ment which warn against the potential for a massive increase in successful vote fraud attempts were the Carter bill to become law. The first memo (printed below), requested by Sen. Griffin, was initially withheld on grounds of "executive privilege" by Deputy Attorney General Flaherty, and subsequently released. The second memo was released to the Senate Rules Committee, where it was entered into the hearing record. That memo was written by Thomas Henderson, head of the Criminal Division's Public Integrity Section, in the form of a telegram to all U.S. attorneys. The third known memo, whose existence is denied by White House liaison in the Justice Department's public information office, Bob Havel, was written by the Civil Rights division. In an interview, Havel blustered "there may be more memos" but claimed that "we don't have to make public every internal memorandum that comes along." Sources on Capitol Hill reveal that Havel may be right about additional memos in the form of reports written from the field by U.S. District Attorneys warning against the bill.

The reasons for the Administration's reluctance to produce the memoranda publicly is clear; not only do they plainly contradict Administration assertions regarding the bill, but the question of vote fraud in the 1976 election is open, and if pursued intelligently would lead to impeachment and criminal proceedings against Carter, Mondale, and most of the Administration.

The "Griffin memo," published below, authored by Craig Donsanto, for the first time publicly links the indictment of 25 election workers in Louisiana to the new "easy registration" on the books there. The Administration beat a hasty retreat on the Louisiana case: illegally elected former Rep. Richard Tonry (D-La.), whose campaign staff led the Carter vote drive there, tendered his resignation from the Congress on the very day that the cited memorandum was released. A week later, on May 12, Tonry was indicted by a Federal grand jury for soliciting illegal campaign contributions and his subsequent attempts to "cover-up."

The fraud issue and Administration's cover-up of opposition to its bill has drawn fire from other quarters which have raised the 1976 election Sen. Robert Dole (R-Kan.), Gerald Ford's running mate, spoke before a New Jersey GOP meeting and reported that vote fraud had been found on a large scale in Milwaukee, Wisconsin, a state where the on-sight registration is already in effect. Dole went on to charge that a "cover-up" had been made of such evidence by the new Administration in an effort to expedite its own legislation.

Justice Dept Memo Warns

Vote Bill Would Make Fraud Easy

The following is the full text of an internal Justice Department memorandum dated April 1 and commenting on the proposed testimony of Attorney General Bell on the subject of House bill H. R. 5400 on voter registration. Also reprinted here is a copy of the letter accompanying the memo which was sent by Deputy Attorney General Flaherty to Senator Robert Griffin of Michigan; similar letters were sent to Senator Howard Cannon, chairman of the Senate Rules Committee, and Rep. Frank Thompson, chairman of the House Administration Committee.

DATE: 4-1-77
TO: Raymond S. Calamaro, Acting Deputy Assistant Attorney General-OLA
FROM: John C. Kenney, Deputy Assistant Attorney General, Criminal Division
REMARKS: Attached are the comments you requested on H.R. 5400. While Mr. Civiletti has not personally read the memorandum, he is aware that it emphasizes the need for the Attorney General to be aware that enactment of this legislation will probably create substantial enforcement problems for the Criminal Division. It may be that the Attorney General will consider it appropriate to make some recognition of these potential enforcement problems during the course of his testimony. Accordingly, it is suggested that a copy of the attached memorandum be made available to the staff of the Attorney General in connection with any revision of the Attorney General's proposed testimony.

Raymond S. Calamaro
Acting Deputy Assistant Attorney General
Office of legislative Affairs

Benjamin R. Civiletti
Assistant Attorney General
Criminal Division

Comments on H.R. 5400 Testimony by Attorney General

At your request, we have reviewed the testimony which the White House has apparently suggested that the Attorney General give before the House Administration Committee on April 6 during hearings on H.R. 5400. This bill is the Administration's proposal to do away with pre-election registration requirements which the vast majority of the 50 states presently impose as a prerequisite to the exercise of the federal franchise, and substitute in their place a system permitting otherwise locally-eligible electors to register at the polls on the day of an election.

I. THE BILL

We emphasize at the outset that this Division has not had any input into this bill. We have not even seen a copy of the bill, and our comments thereon have never been sought.

