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# WINNING WHILE LOSING

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Civil Rights, the Conservative Movement,  
and the Presidency from Nixon to Obama

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Edited by Kenneth Osgood and Derrick E. White

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## ZIGS AND ZAGS

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Richard Nixon and the New Politics of Race

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JOHN D. SKRENTNY

In the fall of 1970, Richard Nixon's top domestic policy advisor, John Ehrlichman, found himself frozen out of the Oval Office. Nixon accepted no appointments and offered no responses to his memoranda. After ten days of silence, the president finally gave an indication of the nature of the problem: insufficient conservatism in key areas of domestic policy. Nixon gave to Ehrlichman a newspaper column by Kevin Phillips arguing that Nixon had veered too far to the Left on crucial aspects of the "social issue," or what we now might call the "culture wars."<sup>1</sup> Specifically, Phillips argued that Nixon's support for affirmative action, integration of the suburbs, and welfare and his Presidential Commission on Campus Unrest had revealed excessive liberalism that alienated working-class whites—whites who were needed for an election victory in 1972. Nixon told his domestic policy chief that Phillips offered "a correct view"—and Ehrlichman should "take action to correct this."

Ehrlichman was able to return to Nixon's good graces only by penning a long memo that offered an ideological rationale for these seemingly wayward policy moves. He argued that a totally conservative line on the social issue was misguided and that a "centerist strategy" was best. But since "very few initiatives will be truly in the center," Nixon had to find balance by mixing in with his "conservative zags" some good liberal "zigs." In the matter of race issues, Ehrlichman argued that Nixon's affirmative action, targeted at labor unions, was a good wedge issue to divide blacks and labor unions, two key constituents of the Democratic Party. But he also admitted that suburban integration had to be stopped.

The memo worked. Nixon invited his adviser in for a ninety-minute meeting, and the ten-day freeze was never mentioned again. The larger message from the domestic-policy advisor freeze-out, however, remained: partisan politics after the civil rights movement were a minefield. What was conservative and what was liberal regarding civil rights (that is, regulatory efforts to prevent discrimination and promote equality) were unknown. And as unclear as were the politics of black civil rights, the politics of women's rights and rights for the emerging minority group of Latinos were even less clear.

Enter into this context of political ambiguity the enigmatic Richard M. Nixon. Scholars have tried to understand this complex man for decades.<sup>2</sup> On civil rights in particular, Nixon confounded his supporters and his critics.<sup>3</sup> Nixon's civil rights record before his presidency was one of moderation. Notably, he headed Eisenhower's President's Committee on Government Contracts, which made some progress on equal employment opportunities in employment among government contractors. He was also a longtime supporter of the Equal Rights Amendment, which would have ended discrimination on the basis of sex.<sup>4</sup> But his positions were neither firm nor elaborate. They offer little guidance for his positions during his presidency.

Understanding Nixon's civil rights politics requires understanding the context of his policymaking. Nixon was the first president to enter the completely remade civil rights landscape. Lyndon Johnson has presided over the passage of the historic Civil Rights Act of 1964, remaking racial patterns in education, employment, and public accommodations. Legal scholars have noted the revolutionary impact of this act. William Eskridge calls it a "super-statute,"<sup>5</sup> and Bruce Ackerman describes it as a "landmark statute" that affects interpretation of the constitution itself.<sup>6</sup> But there were other important civil rights initiatives as well in the 1960s. There was the Voting Rights Act of 1965 (ending decades of disenfranchisement) and the less effective but nevertheless pioneering Civil Rights Act of 1968 (ending segregation in housing), and Johnson also issued in 1965 the Executive Order 11246, requiring government contractors to cease discrimination on the basis of race, religion, and national origin as well as to take some undefined affirmative action to ensure nondiscrimination.

Even by 1969, it was still not clear how these policies would affect American politics. The meanings of Left and Right were muddled during

the passage of these acts in Congress, as they passed with bipartisan support. Making overtly racist statements in public was, of course, no longer legitimate in American politics. Liberal Democrats, it appeared, would support the new policies and would lend support for what became great expansions of the reach of the American regulatory state. Conservative Republicans needed to offer an alternative. What would be the new conservative position on civil rights? The battle over the *existence* of the policies was over—what (or where) would be the new fault line in American civil rights politics?

The ambiguity of the times can be understood on an even broader basis than the civil rights issue. Every president enters into office in a particular climate that affects what that president can or cannot do. The political scientist Stephen Skowronek has argued that presidential politics are largely shaped by the political context in which the president is elected. How resilient is the prevailing political opposition? How close was the election? These factors as well can help us understand presidential action.<sup>7</sup>

Nixon's first term coincided with a fascinating time in American politics. Except for the eight-year reign of moderate Dwight D. Eisenhower, liberal Democrats had governed America for thirty-six years. But the Vietnam War, the counterculture, and urban unrest by African Americans had led to the "unraveling of America," as the historian Allen Matusow put it—or at least to the unraveling of liberalism.<sup>8</sup> Yet liberals in Washington were still assertive and convinced of their moral superiority and entitlement to rule. Nixon was also challenged by social conservative, third-party candidate George Wallace and moderate liberal Democrat Hubert Humphrey in the 1968 election. Nixon won the popular vote by a hair—43.4 percent of the vote compared to Humphrey's 42.7 percent, with Wallace capturing a respectable 13.5 percent.<sup>9</sup> Though the election was close, it also showed that 56.9 percent of voters picked a conservative candidate.

Overall, liberalism seemed to be on the retreat, if not the defensive. But liberalism still seemed strong on civil rights. Whereas in 1964 there were many national leaders who opposed federal civil rights regulations—including Republican presidential candidate Barry Goldwater—in 1968, federal regulations guaranteeing nondiscrimination on the bases of race, national origin, and religion were the new starting point

to the discussion. There was still a lot to debate, of course. But that debate was about how far civil rights regulations should go, not whether or not to have them. Because the endpoints of civil rights were entirely unknown, both liberals and conservatives were unsure of what the appropriate policies should be—and how hard to push.

What we see in the Nixon years, then, is a process of learning. As is clear in the episode with Ehrlichman regarding the huge impact of reading one newspaper column by a young Kevin Phillips, Nixon was unsure of what to do in this dynamic but confusing political context and was very open to persuasion. He looked for clues from the voters. And these clues and his concern to uncover them varied by the issue and over time. What we see in Nixon's first term—the term where he made policy that set up his landslide 1972 victory and he operated without the distraction of Watergate—is movement in his civil rights policy as he learned of the political impacts of different policy preferences. And where he did not find clues or signals, his policy could vary a lot—from a misguided certainty to a confusion that led to a kind of paralysis.

Nixon's civil rights politics, and the negotiation of the meaning of civil rights conservatism as well as electoral imperatives, changed over time and even more strikingly varied with the group in question. Three cases show a different set of dynamics regarding conservative ideology, electoral strategy, and the cultural meanings of different groups.<sup>10</sup> First, adhering to conservative principles, Nixon tried to establish a new boundary for civil rights for African Americans but was selective about where he was going to push or accept the boundary. Here, Nixon's concern was more with white voters and their potential for backlash than with the African American electorate. Second, Nixon pursued civil rights for Latinos with little restraint. In this case, his administration showed little concern for ideology or the concerns of non-Latino whites and instead innovated energetically in order to win votes from the Latino population. It is difficult to discern Nixon's sense of limits to civil rights policies for Latinos, and policy moved in a more liberal direction. Finally, the case of women's rights reveals an administration without a plan—unclear of the electoral prospects or ideological constraints, but apparently sensing that women, though similar to ethnic and racial minorities, were also somehow different. Nixon struggled to find a conservative stance on women's rights.

