Voting Rights

THE WHITE HOUSE

WASHINGTON

September 10, 1981

MEMORANDUM FOR: ELIZABETH DOLE
RED CAVANEY
THELMA DUGGIN
MORTON BLACKWELL

FROM: DIANA LOZANO

Attached is the briefing paper in preparation for our meeting tomorrow on the Voting Rights Act.

What is reasonable bail/out

Effects & intent

W.H. never told Ed Brooke

Very serious matter

ATTACHMENT

VOTING RIGHTS ACT

The Voting Rights Act (VRA) was enacted in 1965 and extended in 1970 and 1975. The initial intent was to protect and guarantee the voting rights of minority citizens, particularly Blacks located in the South. In 1975, bilingual provisions were added to the VRA in order to enhance the voting capability of language minority citizens. The original mechanisms of the VRA are scheduled to expire after August 1982 unless Congress acts to extend them.

Section 2 of the VRA bans racial discrimination in voting nationwide, and Section 3 bans literacy tests and other devices and qualifications for voting nationwide. Judicial remedies are provided for violations of these Sections.

Prior to 1980 it was believed that Section 2 protected against discriminatory impact of election procedures, regardless of the intent behind the establishment of those procedures. However, in City of Mobile v. Bolden, 445 U.S. 55 (1980) the Court found that there must be shown a purposeful intent to discriminate against a racial minority before Section 2 of the VRA would apply. In effect, this ruling indicated that a change to an at-large election system, without a further showing of a discriminatory motive, was insufficient as proof of dilution of the impact of minority votes. The burden was placed upon the challengers to prove that the system was purposefully intended to discriminate against a racial minority.

Section 5 of the VRA, the most controversial section, establishes pre-clearance provisions for covered jurisdictions. "Covered jurisdictions" are those with a history of literacy tests, poll taxes, or other devices, where less than 50 percent of the voting age residents voted in the 1964 (in some cases, 1968) Presidential election. The VRA covered all or parts of 22 states. The 1970 extension of the VRA applied it to parts of New York, Massachusetts, Idaho, Alaska, as well as most of the South.

The pre-clearance provisions require that any prospective change in voting or election procedures within a covered jurisdiction must be cleared by the Department within 60 or 120 days, or by the U.S. District Court in the District of Columbia. Under the current provisions of the VRA, there is no escape ("bail-out") for covered jurisdictions from this mandatory pre-clearance procedure before August 1982, unless a covered jurisdiction can prove in court that its literacy tests or other procedures were fairly applied to all during the preceeding 17 years, and not used to discriminate.

September 10, 1981

As recently as September 9, 1981, the Federal Courts prohibited a New York City election scheduled to be conducted on September 10, 1981, for failure to comply with the pre-clearance requirements. (See Post news article attached.)

Section 203 was added to the VRA in 1975 providing that certain state and local jurisdictions provide assistance in other languages to voters who are not literate or fluent in English. Although these provisions do not expire until 1985, VRA extension proposals call for a seven-year extension to make their termination date consistent with the other provisions of the Act.

On July 31, 1981, the House Judiciary Committee reported out HR 3112, on a vote of 23 to one. HR 3112 would do the following:

- Continue the bail-out provisions, but delay their utilization until 1984. However, this procedure would not only be available to covered jurisdictions, but also to counties within states where the entire state has previously been designated as a covered jurisdiction.

- It would strengthen the provisions of Section 2 by easing the burden of proof requirements established in the case of Mobile v. Bolden.

- It would extend the bilingual provisions until 1992.

The President originally appeared to favor extension of the VRA, with the provisions of the Act extended to cover the entire country. However, an August 4 interview with the Washington Star (attached) indicates that his position has been reconsidered.

On June 15, 1981, the President wrote to the Attorney General (copy attached) requesting a comprehansive assessment of the Act, its history, any continuing abuses, and a review of proposals to change or amend the Act. Response was requested by October 1, 1981, and it is conceivable that discussions will occur prior to preparation of a formal response.

There appear to be three primary areas of concern involving proposals to extend the VRA. The first is continuation of the pre-clearance procedures, coupled with various proposals to expand or restrict its application. The second is the bail-out provisions. Finally, there is serious concern, especially among Hispanic groups, regarding dilution or elimination of the bilingual requirements of Section 203 from the current decision process.

Pre-Clearance Procedures:

Minority (primarily Black) groups have expressed considerable anxiety over any easing of the pre-clearance requirements as they now exist. In this respect, nationwide coverage is viewed as a potential dilution of these provisions effectively reducing their potency.

It is significant that the Department of Justice has rejected more than 800 pre-clearance applications since the original enactment of the VRA, and more than half of those rejections have come since its last amendment in 1975.

The response of Black groups in general is highly charged with emotion over this issue, and any proposal which diminishes, or is perceived to diminish, the impact of the VRA will represent a flash-point and will inevitable trigger a vehement response. In this context it is important to note that this issue cuts across all socio-economic levels with Blacks. The concern is not restricted to those who may consider themselves underprivileged.

Bail-Out Provisions:

As it is written, the VRA provides that after August, 1982, covered jurisdictions have the option to come into U.S. District Court for the District of Columbia and make a showing that they have not engaged in discriminatory practices since the enactment of the VRA. Upon an acceptable showing, the Court could relieve them of their status as a "covered jurisdiction".