The proposed legislation, from sources available to us, would appear to supercede state and local voter registration procedures with a uniform procedure applicable to all contests for Federal office. The Federal procedure under H.R. 5400 would permit an individual who is otherwise qualified to vote under the state law to register to vote at the polls on the day of an election. To prevent abuses of this relaxed registration procedure, H.R. 5400 would create a new Federal felony to punish those who willfully or fraudulently cast ballots under its provisions, add a level of administrative sanctions to be enforced by the Federal Election Commission, and permit local poll officials to require electors seeking the franchise by virtue of these relaxed provisions either to produce some identification before being permitted to vote, or to execute affidavits attesting to the fact that they meet local voting requirements.

If these preconditions are met, H.R. 5400 would require local voting officials to extend the federal franchise notwithstanding an elector's failure to comply with state registration laws.

II. THE PROPOSED TESTIMONY

The testimony which it is suggested the Attorney General give on this bill is highly comendatory of its purpose of facilitating the exercise of the franchise, critical of present state registration laws as "outmoded and unnecessary," and strongly in favor of H.R. 5400's enactment.

III. DISCUSSION

Personally, based on our enforcement experience in the election law field, I do not share these observations and conclusions. I oppose the concept embodied in H.R. 5400 as a dangerous relaxation of what precious few safeguards presently exist against abuse of the franchise. Most certainly, I would not recommend that the Attorney General support this legislation in the proposed glowing terms without expressing some caveats based on enforcement experience.

A. Function of Pre-registration

Voter registration statutes presently on the books of the vast majority of the states usually require that a prospective voter present himself at the appropriate registration office at least 30 days prior to the election in which he wishes to vote, and there provide pertinent data concerning himself and his residence in the election district. He is also customarily required to provide information about where he may have been registered to vote previously to enable the prior registration to be purged before the new one becomes effective, and to provide a sample of his signature which can be used at the polls during the election as a control to assure that the registrant and the person who seeks to vote in his name are the same person.

These requirements serve at least two critical functions in preserving the integrity of our elective system:

First, the fact that a prospective voter is required to appear in person and to provide pertinent information about his qualification to vote at least 30 days before an election provides local election officials with ample time to check the veracity of his claim to the franchise to assure that previous registrations he may have had are voided before the election takes place. This in turn insures that a registrant is indeed qualified to vote in the place where he is seeking the franchise, and that he is permitted only to vote in that one place. Secondly, by providing for a "control" sample of the registrant's signature, registration laws enable many states to protect themselves against vote fraud by additionally requiring a voter to sign a roster at the polling station itself. The signature which the registrant executes on election day at the polls can easily be checked against the control on his permanent voter registration card, which in many places is the sole viable method of insuring that the person seeking to vote is indeed the same person whose registration the local election board has previously approved and accepted.

B. Effect of Repeal of Pre-registration Laws

Abolition of pre-election registration will, for all intents and purposes, prevent the states from protecting themselves against individuals who may seek to vote at several locations where they are known (a factor which becomes all the more critical with the continuing increase in the mobility of our population), as well as prevent them from assuring that a voter is indeed qualified to vote *before* he casts his ballot. At the same time, the elimination of the "control" signature which usually appears on a voter registration card will deprive precinct officials of an objective standard by which to judge the qualifications of persons presenting themselves to vote, while at the same time making proof of election fraud in a criminal case substantially more difficult.

In this latter regard, this Division has had substantial experience over the years in prosecuting election fraud cases under applicable Federal statutes presently on the books. This in turn has demonstrated to us graphically the importance of having a pre-registration and verified "control" signature against which to compare the signature of individuals presenting themselves to vote at the polls on election day. On the basis of such comparisons, 25 election officials have been indicted during the past few weeks in the Eastern District of Louisiana for forging the signatures of "no-shows" on the election day rosters which Louisiana law requires voters sign before they obtain a ballot. Similar comparisons between "controls" and the signatures appearing on election day rosters have long been used as the principal method of proving election fraud cases in Chicago, Illinois.

C. H.R. 5400's Alternative Safeguards

In the place of the protection which pre-election registration provides as a guard against election fraud, H.R. 5400 offers four purported safeguards. We feel that all are inadequate.