Taken together, these cases reveal a "winning while losing" pattern to Nixon's civil rights policies. In some respects, Nixon looked like an enemy of civil rights. He adopted a political strategy that aimed to woo white southerners by slowing down desegregation and employing polarizing rhetoric. During his presidency, momentum for civil rights reforms, especially for African Americans, eased perceptibly. Yet, in other respects, Nixon's policies resulted in an expansion of civil rights. This was particularly true for Latinos, whom Nixon was seeking to lure into the Republican fold. Although Nixon would sometimes mouth conservative rhetoric that implied a limited role for the government in advancing civil rights, his administration's policies, as Ehrlichman suggested, included both liberal "zigs" and conservative "zags."

The cases also show that the great ideological divide between liberals and conservatives on civil rights that characterizes today's politics simply did not exist during Nixon's years in office—or to be more precise, during his first term. Instead, the new political landscape created by civil rights statutes, as well as Nixon's close election, contributed to a piecemeal, learning approach to civil rights politics. It was not until Nixon and later Republicans began to strongly pursue white, working-class voters that the conservative positions on civil rights that we know today—opposition to affirmative action, especially for blacks but also for Latinos, and opposition to bilingual education and multiculturalism in the schools—developed and became staples of campaign speeches. Women's civil rights remained confusing for conservatives, but Nixon's period of confusion settled into quiet acceptance of civil rights laws that aided economic opportunities but resisted those that challenged traditional gender roles.

Civil rights during the Nixon years are significant for several reasons. It was a period of tremendous policy development, but it was also a period where conservatives and liberals were negotiating the role and meaning of ideology in a new and important policy area. In the end, conservatives would end up mostly in support of what they had previously opposed—nondiscrimination rights for minorities. They would also police the new boundaries of the new conservative orthodoxy: opposition to quotas, multiculturalism, and race-conscious (or more generally, "difference-conscious") justice.

## Black Civil Rights: Between Ideology and Opportunism

Richard Nixon, as his biographers are fond of noting, was a moderate on civil rights for most of his career.<sup>11</sup> His presidency, however, presented unique circumstances. His approach to black civil rights was both conservative and liberal—though with a conservative or partisan twist. This story of Nixon and black voters has now become well known, and so only a few points need to be made here.

Most famous was Nixon's so-called southern strategy. This referred to his administration's resistance to the advancement of civil rights, especially where that resistance might benefit southern racial conservatives. Not surprisingly, Nixon never embraced this term, and nor did he or his advisors promote the idea that the president was slowing down civil rights to appeal to southerners. But that is exactly what he appeared to do.

This was most apparent on busing.<sup>12</sup> The Nixon administration came to office when courts were deciding what school desegregation really meant. These unelected officials were at the vanguard of black civil rights in schooling and the progressive interpretation of Title VI of the Civil Rights Act of 1964. Its impact on schools far exceeded that of the Supreme Court's 1954 decision, *Brown v. Board of Education*.<sup>13</sup> It declared that no programs or institutions receiving federal funds could discriminate on the basis of race, national origin, or religion. By the late 1960s, courts were moving toward an interpretation of civil rights where desegregation meant measurable, statistical integration. This sometimes required busing school children across town, and it produced a storm of controversy. Nixon campaigned on the issue. During the 1968 primaries, he told southern delegates for the Republican National Convention, "I think that busing the child . . . into a strange community—I think you destroy that child. The purpose of a school is to educate."<sup>14</sup>

Nixon maintained this position in office. He did not stop the march of progress in school desegregation, but he delayed it to signal to southern white voters that he understood their concerns. Attorney General John Mitchell and Department of Health, Education, and Welfare (HEW) Secretary Robert Finch shocked civil rights liberals when they declared that the Nixon administration would avoid terminating federal education aid funds for still-segregated schools. Instead, they would concentrate on voluntary compliance; the threat of a lawsuit would be held in reserve.

They canceled a previous target date of the 1969–70 school year for desegregation. In fact, there would be no target date at all.

The statement outraged civil rights advocates both inside and outside the government. Sixty-five of the one hundred lawyers in the Justice Department's Civil Rights Division signed a petition declaring that Nixon's new approach was "inconsistent with clearly defined legal mandates" and showed "a disposition on the part of responsible officials of the federal government to subordinate clearly defined legal requirements to non-legal considerations."<sup>15</sup>

Outside the government, the reaction from the Left was equally strong and perhaps more colorful. Roy Wilkins, the moderate liberal head of the National Association for the Advancement of Colored People (NAACP), greeted Nixon's announcement with graphic disdain: "It's almost enough to make you vomit." Wilkins believed that Nixon was actually breaking the law, noting that his approach "is not a matter of too little too late; rather, this is nothing at all."<sup>16</sup> Civil rights advocates began to prepare a lawsuit against the government for failing to enforce the Civil Rights Act. In October 1970, the civil rights activist Joseph Rauh and the NAACP Legal Defense Fund—with the help of unhappy HEW officials—did file a lawsuit against HEW for failing to enforce Title VI.<sup>17</sup>

In other areas, though, Nixon positioned himself at the vanguard of black civil rights—though, as we will see, not consistently. Most prominent here and the focus of much attention from scholars is Nixon's role in the birth of affirmative action in employment. The conservative position now is to oppose racial preferences and quotas. But it was not always thus.

Nixon made his case for supporting black civil rights especially with his support for Labor Department regulations implementing Lyndon Johnson's Executive Order 11246. That order, building on and refining and strengthening similar orders issued by Roosevelt, Truman, Eisenhower, and Kennedy, required that contractors doing business with the federal government could not discriminate on the basis of race, national origin, or religion. Both Kenney and Johnson had included in their executive orders a passage saying that contractors had to also take some undefined affirmative action to ensure nondiscrimination. What this meant remained undefined for years.

However, under Johnson the Labor Department's Office of Federal Contract Compliance (OFCC) began to experiment with different

regulations implementing the order in the field of construction. Of course, construction was a massive part of federal procurement and an area with considerable interest from civil rights leaders.<sup>18</sup> This was because these jobs were very visible, often located in poor black neighborhoods, and almost completely dominated by white union members.

The OFCC had developed a series of implementing regulations that sought to force the construction unions to open up to African Americans. Tried over a few years and in a series of cities, including St. Louis, the San Francisco-Oakland area, Cleveland, and finally Philadelphia, these regulations developed pragmatically in a way that eventually settled on a reasonably effective regulatory strategy. By the 1968 Philadelphia edition, the regulations required contractors to commit to making good faith efforts to hire a certain percentage range of minorities ("goals") and to do so by a specified time (the "timetables" requirement). All of this happened during the Johnson administration, but the explicit race-consciousness of what was called the Philadelphia Plan ran into some legal trouble, and the plan was put on the shelf.

It remained shelved until the Nixon administration came into office in search of some pro-civil rights initiative to balance the retrograde politics of the southern strategy. In 1969, Nixon dusted it off, made some minor changes, and pushed it hard when southerners in Congress tried to kill it. The Philadelphia Plan appealed to Nixon for many reasons, including most intriguingly the conundrum it created for Democrats. It targeted the overwhelmingly white unions, who voted mostly for Democrats and whose leadership strongly supported Democrats, and tried to benefit African Americans, who also voted overwhelmingly for Democrats. It forced Democrats to pick one constituency over the other. And in picking African Americans and affirmative action, Democrats added to the alienation of working-class whites that several other initiatives of the Johnson era had already exacerbated.<sup>19</sup>

After getting the race-conscious "goals and timetables" regulations of the Philadelphia Plan established, in 1970, the OFCC, with its Order No. 4, expanded them to apply to all contractors with contracts of at least \$50,000. It was a tremendous expansion of civil rights regulatory reach. Was there any role for ideology in this policy initiative?

