights on account of race. If, on the other hand, the goal of the Voting Rights Act is that election results somehow mirror the racial balance in any given jurisdiction, an effects test should be used. Since we do not believe that it was the goal of the Voting Rights Act to mandate any type of election results, certainly not results based on race, we do not think an effects test makes any sense.

Q. How would an effects test mandate certain election results?

A. Based on court decisions under §5 of the Act, which contains an effects test, any election law or practice which produced results which did not mirror the population make-up of a community could be struck down.

Q. What does that mean in practical terms?

A. In essence it would establish a quota system for electoral politics, a notion we believe is fundamentally inconsistent with democratic principles. At-large systems of election and multi-member districts would be particularly vulnerable to attack, no matter how long such systems have been in effect to the perfectly legitimate reasons for retaining them. Any re-districting plans would also be vulnerable unless they produced electoral results mirroring the population make-up. And I should emphasize that §2 applies not only to statewide elections but elections to local boards as well, such as school boards. All elected bodies, no matter at what level, would be vulnerable if election results did not mirror the racial or language composition of the relevant population.

*this is a key point in fighting the effects test.*

Q. How can your fears about the effects test in §2 of the House bill be correct, when the bill specifically provides that "the fact that members of a minority group have not been elected in numbers equal to that group's proportion of the population shall not, in and of itself, constitute a violation"?

A. We have studied that clause and do not think it is sufficient to prevent the problems I have identified. As I read the clause, it would uphold only those election plans which have been carefully tailored to achieve election results which mirror the population make-up of the community in question. In such circumstances, if a particular group in the community fails to take full advantage of the election opportunity under the system *but coupled w/ other, perhaps minor factors, it could!*

that is in place -- such as where no members of the group elect to run for office -- the savings clause of the Act makes it clear that there is no violation, since the failure to achieve proportional representation does not "in and of itself" offend the statute. If, on the other hand, there are any features in the election system that a court can point to as contributing in any way to a disproportional election result -- as would almost invariably be the case -- then the savings clause is to no avail.

- Q. It is argued, however, that "intent" is impossible to prove. This seems to make some sense. Decisionmakers usually don't state, in front of witnesses, that "I'm doing this to discriminate against blacks".
- A. If the "intent test" required such direct proof, you might have a point. But the Supreme Court has made clear that it does not. Intent in the civil rights area may be proved by circumstantial and indirect evidence as well as by any available direct evidence. A "smoking gun" of the sort referred to in your question has never been required. For example, in the case of Arlington Heights v. Metro Housing Corporation, 429 U.S. 252 (1977), Justice Powell, writing for the Court, stated that "determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." He went on to point out that evidence of impact or effect was "an important starting point" in the inquiry. Other relevant factors included the historical background to a decision, the sequence of events leading up to it, and any departures from normal practice or procedures. An inquiry into such factors is hardly "impossible."
- Q. Are there any other differences besides the intent/effects issue between the House bill and the Administration position?
- A. Yes. The House bill extends the special preclearance provisions in §5 indefinitely, while the bill we support provides for a 10 year extension. Congress' practice has been to provide for periodic extensions, which permits review to determine if the extraordinary preclearance requirements -- including submission of proposed changes to the Attorney General -- continue to be necessary. We see no reasons to depart from this historic practice which has worked so well. The extension we support -- 10 years -- is longer than any previously adopted by Congress.
- Q. Doesn't the Administration support a bailout?
- A. We do think Congress should consider a reasonable bailout that would permit jurisdictions with good records of compliance to be relieved of the preclearance requirements so long as voting rights were not endangered in any way. We do not have a specific formula in mind, but think that the question should be considered by Congress. We will be happy to work with the committee in the weeks ahead on this question.

good

**DRAFT**

- Q. What's wrong with the bailout in the House bill?
- A. As I have noted, I do not want to get into the details of the various bailout proposals beyond stating that the question should be addressed. There may be some difficulties with the House bill bailout, since it uses imprecise terms, such as "constructive efforts," which may result in the question being tied up in the courts for years. That would not be good for any election system.