The point of contention is whether or not bail-outs should be available following August 1982. The clear majority of Black and civil rights groups believe that availability of bail-outs at this time will result in a status quo ante situation and wipe out the gains they have made thus far. They believe that there has been a "chilling effect", in that clearly unacceptable changes in voting and election laws have not been proposed due to the necessity for pre-clearance. Once this necessity is lifted, they believe jurisdictions will not be restrained from enacting future discriminatory provisions with the only recourse being protracted litigation under Section 2 of the VRA.

The other point of view, proposed by conservative supporters of the Administration, is the bail-out is just another aspect of the move to relieve local and state jurisdictions of Federal oversight and paperwork. To continue in the status of "covered

jurisdiction" is perceived to be an obnoxious burden placed upon jurisdictions otherwise capable of obtaining a clean bill of health in this regard. Furthermore, they desire a provision for selective bail-outs wherein local jurisdictions, even though within a larger jurisdiction or state designated a covered jurisdiction, would be permitted bail-out upon a proper showing of compliance.

Strong and reliable supporters of the Administration have been known to be of this view, and there would be some reaction against any proposal to extend the time prior to possible bail-out.

Bilingual Provisions:

In 1975 the provisions of the VRA were extended to language minority citizens, most of whom are Hispanics resident in the Southwest. In addition to requiring pre-clearance for Texas, Arizona and other parts of the Southwest, Congress also required bilingual elections for these areas and over 200 additional counties throughout the country where there are significant populations of non-English speaking citizens.

Although the bilingual provisions in Section 203 of the VRA will not expire until 1985, language minorities have expressed a clear interest in seeing these provisions extended in conjunction with the rest of the Act. There is especially high emotion among the Hispanic organizations regarding the bilingual provisions. Even among highly-articulate English-speaking Hispanics there exists an abiding concern regarding family members and friends who, though citizens, have difficulty with English. A decision to consider extension of the bilingual provisions separately from the other provisions of the VRA will be viewed among Hispanics as a portent of a movement against the hard-earned progress of Hispanics in the voting process. Although inaccurate, it will be viewed as the beginning of a move to "take away their right to vote."

Summary:

A review of the literature indicates that Blacks view the initial passage of the VRA as one of the most important legal events in their history in this country. Martin Luther King, Jr., Medgar Evers, and others are cited as martyrs in the movement which witnessed the VRA as its high point. The implication is clear that any loosening of the provisions of the VRA at this time would cast a cloud on the memory of those who are considered to have given their lives in the effort to get it enacted.

A more subtle implication is being given by those who would attempt to find racism in the budget, tax, and other programs of the Administration. Again, rightly or wrongly, any lessening of the impact of the VRA supported by the Administration would be seen as vindicating the racist allegations.

The emotional reaction in this regard cannot be understated. Major Black, Hispanic, and other civil rights groups are already preparing a united effort to support continuation of all the provisions currently contained in the VRA.

The point is repeatedly made that, while the percentage of eligible minority voters has considerably increased since the initial passage of the VRA, the registered percentage of eligible minority voters compared to eligible white voters is still considerably low.

To the extent the VRA has lessened this disparity, substantial credit is given to the "chilling effect", mentioned above. Proponents of the VRA desire extension of its present provisions for at least another decade.

Opponents of VRA extension cite the burdens placed upon jurisdictions required to undergo the pre-clearance procedures. They believe that covered jurisdictions, or subdivisions thereof (cities and counties) should be relieved of this burden once they are capable of making a showing that they have complied with the provisions and intent of the VRA.

It is interesting to note the opinion expressed in the "Barron Report" of May 25, 1981, indicating the VRA has often been of help to conservatives. It is their view that VRA provisions have contributed to the development of minority districts which have (1) caused the development of corresponding white districts, (2) reduced the need for politicians in those white districts to seek minority votes, and (3) reduced minority turnout in the predominately minority districts.

Top Court Refuses To Allow Primary Vote in N.Y. City

By Doyle McManus and John J. Goldman
Los Angeles Times

NEW YORK, Sept. 9—The U.S. Supreme Court, after a telephone conference of its members, refused today to reinstate the New York City primary election scheduled Thursday.

On a 7-to-0 vote, the justices rejected appeals from Mayor Edward Koch and left intact a lower court order that blocked the citywide balloting. Chief Justice Warren E. Burger, traveling in Asia, did not participate in the decision, and one court seat is vacant.

The 11th-hour cancellation of the election, forced by the sudden ruling Tuesday of a three-judge federal court that the city had failed to comply with the 1965 Voting Rights Act, threw the city into political chaos.

City officials and candidates appeared thunderstruck by the switch, which came just as their campaigns were preparing for last-minute appeals to the voters.

Lawyers for the city requested a stay of the lower court's order from Supreme Court Justice Thurgood Marshall, who submitted the question to the full court late today.

The lower court, examining charges by black and Hispanic groups that the city's reapportionment plan discriminated against minorities, agreed that Koch's administration had not provided the Justice Department with sufficient information on the redistricting of city council seats, and ordered the voting postponed.

Koch was riding home tonight from a pro-Israel rally and a steak dinner when an aide called him on his limousine phone. "I'm glad we had dinner before we got this news," he told a companion.

"My immediate reaction," the mayor said later, "was to think of the Heimlich maneuver."