Nixon's support for affirmative action in employment did, in some ways, fit with conservative ideology. He sometimes discussed it as an example of self-help and pointed out that it was about getting people

to work rather than relying on government for a handout—as, presumably, the Democrats preferred. Yet in other ways the policy of affirmative action in employment was a significant violation of conservative principles. Much more so than simple nondiscrimination, the affirmative-action regulations limited liberty. The policy told business owners how they should hire and, when enforced strongly, who they should hire. But this was all before the current conservative orthodoxy on color-blind civil rights regulations.

### Latinos: The Unfettered Search for a New Majority

Unlike Nixon's policies regarding African Americans, which were shaped significantly if not consistently by the racial conservatism that came to be a GOP staple, the administration's policy regarding Latinos ran free and easily, shaped more by the limits of the administration's imagination and budget than by anything else. Conservative notions of a limited government, at least in its legal reach, were nowhere to be found. This can be seen most clearly in two different policy initiatives that put the government squarely on the side of diversity and minority rights in ways that conservatives later detested.

The first was affirmative action. Bureaucrats at the OFCC included Latinos (along with Asian Americans and American Indians) in the original Philadelphia Plan employment affirmative-action regulations without fanfare. The same occurred at the Equal Employment Opportunity Commission, which used the same groups in its 1965 decision to have all employers with at least 100 employees report to the commission on the racial makeup of their workforces. None of this occurred with input from the White House of Johnson or Nixon.

But Nixon championed another type of affirmative action in addition to the employment variety. In his campaign, he had talked loosely of the importance of developing black capitalism, or a black entrepreneurial class. In April 1968, he gave the idea a conservative cast, suggesting it did not really involve the federal government at all: "What we need is imaginative enlistment of private funds, private energies, and private talents, in order to develop the opportunities that lie untapped in our own underdeveloped urban heartland . . . It costs little or no government money to set in motion many of the programs that would in fact do the most, in a practical sense, to start building a firm structure of [black]

economic opportunity."<sup>20</sup> The idea was not original, and it had gained attention during the long, hot summers of the previous few years. Blacks, the reasoning went, would not burn down their neighborhoods if blacks actually owned the businesses there, which was rarely the case.

Nixon's idea for black capitalism became an executive order in March 1969 to create the Office for Minority Business Enterprise (OMBE). Officially, it was not supposed to do much: its main task was to coordinate federal procurement with minority contractors. It would soon do more than coordinate, however, and it would also become a program to aid the effort to win Latino votes.

By the fall of 1969, Nixon believed that Mexican Americans should be a key target of his team's political efforts. After meeting with Nixon, Chief of Staff H.R. "Bob" Haldeman told political aide (and architect of the southern strategy) Harry Dent that Nixon believed that the Republican National Committee was "not putting nearly enough emphasis on the key ethnic groups—Italians, Poles and Mexicans." Efforts with these groups, he argued, could "be really politically productive."<sup>21</sup>

In the next few years, the Nixon administration increasingly began to seek Latino votes. Other key Republicans urged the Latino strategy. For example, domestic policy advisor John Ehrlichman told Nixon in April 1970 that a meeting with Latino appointees was a good idea because it would "demonstrate Presidential concern for the interests of the Spanish-speaking minorities" and show "presidential awareness that Negroes are not the only minority in the country."<sup>22</sup>

In that year, the Nixon White House also decided that Latinos should be given their own program to develop Latino capitalists. The administration created a new, scaled-down OMBE specifically for Latinos. Strangely, the name of the new program, the National Economic Development Association (NEDA), did not reveal its intended beneficiary. The Small Business Administration started it off with a \$600,000 grant before OMBE took over. From 1970 to 1972, NEDA oversaw 821 assistance packages amounting to \$43.5 million to grow or expand Latino-owned businesses.<sup>23</sup>

In the area of affirmative action, Nixon did not do anything that he was not already doing for blacks. The difference was that in the case of Latinos, he was more proud of it. The strategy was to cede the black vote to the Democrats and to try to make headway with Latinos. When a reporter asked Nixon in 1971 about the perception among blacks that

Nixon opposed civil rights, Nixon switched the topic to Latinos. He said he was happy to meet with African American leaders "and with representatives of other parts of our society, because we have got to move forward not only with black Americans; we have very significant problems . . . in the Mexican American community."<sup>24</sup>

In May 1971, a strategy memo laid out the case for pursuing the Latino vote. That argument and strategy was totally unburdened by ideology. The bottom line: "There are some twelve million Spanish surnamed [*sic*] Americans" whose demands "are now accelerating" and "most of this population is strategically located in politically doubtful states." The thesis was simple: "If we get or can get momentum going with these people, they will be very loyal and at present they feel neglected." The way to prevent Latinos from feeling neglected was to take everything the administration was doing for blacks and to expand it or modify it to include Latinos because "one of the battle cries of the Spanish Speaking [*sic*] community is that they want the same type of opportunities as Negroes, and do not want 'to play second fiddle to any minority.'" Therefore, "any action toward Black Demands [*sic*] should be taken with subsequent Spanish Speaking [*sic*] requirements in mind, and with awareness that the Spanish Speaking [*sic*] will ask for parity in treatment. Perhaps package proposals should be considered."<sup>25</sup>

A few months later, Secretary of Commerce Maurice Stans began to push an expansion of the OMBE program to include more efforts for Latinos. In an "EYES ONLY" memo for Ehrlichman, Stans made the case with census data showing the number of Blacks (22.6 million), Spanish-Americans (9.2 million), and Indian and other (2.9 million; presumably including Asian Americans), as well as with data on the number of minority-owned businesses in the United States. These numbers were part of the political case for expansion of the program. The value of the numbers was augmented by geography. Latinos were concentrated in places rich in electoral-college votes (New York, Texas, California) and so more programmatic efforts toward Latinos "could have real political value." For Stans, the minority capitalism program was of great political value, and the number one benefit was that there was "distinct vote-getting potential among the Spanish-Americans in an expanded program."<sup>26</sup>

Stans wanted a commitment of at least \$100 million to OMBE, considerably higher than the \$60 million of its current budget. George Shultz of the Office of Management and Budget explained to Nixon, with the

help of others in the administration, the pros and cons of increasing the budget. Shultz believed the program had a great potential for waste. Both he and Ehrlichman counseled holding the budget at \$60 million. Attorney General John Mitchell, who was to soon resign from his post and direct the Committee to Re-Elect the President, counseled moving up to the \$100 million. Although Shultz was suspicious of the program (for reasons related either to good accounting or ideology), he included for Nixon a document describing the "distinct vote-getting potential among Spanish-Americans in an expanded minority business enterprise program" for California, Texas, Florida, Arizona, New Mexico, Chicago, and New York. He added, "the Spanish-speaking population responds well to the economic development programs" and that "past experience indicates that a strong new thrust to the Minority Business Enterprise Program will go along [*sic*] way to further enhance the favorable impression of you and the Administration in the Spanish-American Community [*sic*]." Nixon's view, scribbled on the memo itself, was that efforts for the Latinos should be strengthened (though he ordered, "Keep the black about where it is").<sup>27</sup>

In a message to Congress about the program, Nixon bragged about increases between 1969 and 1971 in grants and loans to minorities (from \$200 million to \$566 million) and a growth in purchases from minority companies from \$13 million to \$142 million. He described the race-targeted program as self-help: "The best way to fight poverty and to break the vicious cycle of dependence and despair which afflicts too many Americans is by fostering conditions which encourage those who have been so afflicted to play a more self-reliant and independent economic role."<sup>28</sup>

If there was anyone in the Nixon administration who was unfettered by conservative ideology, and particularly on the subject of adding Latino votes, it was Charles Colson, Nixon's designated coalition-builder. In late 1971, Colson put together strategy plans for Ehrlichman, explaining, "we could see some significant movement in the voting preferences of Spanish-surnamed Americans next year" and "there is much in the way of fertile ground to be plowed hard." Were there limits on what they should try? Apparently not: "I think we should do everything possible to encourage it." Colson suggested various new policies. One was to develop a computerized network for NEDA and OMBE in order to find Latino contractors and subcontractors.<sup>29</sup>

Apparently following up on Colson's December 1971 initiative, in January 1972, Ehrlichman's aide Ken Cole sent a series of urgent memos through the White House, explaining, "The President has a strong interest in program development of assistance to Spanish-Speaking [*sic*] Americans" and adding, "We would like to get things out and rolling in a very short time." Ideas related to the minority capitalism program included stationing a Small Business Administration (SBA) development officer in Latino areas and "establish[ing] a computerized Spanish-Speaking minority enterprise capabilities directory to assist both government and private enterprise in finding Spanish-Speaking contractors and Sub-contractors [*sic*]."30

If Nixon's approach to minority capitalism affirmative action for Latinos revealed little influence from conservative ideology in the 1969-71 period, things would change in 1972. Lack of ideological constraint turned into a lack of ethical constraint. The congressional Watergate committee came to be interested in the use of minority capitalism for political purposes. Some of the most surprising lapses in ethics, the committee discovered, related to use of the program as a way to win Latino support.

