97TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 97-227

VOTING RIGHTS ACT EXTENSION

SEPTEMBER 15, 1981.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. EDWARDS of California, from the Committee on the Judiciary, submitted the following

REPORT

together with

SUPPLEMENTAL AND DISSENTING VIEWS

[To accompany H.R. 3112]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3112) to amend the Voting Rights Act of 1965 to extend certain provisions for an additional ten years, to extend certain other provisions for an additional seven years, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill is a complete substitute therefor and appears in italic type in the reported bill.

The title of the bill is amended to reflect the amendment to the text of the bill.

EXPLANATION OF THE AMENDMENT IN THE NATURE OF A SUBSTITUTE

The amendment in the nature of a substitute differs from the introduced bill primarily in the following respects: the criteria for allowing covered jurisdictions to be exempted, that is bail out, from the special provisions of the Act are broadened; the extension of certain provisions of the Act for 10 years is changed; and the amendment to Section 2 of the Act is further clarified.

PURPOSE

The objectives of H.R. 3112, as amended are: (1) to extend continuously the special provisions of the Voting Rights Act, Sections 4, 5, 6, and 8, (2) to amend Section 4(a) of the Act to permit jurisdictions

to meet a new standard of exemption from the obligations of Section 5, (3) to clarify the standard of proof in Section 2 voting discrimination cases and (4) to extend the language assistance provisions of the Act until 1992.

Jurisdictions which meet the criteria set out in Section 4(b) of the Act will continue to be subject to the special provisions of the Act until such time as they can meet the new standard for bailout, as set forth in Section 4(a), as amended.

The standard for bail-out is broadened to permit political subdivisions, as defined in Section 14(c)(2), in covered states to seek to bail out although the state itself may remain covered. Under the new standard, which goes into effect on August 6, 1984, a jurisdiction must show, for itself and for all governmental units within its territory that for the 10 years preceding the filing of the bailout suit: (1) it has a record of no voting discrimination and; (2) it has taken steps to increase minority political participation and has removed obstacles to fair representation for minorities.

H.R. 3112 amends Section 2 of the Voting Rights Act of 1965 to prohibit any voting qualification, prerequisites, standard, practice, or procedure which results in discrimination. Section 2 would be violated if the alleged unlawful conduct has the effect or impact of discrimination on the basis of race, color, or membership in a language minority group. The amendment is necessary because of the unsettling effect of the decision of the U.S. Supreme Court in *City of Mobile* v. *Bolden*, 446 U.S. 55 (1980). The amendment clarifies the ambiguities which have arisen in the wake of the *Bolden* decision. It is intended by this clarification that proof of purpose or intent is not a prerequisite to establishing voting discrimination violations in Section 2 cases. The proposed amendment does not create a right to proportional representation.

The language assistance provisions of Section 203 are extended for an additional 7 years. While Section 203 does not expire until 1985, the Committee felt it was appropriate to address these provisions in light of legislation amending these provisions which was pending before the Committee during its deliberations.

History

On May 6, 1981, the Subcommittee on Civil and Constitutional Rights convened the first in its series of hearings on legislative proposals to extend and amend the Voting Rights Act of 1965, certain provisions of which expire on August 6, 1982. At the outset, the Subcommittee had before it five bills [1] which addressed all of the major provisions of the Act, even those which do not expire next year. Consequently, the Subcommittee heard testimony regarding the broad range of issues connected with the Act. The Subcommittee held eighteen days of hearings, including regional hearings in Montgomery, Alabama and Austin, Texas, during which testimony was heard from over 100 witnesses. Witnesses included current and former Members of Congress, two former Assistant Attorneys General of the U.S. Department of Justice, representatives of the U.S. Commission on

[1] H.R. 3112, H.R. 3198, H.R. 1731, H.R. 1407, and H.R. 2942.

Civil Rights, national, state, and local civil rights leaders, State and local government officials, representatives of various civic, union and religious organizations, private citizens, as well as social scientists and attorneys who specialize in voting discrimination issues. Representatives from the U.S. Department of Justice were invited to testify but were unable to do so prior to the completion of the hearing process. In addition, the Subcommittee encouraged witnesses who were unable to appear personally to submit statements for the record.

On July 21, 1981, the Subcommittee met and by unanimous voice vote ordered H.R. 3112 reported, without amendment, to the full Committee.

On July 28, 30, and 31, the full Committee on th Judiciary met to consider H.R. 3112. On July 31, the full Committee, by a vote of 23 to 1, ordered the bill reported to the House, with a single amendment in the nature of a substitute.

General Statement

BACKGROUND

The right to vote is preservative of all other rights. As a consequence, our history is replete with actions by the Congress over the last 100 years to extend and safeguard the franchise. The Voting Rights Act of 1965 has been hailed as the most important civil rights bill enacted by Congress. Unquestionably, it has been the most effective tool for protecting the right to vote. The Act provides evidence of this Nation's commitment to assure that none of its citizens are deprived of this most basic right guaranteed by the fourteenth and fifteenth amendments.