Koch, who was saved from choking to death during a Chinese dinner in July by an aide familiar with the Heimlich maneuver, is seeking both the Democratic and Republican nominations for mayor in his reelection bid.

The lower court's decision touched off a night and a day of political maneuvers, as Koch aides tried to get the primary back on track. City lawyers worked until dawn preparing briefs. Several high-level officials admitted that the ruling had taken them by surprise and said that they had never read the city's original brief in the case.

City Corporation Counsel Allen Schwartz first asked the three-judge panel this morning to reconsider its order. Then he sought a compromise that would have allowed voting for some citywide races, including that for mayor. Finally Schwartz flew to Washington to seek a stay of the order from Marshall, who as the justice in charge of the 2nd Circuit, handles emergency appeals when the court is not in session.

Candidates for the jobs at stake—including the posts of mayor, city council president, city comptroller, and borough presidents and district attorneys for Manhattan, Brooklyn and the Bronx—went on campaigning, sticking to schedules designed for an election that would not occur.

Koch and his rivals for the mayoral nominations met today for a broadcast debate in what the radio station moderator called "the final hour—maybe."

Koch's opponent for the Republican nomination, state Assemblyman Richard Esposito of Queens, attempted to lay some of the blame for the situation on Koch. "We have an American tragedy here," he said. "We have the American tragedy of people not knowing whether to go out and vote tomorrow . . . the American tragedy of mismanagement under the Koch administration."

COMMENTS OF PRESIDENT REAGAN REGARDING VOTING RIGHTS ACT

during August 4, 1981 interview at the Washington Star:

Q. What about extension of the Voting Rights Act?

The President. I am only waiting for the Attorney General on that and the study that's being made to make sure that there aren't some additional loopholes that need to be closed. I feel very strongly about it. As a matter of fact, when it first came up, my only objection was I thought it should have been applied to 50 states. Recently, I made that statement off-hand getting into the car and somebody had called a question, said that I favored that. I since have learned from a number of people interested in that, that that may not be a good solution, that it might make it so cumbersome as to not be effectively workable. And so, I yield to that if that's true that extending it to all the states would interfere with its working. I believe very strongly in the right of everyone to vote and I know that there are efforts made to, and have been made, to keep people from voting. But that's why I'm waiting for the study. I want to make sure that there aren't some things that need to be covered that aren't covered yet.

Q. Can we infer from that, though, that you will be in favor of a 10-year extension if that study proves out?

The President. Yes.

THE WHITE HOUSE

WASHINGTON

June 15, 1981

Dear Bill:

As you are aware, certain provisions of the Voting Rights Act are due to expire in August of 1982. In its 15-year history, the Act has made a massive contribution to the achievement of full constitutional and political equality for black Americans. And by virtue of amendments added in 1975, the Act has helped to insure greater equality for other minorities, especially Mexican-Americans.

I am sensitive to the controversy which has attached itself to some of the Act's provisions, in particular those provisions which impose burdens unequally upon different parts of the nation. But I am sensitive also to the fact that the spirit of the Act marks this nation's commitment to full equality for all Americans, regardless of race, color, or national origin. Because my Administration intends to maintain that commitment, the question before us in the months ahead will not be whether the rights which the Act seeks to protect are worthy of protection, but whether the Act continues to be the most appropriate means of guaranteeing those rights.

Before making a final determination on the Act's extension or revision, I want to be assured that we have received and evaluated the considered opinions of all concerned parties. Accordingly, I would like the Department to undertake, at your direction, a comprehensive assessment of the Act's history to date; extant or likely abuses of voting rights that may require special scrutiny; the adequacy of the Department's powers under the Act; your suggestions as to whether any changes in the Act may be desirable; and the feasibility of extending the Act's coverage to voting rights infringements not now covered by the Act.

Finally, in the course of developing your assessment, I would like you to consult with concerned citizen groups, state, local, and federal officials, and others whose thoughtful views will contribute to the development of a just and sound Administration position.

I understand that you have already begun this deliberative and consultative process, and I am pleased by this. It will be necessary, however, to complete our review in sufficient time to enable Congress to enact a bill prior to the expiration of the Act's special provisions. I would therefore like to receive your report not later than October 1, 1981.

Sincerely,

R

The Honorable William French Smith
The Attorney General
Washington, D.C. 20530

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

November 17, 1981

TO: Elizabeth H. Dole

FROM: Morton C. Blackwell

RE: Why the President's Decision on Voting Rights Act was Correct

POLICY REASONS THE PRESIDENT WAS RIGHT

-- The decision is generally consistent with the President's primary philosophy of keeping decision making at the lowest level possible.

-- Even if the Congress takes no action, all that would lapse next year are the preclearance provisions. Any state or locality which might subsequently take action to deprive any protected minority of its voting rights would still be subject to immediate Federal court action.

-- A ten year extension of the preclearance provision, with meaningful bailout provisions, will antagonize many supporters of the President who favor local self government, but it should convince all but the most power-grabbing of the professional "civil rights activists" that the President is serious about protecting everyone's right to vote.

-- Most of the purpose of the original act was accomplished as early as 1976, as the below table of the change in black registration before and after the act shows:

	1964	1976
Alabama	23.1%	58.1%
Georgia	44.0	56.3
Louisiana	32.0	63.9
Mississippi	6.7	67.4
South Carolina	38.8	60.6
Virginia	45.7	60.7

-- The "effects" test now being proposed, which the President pointedly criticized in his statement on November 6, would get the Federal government in the business of requiring districts of specific racial composition. It is outrageous for us to insist on integrated schools, integrated employment and integrated housing and for us then to demand racially segregated election districts.