Perhaps surprisingly, it was a high-ranking Asian American staffer, William H. Marumoto, who was deeply involved with the controversial actions. Less surprising was that Marumoto worked on Latino issues under Colson. Marumoto convened a meeting each week with a group of Latino aides, including his assistant, Antonio Rodriguez, White House aide Carlos Conde, Henry Ramirez, head of the cabinet's Committee on Opportunities for the Spanish Speaking, and Alex Armendariz, director of the Committee to Re-Elect the President (CREEP). Their task was to dream up new ways to add Latinos to the Nixon coalition. What they ended up doing, however, was using OMBE and NEDA to reward Latino friends and punish enemies.<sup>31</sup>

Marumoto was to participate in a strategy called Capitalizing on the Incumbency, which involved using the executive branch's powers of grant-making and hiring to secure (in Marumoto's case) support from Latinos.<sup>32</sup> Fred Malek, a Haldeman aide and deputy director of CREEP, told Marumoto and Armendariz on the Latino side, as well as two counterparts who worked on black issues, "Each of you has expressed concern to me recently about the use of OMBE grants. This, obviously, represents an excellent opportunity to make a contribution and gain headway in the

Black and Spanish-Speaking areas. I have discussed this situation with [domestic policy aide] Ken Cole, and we are in agreement on the importance of the program to our efforts."<sup>33</sup>

Throughout 1972, Marumoto then spent money in ways to make more likely a victory for Nixon. For example, his 1972 "Weekly Activity Report(s) for Spanish Speaking [*sic*]" described such activities as having an administrator on March 24 "set aside \$300,000 for one of *our* Spanish speaking [*sic*] contractors" (emphasis added). On April 7, he was "reviewing with [Nixon staff members] John Evans, Bob Brown and Wally Henley proposals and grants at OMBE to make sure the right people [were] being considered and receiving grants from OMBE." On May 19, Marumoto logged, "Rodriguez is assisting Ultrasystems, Inc., of Long Beach, California with a \$200,000 grant from OMBE. This organization strongly supports the administration."<sup>34</sup>

The Nixon administration also used a congressionally created parallel minority capitalism program, the SBA 8(a) program, in an unprincipled, unethical, and political way. According to Benjamin Fernandez, a Nixon fundraiser who targeted Latinos, the 8(a) program was part of a "major effort on the part of the administration to award contracts to Spanish-speaking businessmen."<sup>35</sup> Here again there was a political rewarding and punishing logic. Marumoto arranged to have an outspoken Democratic firm told that it no longer needed the 8(a) government preferences. And in another example of the politics-over-ideology nature of the process of this type of affirmative action, and especially for Latinos, there was a meeting of various Nixon officials in March 1972 that planned "ways of improving coordination and more effective means of getting political impact in the grant-making process. Discussion pointed out the tremendous need for a centralized computer facility for all Departments and Agencies whereby one could obtain data regarding grants to any congressional district and/or organization."<sup>36</sup>

The other major Nixon initiative for Latinos focused on bilingual education and a civil right to foreign language accommodation in the schools. Congress passed the Bilingual Education Act in 1968, but both the Johnson administration and Congress itself neglected it. It did not do much—its purpose was to authorize federal funds for teaching children with "limited English proficiency" (LEP). Its significance was more for the previously radical idea of federal tax dollars being used to support foreign language teaching to native speakers. Conservatives came to



despise this program. But not during the Nixon administration—there, especially the first term, they saw political benefits and no ideological reason to hold back.

Nixon officials then used an obscure symbolic body, the Cabinet Committee on Opportunities for Spanish-Speaking People (CCOSS), to promote the image of his administration as interested in bilingual education and respect for language difference. In October 1971, Nixon's political aides dreamed up a meeting of CCOSS to take place in Texas. The goal was simple: "To help our candidates with the Mexican American vote and the Spanish-speaking vote." They discerned no downside to any of these activities, even though they were to take place in a southern state not known for racial liberalism. They chose Texas because "it could be done in conjunction with a brand new pilot program of bilingual education taking place at an elementary school in Dallas." Ehrlichman's domestic policy assistant Ken Cole spoke for a group of several aides who supported the initiative (Martin Castillo, former chairman of the Inter-Agency Committee on Mexican American Affairs, John Ehrlichman and Leonard Garment, top domestic policy advisors, and Jeb Magruder, public relations expert) when he advocated arranging the meeting to get "maximum mileage" for "our candidates who need help with the Mexican American vote and the Spanish-speaking vote."<sup>37</sup>

Nixon's coalition-builder Charles Colson also developed a strategy for winning Latino support that included promoting bilingual education. Along with an affirmative action plan for public housing to ensure that more Latinos took advantage of that program, and more efforts to develop a Latino capitalist class, in 1971 Colson was giving great support to bilingual education. Although "budget priorities" limited new funding, this would not preclude an unfunded mandate. Colson suggested, "we could require that bilingual education programs be components of any educational institution receiving funds with more than a 10 percent Spanish-speaking service population."<sup>38</sup> In fact, as will be described below, developments away from the White House, and not driven by electoral politics, were already moving the administration to precisely this policy.

Nixon administration support for the bilingual education concept remained high, but support for the Bilingual Education Act weakened. This decline was related to cost and not to the propriety of ethnic targeting or government-supported difference. On January 10, 1972, Cole

had aides examine the feasibility of extending bilingual education. Cole expressed no ideological resistance to having the federal government pay to educate children in languages other than English. His concerns were limited to "the budget question involving bi-lingual education [*sic*]."<sup>39</sup> For the 1973 budget, the Nixon administration proposed \$41 million for bilingual education despite a report that, according to the Office of Management and Budget (OMB), "there are serious questions about the effectiveness of this program." For the Nixon team, whether the program actually worked was not a concern. One aide's memo argued, "As far as appearance is concerned, a 17% increase in the program is not that bad," while another scribbled on the memo, "How can we maximize credit w/ the Spanish speaking?"<sup>40</sup>

How widespread in the administration was support for bilingual education? In April 1972, the administration planned further occasions to demonstrate Nixon's support for bilingualism in preparation for the election. A group of seven top policy and public-relations aides, including Colson and speechwriter Bill Safire, urged a half-hour event with Latino leaders and celebrities, including Fernando Lamas and Ricardo Montalban, "to show the President's interest in bilingual education." They all took for granted the Latino community's support and bilingual education's merits. Only press secretary Ron Ziegler opposed it, calling the event "much too obvious."<sup>41</sup> Nevertheless, promotion of bilingual education became a favorite strategy for appealing to Latinos in the 1972 election.<sup>42</sup>

There was another move toward language rights that would later be an affront to conservative ideology. The Nixon administration promoted an interpretation of Title VI of the Civil Rights Act of 1964, promulgated in a May 25, 1970, memo and later affirmed by the Supreme Court, that saw language accommodation in the schools as a civil right. This was less of an affront to conservative notions of national identity than was the Bilingual Education Act. However, *how* LEP students should be accommodated remained undefined, and bilingual education was certainly a dominant and likely approach. Moreover, it was a massive affront to conservative notions of limited federal government, local control of schools, and the undesirability of unfunded federal regulatory mandates.