The requirement that persons seeking to vote without prior registration, produce some form of identification at the polls, or perhaps swear to the factual predicate for the franchise under local law, is essentially meaningless. Even with the pre-election registration

which most states require today, election fraud is widespread in both State and Federal elections. With the stakes as high as the power of the elective offices in dispute, it would not be unreasonable that those bent on corrupting the system would be able to find false identification, and would be willing to lie on whatever affidavits they are asked to sign. Moreover, once possessed with what we suggest is easily obtained false identification, a person could successfully wander from precinct to precinct and cast as many ballots as he dares on election day, with election officials being powerless to stop him provided he was willing to execute the required affidavit. Even assuming that subsequent inquiry was able to establish that such an individual used the relaxed procedures accorded by H.R. 5400 to defraud his fellow citizens of an election fairly conducted on the "one man-one vote" principle, the fraudulent vote would already have been cast and the *damage done*, to the detriment of the precious balance on which our democratic elective system is based.

The addition of a new Federal felony which specifically provides for fairly serious penalties for those persons who would seek to abuse the lenient provisions of H.R. 5400 are of little foreseeable help. Federal law presently contains numerous statutes, most of which are felonies, directed at protecting the system against voter fraud. Under 18 U.S.C. 241, it is a ten year felony to conspire to stuff ballot boxes or to commit other varieties of election frauds directed at depriving the public of a fair and impartial election, *U.S. v. Classic*, 313 U.S. 299 (1941). This section has recently been extended to include election frauds directed at corrupting only State or local elections, where the defendants involved are themselves election officials of some sort, *U.S. v. Anderson*, 481 F. 2d 685 (4th Cir., 1974). Under 18 U.S.C. 242 it is a misdemeanor to deprive the electorate of a fairly-conducted election under color of official right; under 42 U.S.C. 1973(i) (c), it is a 5 year felony to provide certain types of false information concerning one's residence to vote in an election where Federal candidates will be on the ballot; and under 42 U.S.C. 1973(i) (a), which was enacted last year, it is a 5 year felony to vote more than once in an election where there are Federal candidates on the ballot. This impressive stable of statutes has been the source of numerous prosecutions lately, especially in states like Illinois and Louisiana where State laws require voters not only to pre-register but also to sign rosters at the polls. At the present time, the Criminal Division has active investigations involving this sort of offense before grand juries in Tennesee, Illinois, Louisiana, and Virginia. Complaints involving isolated instances of fraudulent registrations and multiple votes have been so numerous since 42 U.S.C. 1973 (i) (c) and 1973(i) (a) were enacted that the Division has had to routinely defer such matters to the States, all of which to our knowledge have their own extensive and intricate network of criminal statutes which seek to protect against election irregularities. Clearly, if all of these statutes, many of which carry substantial penalties, have been unsuccessful in deterring those bent on corrupting the elective system through vote fraud, one more such statute will not help much. Quite the contrary, our not insubstantial experience in this area has demonstrated that the type of person who is most apt to commit election fraud feels that he is "above" the system, that he will not be caught or punished, and is thus not deterred in the slightest by the presence on the books of facially awesome criminal statutes.

THE DEPUTY ATTORNEY GENERAL
Washington, D.C.20530

May 5, 1977

Honorable Robert P. Griffin
United States Senate
Washington, D.C. 20510

Dear Senator Griffin:

During my testimony yesterday on S. 1072, you requested a copy of an internal April 1 memorandum commenting on the proposed testimony of Attorney General Bell on the subject of the House bill on voter registration. I was unaware of the memoradum at the time of the hearing and requested an opportunity to read the memorandum and review it before making a decision on its release. The memorandum has been reviewed and a copy is attached.

I want to emphasize the strong support of the Carter Administration, the Attorney General and myself for the Voter Registration Bill, S. 1072. The attached memorandum reflects the views of one staff attorney in the Criminal Division. We do not believe that the potential for fraud in the proposed legislation is any greater than under existing laws. I believe that the greater turnout that will be encouraged by the bill and face-to-face registration safeguards built into the bill may actually reduce the amount of fraud in Federal General Elections.

The Attorney General and I strongly support the voter registration legislation and wish to emphasize the overwhelming importance of enfranchising minorities, the poor and others with more progressive voter registration procedures for Federal General Elections.

Very truly yours,
Peter F. Flaherty

IV. THE FEDERAL ELECTION COMMISSION DOES NOT BELONG IN THE ENFORCEMENT MACHINERY OF LEGISLATION UNDER H.R. 5400

I feel that anyone who seeks to corrupt our democratic system in this manner should be subject to nothing short of criminal prosecution. Also, I have reservations as to whether the subject of ballot security and election fraud falls logically within the FEC's present mandate over the financial disclosure provisions of the Federal Election Campaign Act. Morevoer, the FEC's small and underfinanced staff is singularly ill-equipped to take on the awesome responsibilities for the preservation of ballot security which H.R. 5400 contemplates for it. And finally, the parallel civil and criminal proceedings which are bound to arise from the efforts of FEC and this Division to si-

multaneously fulfill our respective enforcement mandates under the Act are bound to create conflicts which will prove detrimental to overall law enforcement in this critical area.