-- Establishing for this country a new form of quota system or proportinal representation in elected assemblies would be as disruptive and counterproductive as the scheme these same activists convinced the Democratic Party to adopt in its national convention delegate selection process.

PROCEDURAL REASONS THE PRESIDENT WAS RIGHT

-- Even as currently in force, the act is loaded with absurdities. For instance, when Arlington County, Virginia recently closed an elementary school which had been used as a precinct voting place, county authorities had to go to the U. S. Justice Department to get permission to move the polling place to a nearby site in the precinct. New complications in the law would only further involve the Justice Department in such local trivia.

-- The "effects" standard repudiated by the President could, and probably would, create a whole new body of controversial regulations and policies which would be very burdensome to administer.

PRACTICAL POLITICAL REASONS WHY THE PRESIDENT WAS RIGHT

-- One internal paper I have seen argues that we should require segregated election districts as a means of breaking the ties of Southern whites to the Democratic party. That paper argues, "blacks would get their own districts, which they very much want, and the remaining white districts would start trending heavily Republican." That argument is shallow and short-sighted because:

1. It is the fading, historic link between the South and the Democratic Party, not black voters, which has most retarded the gradual growth of the GOP in the South.

2. As the Democrats in the South have repeatedly found, state election law tinkering to harm the GOP often fails to work or backfires. How would this scheme help the GOP in Virginia?

It has nine Republican congressmen and one very conservative Democratic congressman who supports the President.

3. Any scheme which deliberately creates many districts (of whatever racial composition) which are virtually certain to elect only radical leftist Democrats is dangerous in the long run. In a two party system, the pendulum swings both ways. It is unwise in the extreme to wipe out conservative and moderate Democrats by replacing them with leftists of whatever ethnic heritage. Sooner or later, the Democrats will return to power. It could be disastrous for the country for them to be unrestrained by any significant, sensible elements in their party.

4. Well-mixed constituencies require politicians to take into account the interests of every significant voting group, lest a coalition of dissatisfied voters decide to make changes in the next election. Carving out special election districts for different groups tends to polarize elected assemblies and to radicalize the behavior of those elected under such a scheme. That is one reason why the U.S. Senate now displays more decorum and courtesy than does the U.S. House of Representatives. Racially segregated districts only encourage some representatives, unconcerned about white voters, to hurl charges of racism at those who disagree with them on public issues while other representatives, unconcerned about black voters, hurl charges of socialism and worse at those who disagree with them. Adoption of this scheme would tend to engender and to perpetuate antagonisms rather than ease them.

-- In one recent internal discussion of this issue the point was made that certain civil rights groups are "declaring war" on the Administration over this issue. The contention seems to be that large numbers of voters will vote next year against candidates who support the President unless we reverse the position the President has taken on the Voting Rights Act. If this were true, it would be a serious political consideration. But the claim is not true. These groups are already in vigorous opposition to

virtually the entire Reagan program: budget cuts, supply side economics, strengthening national defense etc. The President has endorsed the extension of the pre-clearance provisons of this law for another ten years. It is bizarre, wishful thinking to contend that people (such as one black church leader who charged at a recent briefing that the President's program is "genocidal") will slacken their efforts against the President if he gives them everything they want on this issue.

-- Finally, giving in to militant opposition on this issue will be damaging to the health of the President's winning coalition. Groups such as veterans and conservatives who have various complaints about Administration policy and appointments will have one more reason to conclude that the best way to get what they want is by use of a two-by-four. Despite their concerns, these groups have been loyal supporters through the 1980 elections and the 1981 budget, tax and AWACS battles. There is nothing inevitable about the cohesion of the President's vinning coalition. Up to now, these major groups have been convinced that cooperation is their best course.

NAVY TIMES

An Independent Newspaper Serving Navy, Marine Corps And Coast Guard People

Melvin Ryder, Founder, 1893-1979

30th YEAR, NO. 44 AUGUST 17, 1981

file Voting Rights

Voting Signals

AS REPORTED in this issue, a Pentagon survey has shown that about one-half of the military people polled did not make any effort to vote in last year's presidential election.

Some of those responding presumably were under 21 years of age. Until the Constitution was amended in 1971, most Americans under 21 could not vote.

A few of those who did not bother to vote may have been residents of the District of Columbia. Until the Constitution was amended in 1961, D.C. residents did not have the vote.

Some of those uninterested in the election probably were women. It was not until 1920 that a constitutional amendment gave women the vote.

There may have been blacks among the non-voters. It was 1870 before the Constitution was amended to assure that no citizen was denied the vote "on account of race, color or previous condition of servitude."

In the early days of the republic, few citizens participated in the election of presidents. The original Constitution left it to each state to choose electors "in such manner as the legislature thereof may direct" and the electors then cast their votes for the president. It was many years before the votes of the electors were tied to the popular vote.

The point of all this is that various groups of citizens have had to struggle over a period of more than 200 years to win the right to have a say in the choice of a president. It seems a pity not to use it now.

The most common reason the non-voters gave for not participating was that they had no preference among the candidates.