The "May 25 Memorandum," as it came to be called, bubbled up from the Office for Civil Rights (OCR) bureaucracy. Ideology may have mattered in this setting, far away from the White House, as two of the

primary architects were liberal Leon Panetta and Martin Gerry, a Republican civil rights activist. What is significant about these developments, however, is that they trickled up to the White House and became part of more nonideological strategies to pursue Latino voters.

Written by Gerry and signed by OCR director J. Stanley Pottinger, the memo declared that OCR reports found “a number of common practices which have the effect of denying equality of educational opportunity to Spanish-surnamed pupils” and were therefore in violation of Title VI. It announced four different responsibilities for local school districts with at least 5 percent “national origin-minority group” students. The memo spelled out four different areas of compliance with Title VI of the Civil Rights Act of 1964 relating to language. The key requirement was that, henceforth, covered school districts must take “affirmative steps to rectify the language deficiency” in order to allow “effective participation” in district educational programs for students who could not speak or understand English.<sup>43</sup>

Although the OCR administrators appeared most concerned with the civil rights issues of Latinos, as well as with pre-empting any criticism they might receive for acting too slowly, they had the support from Nixon’s appointee at the top. HEW Secretary Robert Finch showed the political orientation of other Nixonian officials when he later recalled, “I wanted to make it clear that the course I was following at HEW was not motivated entirely by concern for good works or support for social programs.” Instead, his focus was “the cutting issues that were affecting the Republican party.” Latino votes were a part of these “cutting issues”: “I thought it was very important, for instance, that Republicans gain a foothold in the Chicano community.”<sup>44</sup>

Finch’s successor at HEW, Elliot Richardson, a veteran of the Eisenhower administration, appeared to be a believer in language and cultural rights for Latinos. In a letter to Senator Walter Mondale, chair of the Senate’s Subcommittee on Education, Richardson described the recommendations of an Office of Education advisory committee on Latino education that described the psychological injury faced by culturally different children and argued that:

the most important needs of the national origin minority group child are: 1) the need for ethnic or cultural diversity in the educational environment, 2) the need for total institutional reposturing

in order to incorporate, affirmatively recognize, and value the cultural environment of ethnic minority children so that the development of positive self-concept can be accelerated, 3) the need for language programs that introduce and develop English language skills without demeaning or otherwise deprecating the language of a child’s home environment and without presenting English as a more valued language.<sup>45</sup>

What was perhaps most surprising about the right to language accommodation, however, was the Nixon administration’s pursuit of court enforcement. The Justice Department, for example, pursued a case in Texas where it argued for a local school district to remake itself in line with bilingual and bicultural principles.<sup>46</sup> Better known is the Nixon administration’s position in the *Lau v. Nichols* Supreme Court case, where the high court deferred to OCR and supported the interpretation of Title VI that it required language accommodation in the schools. In that case, the staunch conservative judge Robert Bork, then Nixon’s solicitor general, was the lead author of a brief (along with former OCR director Stanley Pottinger, who had then transferred to the Justice Department) that strongly advocated an unfunded federal mandate for a right to language accommodation.

The case involved the city of San Francisco and its failure to provide language accommodation to Asian American students. Bork argued for both a statutory and a constitutional right to language accommodation. Bork argued that San Francisco needed to implement HEW’s (technically, OCR’s) May 25 memorandum order that national origin nondiscrimination required some kind of program to ensure equal opportunity. He pointed out that the Supreme Court had previously given great weight to HEW guidelines in black school-desegregation cases. Bork and the Justice Department maintained that the Fourteenth Amendment and the Civil Rights Act “impose upon the school authorities in such circumstances an obligation to provide some special instruction to national origin-minority students” that would “allow them meaningfully to participate in the educational program which is readily accessible to their English-speaking classmates.”

Bork’s argument emphasized the inadequacy of equal treatment. He argued that a school district that provides the same facilities and curriculum for all students—when it was clear that some students would not benefit—

used a “narrow and mechanical view of equal educational opportunities” that could not “be reconciled with this Court’s holding” in a series of black school-desegregation cases.<sup>47</sup> In cases of limited English proficiency, the failure to provide special instruction led to a “denial of access to the dominant culture.”

Stopping short of arguing for bilingual education, Bork instead simply adopted the May 25 memorandum’s “effect standard” of discrimination: “The impact of that practice [of teaching in English] is upon a distinct segment of a national origin-minority group, whose members are affected on account of a national origin characteristic.” Equating race and national-origin discrimination (and ignoring the fact that there are no languages associated with “races”), the brief argued, in the end, that “simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.”<sup>48</sup>

Considered together, Nixon’s policies toward Latinos make a powerful argument for the irrelevance of ideology in these years. The inside story of the minority capitalism affirmative action is completely devoid of any voices saying it violated principles of conservative ideology. The same was true of bilingual education and language rights.

### Women’s Rights: Delay Tactics and Confusion

For many Americans, women’s rights, or women’s liberation, as it was called, are strongly associated with the 1960s and 1970s. In a striking contrast to the case of Latino rights, ideology played a significant role in the development of women’s rights. That role was mainly to supply brakes on the development of policy. However, in the case of women’s rights, the ideology has less to do with the role of government and more to do with notions of what women’s role should be or what women wanted.

The key point for understanding Nixon’s approach to women’s rights is that he had no idea how to approach women’s rights. There was little sense of a clear ideological position and even less sense of the likely electoral gain from supporting women’s rights. More than anything, there was confusion and delaying tactics.

Nixon’s attitude toward women could change rapidly. For example, he saw that appointments of women to key posts in his administration

could have political benefits. He placed Rita Hauser as the U.S. representative to the United Nations Human Rights Commission. Hauser knew that her appointment had political benefits—but she was not sure that Nixon did. In February 1969, she reported to Nixon that her appointment “generated publicity in the press and the media.” She sought strategically to use this opportunity, she said, to “promote the image of your Administration in the field of human rights” and offered “to fill in any appearance in the human rights area that you may not be able to accept and for which you think I am suited.” Nixon approved, which he demonstrated by underlining passages in her note, and then gave it to his chief of staff H. R. “Bob” Haldeman with instructions to “use her as extensively as possible—always non partisan [*sic*]. Particularly on T.V.”<sup>49</sup>

Twenty-four hours later, on February 6, Nixon saw women as a humorous sidelight to the real politics of the day and one woman in particular as the butt of a good-natured joke. Vera Glaser, a Washington journalist, asked Nixon during a press conference if he would neglect women when making appointments to his administration. She was concerned, noting that only three of the administration’s first 200 top-level appointments were women. Nixon responded with a question of his own that treated Glaser like she was a child: “Would you be interested in coming to the government?”<sup>50</sup>

Nixon also dithered on the question of whether or not to meet with four Republican congresswomen on the matter of women’s rights. Florence Dwyer (R-NJ) wished to meet with the president but was politely brushed off. She was later joined by Margaret Heckler (R-MA), Catherine May (R-WA), and Charlotte Reid (R-IL) in a letter to Nixon asking for a meeting “for the purpose of discussing a number of matters of direct and immediate concern to women generally.” Sensing the president’s lack of interest or knowledge on the matter, they explained, “We can provide you with information and ideas which should be of value in dealing with these problems.”<sup>51</sup> They were brushed off again, forcing a more confrontational approach that Nixon finally responded to.