V. CONCLUSION

While we naturally support the fundamental objective of making it easier for citizens to exercise their federal franchise, we would have preferred that a method be devised which would minimize the opportunity for electoral fraud while at the same time maximizing the opportunity for citizen participation in the electoral process. If we had more opportunity for consideration of the general concept and, particularly H.R. 5400, presumably we could make some more constructive comments. Having received this package yesterday afternoon without even a copy of the bill, we have done out best to indicate some of our concerns. I assume that the Administration as a matter of policy is going to support the concept embodied in H.R. 5400. However, if the Attorney General testifies on this bill, he should, in my judgment, qualify his support thereof with the caveat that despite the favorable experience in several states, the experience of the Criminal Division in enforcing the federal election laws indicates that there is a tremendous potential for fraud in H.R. 5400.

'One Person, One Vote'

Statement of Testimony by Thomas J. McCrary of Gainesville, Ga., National Chairman of Committee on Fair and Honest Elections, National Chairman of American Independents on Issues, before the Senate Rules Committee.

I appeared on May 6 before the Senate Rules Committee, which was conducting hearings in connection with the Carter Administration's proposals for new election laws. The proposed laws contain controls over state election laws by requiring registration of voters at the same time they vote. Other restrictive measures for controlling states' rights in the election process are also contained in the Carter proposal.

On the way to the Senate hearing, I read a first page article in the Washington Post stating that the House Administration Committee, which was holding hearings on the Federal Election laws, had hastily passed the Carter election bill, with all Democrats on the Committee voting in favor and all the Republicans opposed. This legislative action gave the appearance that the election bill was purposely designed to perpetuate political control of the United States government from now on by the Democratic Party machine.

That Democratic Party machine, which controls the House Committee, also made sure that the Department of Justice report, prepared by the election divisions of the Criminal Division in that Department was not presented to the House Committee before the vote. The Democrat Party Attorney General, Peter F. Flaherty, blocked the presentation deliberately. Since he declared executive privilege as the reason why he blocked it, undoubtedly the persuasion of that decision came from the White House. It is an unsavory, customary, tight political maneuver, which took place too often during the Carter governor administration in Georgia with which many of us who live in Georgia are very familiar.

Attorney General Griffin Bell, a close friend of Carter and his appointee, endorsed the Carter election bill, even though his own staff, after extensive research of massive evidence of fraud in past elections, particularly in the last general election in the states of New York and Ohio, made the statement "voting without prior registration is meaningless, and can lead to potential or extensive fraud in the election process."

At the Senate hearing the press releases on the above were referred to by many witnesses. Also, portions of the copy of the Justice report were read by Sen. Griffin of Michigan which left a deep impression on all participants in the room. Obviously, the House panel Democrats had egg all over their faces.

It is imperative under the circumstances that such collusion between the Justice Department and the White House to keep critical evidence from particularly the House Committee should be investigated by the Congress. In light of the revelations within the Justice Department memorandum, the House Administration Committee should reconsider its hasty vote — an action which I would applaud.

As speaker for the National Committee on Fair and Honest Elections, I represented many national and state independent parties (those which are not manipulated or under financial control of various special interest or power centers), along with those independents in the Democrat and Republican parties, and just individual independents who have no party persuasion. I presented the following views on which most independents agree.

Foremost, voting rights are sacred to a democratic society and any violation thereof is akin to traitorism.

Secondly, the Federal Government should not interfere with states' rights as is stipulated clearly in the Constitution and the election process.

Thirdly, while liberalization of the election process is to be enacted and encouraged, it should be in the facilitating of registration. This can be done by dispersing registration locations using mobile units such as school buses and so forth, and issuing extensive information on these locations and other information concerning the election process.

Fourthly, along with the above-mentioned liberalization process, stronger safeguards are needed to ensure each voter a one-person, one-vote guaranteed in the Constitution. These safeguards should include registration to be held to permit a sufficient period of time to monitor the accuracy and integrity of the submission by the voters. And this should be done in a space