The major candidates for the presidency now are chosen under a system of conventions and primaries leading up to the national party conventions. Until 1830, candidates were chosen largely by secret party caucuses. Citizens who had preferences had little or no chance to express them.

Some people feel that not voting sends a signal that they do not care for any of the candidates. What it really signals is that they don't care who picks their president, even if it is a minority of the registered voters.

During the past 20 years, between 50 and 60 percent of the nation's registered voters turned out to vote for presidents. At least twice during those years, a president has been elected with less than one-half the popular vote. In those two elections, fewer than one-third of the registered voters selected the presidents.

If more non-voters had voted, would the outcome have been different? We'll never know. The signal was garbled.

The Pentagon's survey also showed that 8.9 percent of the military people polled had tried to vote in 1980 but could not. They sent for ballots and either did not receive them or received them too late to cast votes. If the survey is an accurate sampling of service voters, that means that about 182,000 military members did have candidate preferences in 1980 but were prevented from expressing them. At least once within the past 20 years, a president has been elected by a margin of fewer than 182,000 votes.

The right to vote carries the implied right not to vote if one so wishes. There is little the rest of us can do about the non-voters except, perhaps, to prick their consciences from time to time and to tell them to shut up if they criticize the person who was elected. They took no hand in the process and have no business criticizing the outcome, we can say.

Likewise, there is not very much most of us can do about those who wanted to vote and couldn't, but there are some people who have the power to help see that this doesn't happen.

The unit voting officers can make sure they have done all they can to help people register, send for ballots and return them in time. State and local election officials can see that ballots are printed and sent early enough so that they can be returned in time to be counted. And voters can be certain that they do not cheat themselves by waiting too long to apply or to mail back their marked ballots.

On the bright side, last year's military voting rate was up slightly from that in the previous presidential election. It's a pity that it was lower than the national average. Somehow, we would think that military people, who are barred from many political activities, would be even more interested than other citizens in using the principal means they have to signal their preferences.

More Military Voted in 1980 Than in 1976

By LAURIE PARKER
Times Staff Writer

WASHINGTON — A higher percentage of military members voted in the 1980 general election than did in 1976, but their voting rate was still below that of the U.S. population as a whole, a recent survey by the Federal Voting Assistance Program has found.

The FVAP, which coordinates federal efforts to assist absentee voters, surveyed 17,500 military people — 1500 officers and 2000 enlisteds from each of the four Department of Defense services and the Coast Guard — and 2500 federal civilian employees stationed outside the United States.

Other parts of the survey went to 1540 unit voting officers in the four services and to 400 local election officials from the most populous congressional districts in the country.

A total of 7515 military people and 834 federal civilian employees responded to the survey.

The survey showed that 40.8 percent of the military respondents did vote in 1980, compared to 38.1 percent in 1976. For the eligible voting population as a whole, the figures were 53.95 percent in 1980 and 59 percent in 1976.

Federal civilian voting decreased, however, from 48.5 percent in 1976 to 47.7 percent in 1980.

Thirty-two percent of the military respondents and 45.9 percent of the federal civilians voted absentee in 1980; the corresponding figures for 1976 were 30.48 percent for the military and 43.65 percent for the federal civilian employees.

Responses also indicated that 8.8 percent of military voters and 1.8 percent of federal civilian employees voted in person for the 1980 election.

But 50.5 percent of the military respondents and 42.3 percent of the federal civilian employees said they took no action in the election — they neither registered, applied for a ballot nor voted. Similar figures were not compiled for 1976, FVAP officials said.

"No candidate preference" was the reason most often cited for the lack of participation by both military and federal civilian employees respondents.

The survey also found that 8.9 percent of the military respondents and 9.9 percent of the federal civilian employees said they had applied for absentee ballots and either never received them or received them too late to return in time to be counted. An FVAP official said these percentages were slightly improved from the 1976 election.

It is the absentee voting figures, especially those that indicated late or never-received ballots, that concern the FVAP officials.

"We don't try to gear the program to the total number of people who voted," an FVAP spokesman said, but to make sure "that people who do want to vote absentee get to vote."

Across the services, the percentages of respondents who said they tried to vote absentee but either never received a ballot or received it too late for the election ranged from a low of 5.5 percent in the Coast Guard to a high of 11.2 percent in the Marines.

FVAP officials said those figures are down slightly from 1976, when they ranged from eight to 13 percent.

Navy respondents said 39.3 percent voted, 8.6 percent tried to vote, and 52 percent did not try. Marine Corps respondents said 38.1 percent voted, 11.2 percent tried and 50.6 percent did not try. Army respondents said 32.8 percent did vote, 9.1 percent tried but could not, and 58.1 percent did not try to vote. Coast Guard people said 51.7 percent did vote, 5.5 percent tried, and 42.8 percent did not try to vote. Air Force people said 52.3 percent voted, 8.2 percent tried, and 39.5 percent did not try.

Survey officials said they could find no definite tie-in between late requests for ballots and late or never-received ballots. People who never received their ballots or received them too late generally sent in their requests for ballots at the same time as those who did receive their ballots.

While about 57 percent of the local election officials who responded to the survey said they mailed absentee ballots during the first two weeks in October, approximately 25 percent mailed the ballots out in the third week — barely two weeks before the November 4 election.