A memo by Nixon’s liberal advisor, Daniel Patrick Moynihan, led to more analysis but revealed more of the administration’s confusion and Nixon’s lack of leadership on the issue. A few months after the confrontation with the Republican women from Congress, on August 20, 1969, Moynihan predicted, “female equality will be a major cultural/political force of the 1970s.” After going through the causes and effects of the new

movement, Moynihan argued that Nixon should “take advantage of this” through appointments “but perhaps especially in . . . pronouncements”: “This is a subject ripe for creative political leadership and initiative.”<sup>52</sup>

Moynihan’s memo led to analysis and a set of recommendations from members of Nixon’s domestic policy team. Political advisor and speechwriter Jim Keogh said, “I do thoroughly agree with the conclusion and recommendation that the President take every opportunity in word and deed to champion female equality.” Peter Flanigan, another political aide who had dealt with Dwyer and company, wrote facetiously, “As a member of the staff who has borne the brunt of women’s attack, I am well aware of the increasing use of violence.” He added that he was trying to find women for appointments and secure “major news coverage of such appointments.” Bryce Harlow said, “Politically, it’s gold,” but cautioned, “we don’t appear to have such a program, nor is one suggested here.” In his summary for Nixon, chief domestic policy advisor John Ehrlichman said, “politically this is a golden opportunity and . . . we should, whenever possible, champion female equality.”<sup>53</sup>

However, rather than launch into a set of policies that promised political payoff, as they did with Latinos, the Nixon administration instead formed a task force to study the issues involved with women’s rights. This was the weakest of the set of recommendations Dwyer had urged. Nixon officially announced the new body on October 1, 1969, calling it the President’s Task Force on Women’s Rights and Responsibilities. Several months later, when the group submitted its report to the president, a Nixon advisor told Virginia Allan, the group’s chair, that the report was being “filed.”<sup>54</sup>

Nixon’s confusion could also be seen on the signature women’s rights issue of the time: the Equal Rights Amendment (ERA). Nixon had supported the ERA throughout his political career, but as with black civil rights he re-evaluated his position once in office. Now, with real political consequences to his decision, the issue became complex and the pros and cons, the conservative and the liberal positions, unclear. Ehrlichman put together an elaborate decision memo that broke down the ERA issue and Nixon’s own personal history on it. He also brought together a wide range of administration officials who mostly—though not unanimously—supported the ERA. Due to Nixon’s past support in 1960 and 1968, Ehrlichman himself leaned toward Nixon endorsing the amendment. Vice President Spiro Agnew also had publicly supported the ERA.

Labor Secretary George Shultz also supported it, and Jacqueline Gutwilig, chair of the Citizen’s Advisory Council on the Status of Women, had testified to a Senate committee in support. Domestic policy aide Leonard Garment was in support though not with great enthusiasm. Assistant attorney general (and future chief justice of the Supreme Court) William Rehnquist was the lone voice against the ERA among administration officials. According to Rehnquist, the amendment would lead to “the sharp reduction in importance of the family unit, with the eventual elimination of that unit by no means improbable.”<sup>55</sup> In the end, Nixon supported the ERA, but did nothing to secure its passage.<sup>56</sup>

Because of this indecision and lack of clear policy vision, policy on affirmative action for women was one of foot-dragging and delays. The key fact here is that whereas affirmative action for racial minorities moved quickly, policy development for women took considerably longer. The Philadelphia Plan, which targeted blacks, Latinos, Asian Americans, and American Indians, got its start in June 1969. After it survived a legal battle in December, the OFCC expanded it from construction to include all contractors in Order No. 4 in February 1970. But it did not include women, even though the authorizing executive order had since the Johnson administration amended the executive order to include sex discrimination. The OFCC did not include women in its affirmative-action regulations until August 31, 1971—and then only after more than a year of fierce lobbying by both Democratic and Republican women in Congress and demonstrations and lawsuits by the National Organization for Women and its spin-off, the Women’s Equity Action League.

Why the delay? From the perspective of presidential politics, we can say that Nixon offered no leadership on the issue. The archives do not reveal any discussions of the issue by Nixon himself. But that in itself says something, and this fact fits with the discussions above: Nixon did not know what to do. It was simply unclear to Nixon, or to his trusted appointee, Secretary of Labor George Shultz, what to do. Whereas they never once questioned whether Latinos should be expected to pursue jobs in ways that were basically the same as whites and blacks, Shultz’s letter to a congressional subcommittee investigating discrimination (Shultz was apparently too busy to show up and an aide read his letter) expressed much hand-wringing about whether or not in the workplace women were different from men. He stated that Order No. 4’s affirmative-action procedures for racial minorities did not apply to women because “many

women do not seek employment. Practically all adult males do.”<sup>57</sup> This sense that women were different led to the delays and the resistance to women’s pressure.

The contrast of the politics of women’s rights with the politics of black rights and Latino rights is instructive. Because Nixon perceived women differently than he perceived blacks and Latinos, the political logic for dealing with this group was different. Conservatism did not offer clear guidance on women’s politics, particularly in the areas of their economic advancement. Oddly, Nixon did not explore public opinion on the issue in any systematic way. Instead, unlike the situation with Latino rights, which were clear and apparently costless, he remained hesitant and indecisive.

## Conclusion

The political context can help us understand Nixon’s most innovative civil rights policies. First, they developed only a few years after the passage of the key statutes. In this environment, it is quite understandable that the new boundaries of Left and Right were unknown. Second, his policies developed in the context of an election win with a razor-thin margin of victory.

Was Nixon creating a new conservative position on civil rights? A key tenet of conservatism is the belief in limited government, but in Nixon’s policy this belief sometimes mattered in civil rights politics and sometimes it did not. In the case of the desegregation of black schools, Nixon voiced conservative principles when seeking to slow down the process and oppose busing. In the case of Latinos, however, it is difficult to find any concern at all with the role of government in improving opportunities for Latinos. There was some concern with cost and the budget for helping Latino capitalists, but there was no expression of whether or not unfunded federal mandates were the correct policy move. Ideology simply did not seem to matter here, and it is not surprising that conservative Republicans would turn away from Nixon’s approach, at least until the presidency of George W. Bush. In the case of women’s rights, despite significant pressure from women in Congress and from women’s activists, the Nixon administration expressed what was at best caution but what could probably be more accurately described as confusion. Some aides saw political gain with women in expansive women’s rights, but unlike

in the case of Latinos, the Nixon team delayed and continually wondered what woman really wanted. Even on the ERA, which Nixon had long supported, there was confusion and almost embarrassed support.

In developing his civil rights policies, Nixon responded to how he perceived the group in question and how he anticipated the desires of his electoral coalition. Since he pursued southern white voters, their racial conservatism, which was strongly anti-black civil rights, shaped policy. When Nixon pursued Latino voters, he saw no impacts to his white voter coalition because Latino issues were less important to them. And when Nixon wondered about women’s rights, he simply was unsure how the conservatism of his coalition viewed the issues.

A more focused assessment of the views of his coalition led to an increasing civil rights conservatism in Nixon’s second term. By 1970, Nixon was increasingly equating his “silent majority” of mostly white voters with the white working class.<sup>58</sup> In doing so, Nixon learned of the preferences of these voters—and clear conservative stances on the new civil rights issues emerged. To be sure, issues regarding women’s rights remained murky: while the white working class tended to value traditional women’s roles, the reality was that many working-class women worked, and policies that aided their economic well-being were beneficial to them. For this reason, it became a conservative position to oppose elements of civil rights laws that challenged traditional gender roles. Conservatives would point to the threat of the most feared effects of the ERA, such as that it would force women into the military, or point to the feared effects of a law signed by Nixon, Title IX of the Education Amendments of 1972, barring sex discrimination by programs or institutions receiving federal funds. This law had the potential to end the fraternity and sorority system at colleges and universities.