The local election officials said that their major problems in processing requests for absentee ballots resulted from the applicants not completing their Federal Post Card Application correctly or legibly.

But 65 percent of the responding officials said that they were able to process between 96 and 100 percent of all the FPCAs received.

Respondents in each survey category stressed different areas for improvement in the absentee voting program.

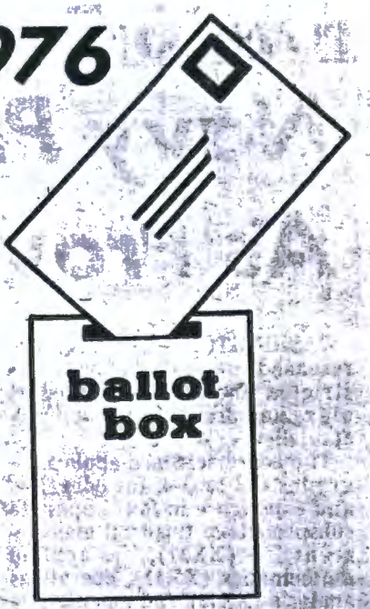
Local voting officials said absentee voters should apply for their ballots earlier, and potential voters and unit voting officials said local officials should mail the ballots out sooner.

For their part, survey officials said it appeared that many military people and civilian employees overseas never were informed of their voting rights and how they could exercise them, and they made little effort to find out.

Also, the variety and complexity of state laws on residency possibly confused many citizens as to where they Were eligible — and even if they were eligible — to vote, the officials added.

FVAP officials said the only major change in the program they are planning is a redesign of the FPCA format.

The new FPCA will include a detachable card that local election officials can return to the applicant, telling him that his application has been received and is being processed, or that they need more information to process the request.



Officials also said that they were trying to make the Voting Assistance Guide — the primary tool of the unit voting officers — simpler and clearer.

Meanwhile, the FVAP staff continues to work with election officials across the country to try to simplify voting requirements.

The FVAP cannot do much more, the spokesman said.

"Our program can do all it can," he said, "but it's still up to the local commander or the unit voting officer to inform personnel of their voting rights and to make sure that they get all the necessary information to exercise them.

"A lot of these kids have never voted before and someone has to give them an appreciation of participation," he added.

Voting Rights Act

THE WHITE HOUSE

WASHINGTON

January 25, 1982

MEMORANDUM FOR ELIZABETH H. DOLE

THRU: DIANA LOZANO

FROM: MORTON BLACKWELL MB

SUBJECT: DRAFT OF ATTORNEY GENERAL'S TESTIMONY ON THE VOTING RIGHTS ACT

The proposed Senate testimony all but guarantees that the bill passed by Congress will be very close to the bad bill which has already passed the House. This testimony represents an ignominious retreat from the President's statement on this subject on November 6th.

An early tone of panic on this issue is set by the unjustified statement that " There is perhaps no more important piece of legislation to come before this Congress than the one now being considered."

The language of the testimony gives no impelling reason for the sixty-one Senate co-sponsors of the House bill to withdraw their co-sponsorship.

With respect to the ten year extension, the testimony fails to make its point adequately. There ought to be a clear statement that we not only insist on a limited duration extension, but that we believe a permament extension is unconstitutional and would not be sustained by the Supreme Court.

The discussion of the "effects" test is the only portion of the statement which approaches serious legal analysis. But, in giving the argument, the draft neglects even to imply that the President would not sign an "effects" test if passed by the Congress.

The discussion of the "effects" test also fails to make the case *against the phony provision in the House bill* which says that "effects" shall not in and of themselves constitute a violation of the law. In practice, that means that if it can be shown that a jurisdiction had in the past any slight record of racial discrimination, that the "effects" test could and would be applied against it.

The "effects" test is particularly outrageous because it would put the federal government in the position of mandating segregated election districts in order to create legislative bodies with proportional representation by race. It is glaringly inconsistent to demand integrated schools, housing, and employment, and then mandate segregated election districts.

The draft testimony completely fails to point out the flaws in the bail-out provisions of the House passed bill. This bill provides for guilt by investigation. To stop the bail-out of any jurisdiction, under the House bill, any Attorney General need only send in examiners.

Jim Baker is on public record in opposition to this ineffective bail-out language.

Neither proponents nor opponents of the House bill will take this testimony very seriously. All will see it as an Administration cop out. All will be convinced that the President will sign the House bill if it passes the Senate intact.

The political impact of this issue will be to disgust many strong Reagan supporters while encouraging many Reagan opponents to further attacks on the Administration.

THE WHITE HOUSE

WASHINGTON

January 25, 1982

MEMORANDUM FOR ELIZABETH H. DOLE

THRU: DIANA LOZANO

FROM: MORTON BLACKWELL

SUBJECT: PROPOSED Q & A ON THE VOTING RIGHTS ACT

The proposed questions and answers for the Attorney General on the Voting Rights Act which were just received do not alter my criticism of the proposed testimony.

The proposed answers relating to the "effects" test were implicit in the testimony.

The discussion of bail-out makes explicit the Administrations's weakness on this issue.

Bill Kenyon

Leadership Conference on Civil Rights

2027 Massachusetts Ave., N.W.
Washington, D.C. 20036
202 667-1780

3826 Dirksen

December 16, 1981

announced at press conference

COSPONSORS OF VOTING RIGHTS ACT EXTENSION LEGISLATION

REPUBLICANS	DEMOCRATS	
Mathias	Kennedy	Dodd
Weicker	Metzenbaum	Tsongas
Chafee	Biden	Mitchell
Hatfield	Moynihan	Williams
Durenberger	Cranston	Inouye
Domenici	Hart	Chiles
Danforth	Proxmire	Baucus
Spector	Bradley	Pell
Percy	Matsunaga	Pryor
Heinz	Glenn	Jackson
Cohen	Sarbanes	Cannon
Stafford	Ford	Huddleston
Packwood	DeConcini	Bumpers
Boschwitz	Eagleton	Sasser
Kassenbaum	Dixon	Byrd, R.
Pressler	Riegle	Hollings
Hawkins	Levin	Bentsen
Andrews	Burdick	Johnston
Quayle	Leahy	Long
		Boren

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 7, 1981

TO: Elizabeth H. Dole

FROM: Morton C. Blackwell MB

RE: Voting Rights Act

The October 2 letter to the President from the Attorney General regarding the Voting Rights Act outlines five possible actions for amending the Act. All of the e options are much better than the outrageous bill passed by the House. The House bill has no termination date and extraordinarily complex bail out procedures which will almost certainly prove unworkable.

If the House bill is enacted it will almost certainly be the last Voter Rights Act. The federal bureaucrats will for the entire foreseeable future be dictating to states and counties through the pre-clearance provisons of the law. Any attempt to amend the law once enacted would surely fall to a left-wing filibuster.

The proponents of amending the House bill, in their various efforts, got 180 different House Members from 42 different states to support one or more proposed amendments.

Of the possible options discussed by the Attorney General, either of the first two options would be desirable.

No option should be seriously considered which does not have a statutory termination date for pre-clearance provisons.

We should not support any bail out provision which would (as the House bill would) make the mere sending of federal examiners into a state or county reason to stop the running of time on a bail out provision.

The closer we get to August, 6, 1982 the more anxious the radical civil rights activists will be to accept the best arrangement for extension they can get. Thus delay now would be in the interest of the eventual freeing of local governments from unnecessary and onerous pre-clearance provisions.

SUMMARY ON COMPROMISE AMENDMENT

Background

As you are aware, the most controversial provision of the House-passed Voting Rights Act bill concerns a proposed change in Section 2. Section 2 contains a general prohibition against discriminatory voting practices. It is permanent legislation and applies nationwide. In the 1980 case of Mobile v Bolden, the Supreme Court held that Section 2 prohibits only intentional discrimination. The House bill would amend Section 2 to prohibit any voting practice having a discriminatory "result".

Much of the intent/results controversy has evolved around whether the Mobile case changed the law. Prior to Mobile, the courts used an "aggregate of factors" or "totality of circumstances" test in voting rights cases. The leading cases articulating this standard are the Supreme Court case of White v Regester, and the Fifth Circuit opinion of Zimmer v McKeithen. According to Zimmer and White, the standard to be applied was whether, based on an "aggregate of factors" the "political processes ... were not equally open to the members of the minority group in question". And the "factors" looked at by the courts in this line of cases included indicia of intentional discrimination, as well as the "result" of the challenged voting practice.

Proponents of the "result" standard in Section 2 have argued that the White/Zimmer "aggregate of factors" test was a "results" test, which the subsequent Mobile case drastically changed. Thus they have argued that by placing a results standard in Section 2, the courts will return to use of the White/Zimmer test. Intent advocates, on the other hand, have pointed to language in the Mobile decision indicating that White was essentially an "intent" case. Thus they have argued that the White/Zimmer approach was simply an articulation of various objective "factors" which could be relied upon to circumstantially proye discriminatory intent.

Key Provisions of the Compromise Amendment

Because neither side of the intent/results controversy has expressed disagreement with the pre-Mobile case law, we have simply codified that case law in our compromise amendment. Specifically, the compromise would add a new subsection to Section 2 explicitly stating that a violation of that section is established when, based on an "aggregate of factors", it is shown that the "political processes leading to nomination and election are not equally open to participation by a minority group". The subsection then provides a nonexclusive list of factors to be considered by the courts, the same factors articulated in White and Zimmer. These factors are:

1. Whether there is a history of official voting discrimination in the jurisdiction;

2. Whether elected officials are unresponsive to the needs of the minority group;

3. Whether there is a tenuous policy underlying the jurisdictions' use of the challenged voting practice;

4. The extent to which the jurisdiction uses large election districts, majority vote requirements, anti-single shot provisions, or other practices which enhance the opportunity for discrimination;

5. Whether members of the minority group have been denied access to the process of slating candidates;

6. Whether voting in the jurisdiction is racially polarized;

7. Whether the minority group suffers from the effects of invidious discrimination in such areas as education, economics, employments, health, and politics; and

8. The extent to which members of minority groups have been elected to office, but with the caveat that the subsection does not require proportional representation.

The Compromise Amendment is Neither an Intent Test nor a Results Test

In our opinion, the pre-Mobile case law, and thus our compromise amendment codifying this case law, represents neither an "intent" standard nor a "results" approach. Nowhere in the pre-Mobile case law did the courts state that a plaintiff must prove that the challenged voting practice was motivated by an intent to discriminate. But similarly, nowhere did the courts state that they were applying a "results" test.[1] Rather, the touchstone of these cases, and of our compromise amendment, is whether certain key factors have coalesced to deny members of a particular minority group access to the political process. Neither election results, nor proof of discriminatory purpose is determinative. Access is the key.