On issues involving race and culture, the new conservative position became clear: opposition to policies that sent categorical benefits to blacks and Latinos. Working-class whites remained economically insecure and resented government programs and regulations for racial minorities that excluded whites. Moreover, the language rights that Nixon enthusiastically sought to give to Latinos offended white working-class conceptions of national identity—as well as devalued the assimilation that was forced upon many of them with ancestry from Southern and Eastern Europe. Even Robert Bork, who as solicitor general fought for a *constitutional* right to foreign language accommodation in the schools,

came by the 1990s to criticize the bilingual education and language rights that he had helped bring about.<sup>59</sup>

By 1972, then, Nixon was no longer promoting his Philadelphia Plan to help blacks and instead was complaining about racial quotas. While he never took a strong stand against bilingual education, the position opposing bilingual education and multiculturalism had come to define conservative approaches to Latino politics by the mid-1970s. He remained quiet about affirmative action for women, seeking neither to strengthen nor weaken the policy.

Perhaps the best interpretation of the historical record of the Nixon administration's conservatism on civil rights, therefore, shows that Nixon's positions varied according to the issue at hand and that he sought to follow (what he regarded as) the public's view of the issues. Nixon's own conservatism may have mattered less than the conservatism of the sections of the electorate that he sought to appeal to. In exploring and pushing a wide range of civil rights policies, the Nixon administration and future Republicans learned what conservatives should say and believe about civil rights in America. Those conservative positions created in the early 1970s continue to define the Republican Party today. As in Nixon's time, however, they remain subject to change.

## Notes

1. Phillips was inspired by a book that gained wide attention in 1970—Richard Scammon and Ben Wattenberg's *The Real Majority: An Extraordinary Examination of the American Electorate* (New York: Coward-McCann, 1970).

2. Some notable attempts include Stephen Ambrose, *Nixon: The Triumph of a Politician, 1962–1972* (New York: Simon and Schuster, 1989); Joan Hoff, *Nixon Reconsidered* (New York: Basic Books, 1994); Dean J. Kotlowski, *Nixon's Civil Rights: Politics, Principle, and Policy* (Cambridge, Mass.: Harvard University Press, 2002); Herbert S. Parmet, *Richard Nixon and His America* (Boston: Little, Brown, 1990); and Garry Wills, *Nixon Agonistes: The Crisis of the Self-Made Man* (Boston: Houghton-Mifflin 1970).

3. The best account of Nixon's civil rights politics remains Hugh Davis Graham, *The Civil Rights Era: Origins and Development of National Policy, 1960–1972* (New York: Oxford University Press, 1990).

4. John D. Skrentny, *The Minority Rights Revolution* (Cambridge, Mass.: Harvard University Press, 2002); Graham, *Civil Rights Era*.

5. William N. Eskridge, *Dynamic Statutory Interpretation* (Cambridge, Mass.: Harvard University Press, 1994).

6. Bruce Ackerman, "The Living Constitution," *Harvard Law Review* 120 (2007): 1738–1812.

7. Stephen Skowronek, *The Politics Presidents Make* (Cambridge, Mass.: Harvard University Press, 1993).

8. Allen J. Matusow, *The Unraveling of America: A History of Liberalism in the 1960s* (New York: Harper and Row, 1984).

9. <http://www.presidency.ucsb.edu/showelection.php?year=1968>, accessed December 16, 2008.

10. These cases are drawn from John David Skrentny, *The Ironies of Affirmative Action: Politics, Culture, and Justice in America* (Chicago: University of Chicago Press, 1996) and Skrentny, *Minority Rights Revolution*. Also see Graham, *Civil Rights Era*.

11. Joan Hoff, *Nixon Reconsidered* (New York: Basic Books, 1994).

12. Graham, *Civil Rights Era*.

13. Gerald Rosenberg, *The Hollow Hope* (Chicago: University of Chicago Press, 1993).

14. Stephen E. Ambrose, *Nixon: The Triumph of a Politician, 1962–1972* (New York: Simon and Schuster, 1989), 169–70.

15. Stephen C. Halpern, *On the Limits of the Law: The Ironic Legacy of Title VI of the 1964 Civil Rights Act* (Baltimore: Johns Hopkins University Press, 1995), 89.

16. John David Skrentny, *The Ironies of Affirmative Action*, 190.

17. Halpern, *Limits of the Law*, 95.

18. Thomas J. Sugrue, *Sweet Land of Liberty* (New York: Random House, 2008).

19. The story of the Philadelphia Plan can be found in Graham, *Civil Rights Era*; Skrentny, *Ironies of Affirmative Action*; and Terry Anderson, *The Pursuit of Fairness: A History of Affirmative Action* (New York: Oxford University Press, 2004).

20. Maurice H. Stans, "Nixon's Economic Policy Toward Minorities," in *Richard M. Nixon: Politician, President, Administrator*, ed. Leon Friedman and William F. Levantrosser (New York: Greenwood Press, 1991), 239–46, 239–40.

21. Memo from H. R. Haldeman to Mr. Dent, October 31, 1969, paraphrasing Nixon, in *Civil Rights during the Nixon Administration, 1969–1973*, ed. Hugh Davis Graham (Bethesda, Md.: University Publications of America, 1989), Part I, Reel 2, frame 129.

22. Memo from John Ehrlichman to the President, April 20, 1970, folder: CCOSS File, White House Central Files, Staff Member and Office Files, Robert H. Finch, box 15, Nixon Presidential Materials Project, National Archives, College Park, Md.

23. Memo for David Parker from Carlos d. Conde via Herb Klein, April 18, 1972; Memo for Herb Klein from David Parker, April 11, 1972; and Schedule Proposal from Herbert G. Klein via Dwight L. Chapin, March 9, 1972, in Graham, *Civil Rights during Nixon*, Part I, Reel 4, frames 86, 88, 91, 92.

24. "The President's News Conference of May 1, 1971," in *Public Papers of the Presidents of the United States: Richard M. Nixon, 1971* (Washington, D.C.: Government Printing Office, 1972), 613.

25. Memo for Clark MacGregor from William Timmons, May 12, 1971, and attached memo for Clark MacGregor and George Shultz from George Grassmuck, May 10, 1971, in Graham, *Civil Rights during Nixon*, Part I, Reel 3, frame 871–73.

26. Memorandum for John D. Ehrlichman from Maurice H. Stans, September

17, 1971, in Joan Hoff-Wilson, ed., *Papers of the Nixon White House* (Bethesda, Md.: University Publications of America, 1989), Part 6a, Fiche 173, frames 46–51.

27. Memo for the President from George Shultz, September 17, 1971, with handwritten comments by Nixon, in Hoff-Wilson, *Papers of the Nixon White House*, Part 6a, Fiche 173, frames 32–38.

28. “Special Message to the Congress Urging Expansion of the Minority Business Enterprise Program, October 13, 1971,” Public Papers of the Presidents of the United States: Richard M. Nixon, 1971 (Washington, D.C.: Government Printing Office, 1972), 1041–46.

29. Other suggested policies included HUD programs and public housing, which Colson said were not reaching Latinos in adequate percentages; he suggested a kind of affirmative action, or “an administrative goal of the number of housing units that can be reasonably provided to Spanish-speaking families under federal programs and that a time-frame be set up to fulfill that goal.” Colson also pushed bilingual education, as discussed in chapter 7. Memo for John Ehrlichman from Charles W. Colson, December 20, 1971, in Graham, *Civil Rights during Nixon*, Part I, Reel 3, frames 899–900.

30. See the three memos for Ed Morgan from Ken Cole, January 10, 1972, on education, housing, and economic development, in Graham, *Civil Rights during Nixon*, Part I, Reel 3, frames 896–98.

31. Hearings before the Select Committee on Presidential Campaign Activities, U.S. Senate, 93rd Congress, First session, Watergate and related activities, Phase III: Campaign Financing, Book 13, Washington, D.C., November 1973, 52 Hearings, Watergate and related activities, 74–5277.