Politically, we think the compromise will be attractive. The civil rights groups have repeatedly stated that a return to the pre-Mobile case law is all they want, and in drafting the amendment, we have made every effort not to deviate from the case law. Further, the amendment carefully

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1 Under the traditional "effects" or "results" test applied, for instance, under Title VII of the Civil Rights Act of 1964, the focus of inquiry is whether statistically, the challenged practice has had a disparate impact on a particular minority group. The pre-Mobile courts consistently emphasized that such statistical disparities, i.e., in the voting context, the lack of proporational representation, was not determinative, but rather only one factor, among meny, to be considered.

avoids any possible interpretation that it could require proportional representation, or that it would impose an "effects" test similar to that employed under Title VII. The first sentence makes clear, as did the White and Zimmer opinions, that the issue to be decided is equal access to the political process, and that this determination is to be based on an aggregate of factors, not simply election results. Similarly, the extent to which minorities have been elected to office is listed as only one factor to be considered, and it is accompanied by an express disclaimer that the subsection does not mandate proporational representation.

SB:pab

Section "G" factors (in any but the most oblique manner), the courts may well treat the Section "G" inquiry as particularly mandated. I believe that Dole can and should be persuaded to drop the provision and believe that such change is our most significant need in the Dole bill.

- There are other problems with the Dole version of Section 2, but, as noted, we can clearly live it -- it is a genuine compromise between two dug-in Senate positions on the Voting Rights bill, and a significant contribution to ending the current impasse.

Purpose: ---

IN THE SENATE OF THE UNITED STATES— ------- Cong., ------- Sess.

S. 1992

H.R. ---------- (or Treaty ---------- SHORT TITLE)

(title) To amend the Voting Rights Act of 1965 to extend the effect of certain provisions, and for other purposes.

( ) Referred to the Committee on ----------
and ordered to be printed

( ) Ordered to lie on the table and to be printed

INTENDED to be proposed by Mr. DOLE

Viz: Strike all after the enacting clause and insert in lieu thereof the following:

SEC. 1. That this Act may be cited as the "Voting Rights Act Amendments of 1981".

SEC. 2. Section 4(a) of the Voting Rights Act of 1965 is amended by:

(1) striking out "seventeen" each time it appears and inserting in lieu thereof "twenty-seven"; and

(2) striking out "ten" each time it appears and inserting in lieu thereof "seventeen".

SEC. 3. Section 2 of the Voting Rights Act of 1965 is amended by -

(1) inserting "(a)" after "2.", and

(2) by adding at the end thereof a new subsection as follows:

"(b)(1) A violation of this section is established when, based on an aggregate of factors, it is shown that such voting qualification or prerequisite to voting, or standard, practice, or procedure has been imposed or applied in such a manner that the political processes leading to nomination and election in the state or political subdivision are not equally open to participation by a minority group protected by subsection (a). "Factors" to be considered by the court in determining whether a violation has been established shall include, but not be limited to:

(A) Whether there is a history of official discrimination or political subdivision which touched the right of the member

democratic process;

(B) Whether there is ~~a lack of~~ responsiveness on the part of elected officials in the state or political subdivision to the ~~needs~~ particularized needs of the members of the minority group;

(C) Whether there is a tenuous policy underlying the state's or political subdivision's use of such voting qualification or prerequisite to voting, or standard, practice, or procedure;

(D) The extent to which the state or political subdivision uses or has used large election districts, majority vote reuqirements, anti-single shot provisions, or other voting practices or procedures which may enhance the opportunity for discrimination against the minority group;

(E) Whether the members of the minority group in the state or political subdivision have been denied access to the process of slating candidates;

(F) Whether voting in the elections of the state or political subdivision is racially polarized;

(G) Whether the members of the minority group in the state or political subdivision suffer from the effects of invidious discrimination in such areas as education, employment, economics, health, and politics; and

(H) The extent to which members of the minority group have been, elected to office in the state or political subdivision, provided that, nothing in this subsection shall be construed to require that members of the minority group must be elected in numbers equal to their proportion in the population."

SEC. 4. Section 203(b) of the Voting Rights Act of 1965 is amended by striking out "August 6, 1985" and inserting in lieu thereof "August 6, 1992".

KANSAS CITIES WITH AT-LARGE ELECTIONS AND LOW MINORITY REPRESENTATION

City	No. On City Council	Population 1970* Non-White	Population 1980 Non-White	Population 1980 Black	No. Minorities Elected 1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	% Minority Elected: 1970-198
Garden City	5	2%	28%	1%	0	0	0	0	0	0	0	0	0	0	0	0%
Junction City	5	16%	35%	22%	0	0	0	0	0	0	0	2	1	1	1	10%
Kansas City, Ks.	3	21%	33%	25%	0	0	0	0	0	0	0	0	0	0	0	0%
Liberal	5	5%	25%	5%	1	0	0	0	0	0	0	0	0	0	0	2%
Wichita	5	3%	19%	11%	1	1	0	0	0	0	0	0	0	0	0	4%

* 1970 Census did not include Hispanics as nonwhite. 1980 Census did. Thus, cities with large Hispanic population show large increase in nonwhite population between 1970 and 1980.