32. Hearings, Watergate and related activities, 5279. An original memo describing this strategy is reproduced on 5532.

33. Memo for Bob Brown, Bill Marumoto, Paul Jones, and Alex Armendariz from Fred Malek, March 3, 1972, in Hearings, Watergate and related activities, 5542.

34. All contained in the Weekly Activity Report of the Spanish Speaking (for Chuck Colson and Fred Malek from Bill Marumoto) on the cited dates, in Hearings, Watergate and related activities, 5549, 5557, 5581, 5576.

35. Hearings, Watergate, and related activities, 5365.

36. Memo for Chuck Colson from Bill Marumoto, March 17, 1972, in Hearings, Watergate and related activities, p. 5543. This meeting involved officials from the Office of Economic Opportunity, formerly the cornerstone of Johnson’s War on Poverty.

37. Memo for Richard Nixon from Hugh Sloan via Dwight Chapin, October 21, 1971, in Folder: EX FG 145 Cabinet Committee on Opportunities for Spanish Speaking People 1/71-[12/31/72], Box 1, EX FG 145 InterAgency Committee on Mexican-American Affairs as of 12/30/69 through EX FG 145/A [1973–74], Nixon Presidential Materials Project, NA.

38. Memo from Charles W. Colson to John Ehrlichman, December 20, 1971, in Graham, *Civil Rights during Nixon*, Part I, Reel 3, frames 899–900.

39. See Memo for Ed Morgan from Ken Cole, January 10, 1972; Memo for Ed Morgan from Ken Cole, January 10, 1972; Memo for Peter Flanigan from Ken Cole, January 10, 1972, in Graham, *Civil Rights during Nixon*, Part I, Reel 3, frames 896–98.

40. Memo for Ken Cole via Edward L. Morgan from James B. Clawson, January 28, 1972, in Graham, *Civil Rights during Nixon*, Part I, Reel 3, frames 887–88.

41. See Memo for David Parker from Ron Ziegler, April 18, 1972; Memo for David Parker from Dick Moore, April 14, 1972; Memo for Dick Moore, Bill Safire, and Ron Ziegler from David Parker, April 13, 1972; Schedule Proposal from Herbert Klein via Dwight Chapin, April 11, 1972, in Graham, *Civil Rights during Nixon*, Part I, Reel 4, frames 93, 96–98.

42. See, for example, Letter from Alex Armendariz to Frederick Malek, May 31, 1972, Folder: Ethnics [1 of 3], Box 62, White House Special Files, Staff Member and Office Files, Charles W. Colson Papers, Nixon Presidential Materials Project, NA; undated campaign document, “Spanish-Speaking,” in Graham, *Civil Rights during Nixon*, Part I, Reel 4, frames 332–36.

43. Memo for School Districts with More Than Five Percent National Origin-Minority Group Children from J. Stanley Pottinger, May 25, 1970, in Graham, *Civil Rights during Nixon*, Reel 3, frame 889. For a discussion, see Iris C. Rotberg, “Some Legal and Research Considerations in Establishing Federal Policy in Bilingual Education,” in *Harvard Educational Review* 52 (1982): 149–68.

44. Quoted in A. James Reichley, *Conservatives in an Age of Change: The Nixon and Ford Administrations* (Washington, D.C.: Brookings Institution, 1981), 180.

45. James V. Gambone, “Bilingual Bicultural Educational Civil Rights: The May 25th Memorandum and Oppressive School Practices” (PhD dissertation, University of New Mexico, 1973), 23. Gambone, a doctoral student at the University of New Mexico, took part in the San Diego meeting.

46. *United States v. State of Texas*, 342 F. Supp. 24 (1971).

47. These included *Brown*, *Sweatt v. Painter* 339 U.S. 629 and *McLaurin v. Oklahoma State Regents* 339 U.S. 637.

48. Bork’s brief is reproduced in Hearings before the General Subcommittee on Education of the Committee on Education and Labor, House, 93rd Cong., second session, on H.R. 1085, H.R. 2490, and H.R. 1146 bills to amend Title VII of the ESEA, 1974, pp. 10–19. Bork is listed as lead author, followed by Pottinger.

49. Memo from Rita E. Hauser to The President, February 5, 1969, and handwritten note from the President to H (Haldeman), n.d., in Joan Hoff-Wilson, ed., *Papers of the Nixon White House* (Bethesda, Md.: University Publications of America, 1989), Part 6, Fiche 6a-7–44.

50. Graham, *Civil Rights Era*, 397.

51. Letter from Florence P. Dwyer, Catherine May, Charlotte T. Reid, and Margaret M. Heckler to Mr. President, June 9, 1969, in folder: HU 2–5 women beginning 12/31/69, White House Subject Files, Box 21, Nixon Presidential Materials Project, NA.

52. Memo from Daniel Patrick Moynihan for The President, August 20, 1969, in Graham, *Civil Rights during Nixon*, Part I, Reel 23, frames 78–82.

53. Memo from John Ehrlichman for The President, September 29, 1969, and attached Memos for the Staff Secretary from Jim Keogh, August 26, 1969, Peter M. Flanigan, August 25, 1969, Bryce Harlow, September 20, 1969, and Memo from Daniel

Patrick Moynihan for The President, August 20, 1969, in Graham, *Civil Rights during Nixon*, Part I, Reel 23, frames 73–82.

54. Graham, *Civil Rights Era*, 406.

55. Memo from Leonard Garment to John Ehrlichman, May 25, 1970, and Memo from John Ehrlichman for The President, n.d., in Graham, *Civil Rights during Nixon*, Part I, Reel 23, frames 139–74. Ehrlichman's memo also showed that all presidents since Eisenhower had supported the amendment, and Nixon's 1968 opponents, Hubert Humphrey and George Wallace, joined Nixon in supporting it in the 1968 election.

56. Hoff, *Nixon Reconsidered*, 104.

57. Hearings, *Discrimination Against Women*, U.S. House of Representatives, second session, Special Subcommittee on Education of the Committee on Education and Labor, on Section 805 of H.R. 16098, June 17, 19, 26, 29, 30, July 1, 31, 1970, 694–95.

58. Jefferson Cowie, "Nixon's Class Struggle: Romancing the New Right Worker, 1969–1973," *Labor History* 43 (3): 257–83; Skrentny, *Ironies of Affirmative Action*, chapter 7.

59. Robert H. Bork, *Slouching Toward Gomorrah: Modern Liberalism and American Decline* (New York: ReganBooks, 1996).

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# AFRICAN AMERICAN CIVIL RIGHTS AND CONSERVATIVE MOBILIZATION IN THE JIMMY CARTER YEARS

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JOSEPH CRESPINO AND ASHER SMITH

In the late 1970s it was an article of faith among conservative Republicans that liberal bureaucrats in Jimmy Carter's administration were enforcing racial quotas. One of the most controversial issues among conservative Christians was an Internal Revenue Service (IRS) policy that denied federal tax exemptions to racially discriminatory private schools. Critics argued that small, independent religious schools were forced to submit to quotas or else face legal harassment from the federal government.

The issue galvanized Protestants and was a critical issue in bringing these voters into the Republican fold. Two of the most influential New Right leaders, Paul Weyrich and the direct-mail guru Richard Viguerie, cited the IRS controversy as critical to conservative mobilization in the 1970s.<sup>1</sup> At the 1980 Republican National Convention, one of the planks in the GOP platform pledged to halt the "unconstitutional regulatory vendetta launched by Mr. Carter's IRS Commissioner against independent schools."<sup>2</sup> In the first year of Ronald Reagan's presidency, conservative Justice Department officials convinced the administration to revoke the IRS policy, which they believed had begun under Carter. In January 1982, the Reagan administration announced that it was dispensing with the policy and ordered that the tax-exempt status be restored to institutions that had been denied it under the old policy, among them