The Voting Rights Act of 1965

The Voting Rights Act of 1965 was primarily designed to provide swift, administrative relief where there was compelling evidence that, despite a history of litigation, racial discrimination continued to plague the electoral process, thereby denying minorities the right to exercise effectively their franchise. The ineffectiveness of the case-by-case litigative approach is documented in the case law itself, as well as in the legislative history of voting rights legislation passed in 1957, 1960, 1964, and 1965. The U.S. Supreme Court, in *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966), summed up the legislative history as follows:

> Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings. Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration. Alternatively, certain local officials have defied and

evaded court orders or have simply closed their registration offices to freeze the voting rolls.[2]

Testimony during the recent hearings cited specific examples of how the pre-1965 litigative approach was unsuccessful in eliminating the myriad methods devised to keep minorities from participating in the electoral process.[3] One witness described litigation which went on for 30 years to abolish the white primary, which was used in Texas and elsewhere. The issue was whether blacks could be excluded from participating in the Democratic Party primaries, where the Democratic nomination for office was tantamount to election. During that 30 year period, the issue went to the U.S. Supreme Court four times because after each decision, the state would enact legislative or administrative hurdles to frustrate further the decision of the Court. "The new technique had to be re-litigated until the Court concluded in *Terry* v. *Adams* (345 U.S. 461), as it had in *Lane* v. *Wilson* (307 U.S. 268), 'that the 15th Amendment was intended to nullify sophisticated as well as simple-minded modes of discrimination.' "[4]

Cognizant of this historical failure to guarantee the rights set forth in the fifteenth amendment, Congress set out, in 1965, to devise legislation which would accomplish a twofold goal. First, based on case law history and testimony presented to it, Congress realized that there were specific practices and procedures which had historically been used, as part of a pattern and practice of abuses, to prevent blacks from participating in the electoral process. To address this problem, Congress suspended the use of literacy tests and other devices in any State or political subdivision where such test or device was in effect on November 1, 1964 *and* where less than 50 percent of voting age persons were registered for or voted in the November 1964 presidential election. The rationale for this formula or "trigger" was that low voter registration and participation resulted from the use of such tests or devices.

Second, to assure that old devices for disfranchisement would not simply be replaced by new ones, to the administrative preclearance remedy of Section 5 of the Act was devised. Through this remedy the Congress intended to provide an expeditious and effective review which would assure that practices or procedures other than those directly addressed in the legislation—that is, literacy tests and other devices, and the poll tax—would not be used to thwart the will of the Congress finally to secure the franchise for blacks.

The jurisdictions which met the trigger set forth in Section 4(b) of the 1965 Act were: the states of Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, and Virginia; forty counties in North Carolina; four counties in Arizona; Honolulu County, Hawaii; and Elmore County, Idaho.[5] These jurisdictions were required to meet

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[2] *South Carolina* v. *Katzenbach*, *supra*, at p. .
[3] See Hearings, May 27, 1981, Herbert O. Reid, Sr. and Jack Greenberg.
[4] Id.
[5] Of these covered jurisdictions, the following successfully sued to exempt themselves or ballout from the Act's special coverage: Alaska [*Alaska* v. *United States*, Civil No. 101–66 (D.D.C. August 17, 1966)]; Wake County, North Carolina [*Wake County* v. *United States*, Civil No. 1198–66 (D.D.C. January 23, 1967)]; Elmore County, Idaho [*Elmore County* v. *United States*, Civil No. 320–66 (D.D.C. September 23, 1966)]; and Apache, Navajo and Coconino Counties, Arizona [*Apache County* v. *United States*, 256 F. Supp. 903 (D.D.C. 1966)]. It is important to note that the Voting Rights Act does in fact provide for such ballout or exemption on the part of a covered jurisdiction.

the obligations of Section 5 for five years, that is, to submit or "preclear" any election-related practice or procedure which its sought to enact or administer, if it was different from that which was in force or effect on November 1, 1964. Submissions could be precleared either by the Attorney General of the United States or by the U.S. District Court for the District of Columbia.

In addition to the Section 5 preclearance provision, the 1965 Act also authorized the Attorney General of the United States to send federal examiners to jurisdictions which met the Section 4 trigger for purposes of listing eligible persons on the voting rolls, and to send federal observers to oversee voting day activities.[6]

Equally important, Congress strengthened existing remedies in voting discrimination cases for areas of the country other than those which were triggered into the special provisions of the Act. The Act broadly proscribed voting practices or procedures which deny or abridge the right to vote because of race or color; federal courts were authorized to order preclearance anywhere in the country if they found voting abuses justifying equitable relief; authorization was also provided so that federal examiners and observers could be assigned anywhere in the country, if the courts deemed it necessary.[7]

1970 amendments

In 1969, Congress undertook to review the progress made under the 1965 Voting Rights Act, since covered jurisdiction would otherwise be eligible to bailout from coverage of the special provisions of the Act in 1970. While encouraged by the progress in registration and voting which had occurred since the passage of the Act, Congress also recognized that racial discrimination in voting continued to exist and that the Section 5 preclearance provision had only been minimally enforced.

In August 1970, Congress passed the Voting Rights Act Amendments of 1970 (Public Law 91–285) which extended coverage of Section 5, and the other special provisions of the Act, for an additional five years for the jurisdictions whose coverage was triggered by the 1965 Act. Congress also brought under the Act's special coverage, states and political subdivisions which maintained a test or device on November 1, 1968 and which had less than a 50 percent turnout or registration rate for the November 1968 presidential election. Lastly, it established a five year nationwide ban on the use of literacy tests or other devices. The newly covered jurisdictions also became subject to the special provisions, or remedies, of the Act. Jurisdictions so affected included: 3 counties (Bronx, Kings and New York counties) in New York; one county in Wyoming; 2 counties (Monterey and Yuba counties) in California; eight counties in Arizona; four Election Districts in Alaska; and towns in Connecticut, New Hampshire, Maine, and Massachusetts.[8]

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[6] See Sections 2, 3(c), 3(a), respectively.

[7] These provisions (i.e., the Section 4 trigger mechanism, Section 5 preclearance and Sections 6 and 8, authorizing the use of federal examiners and observers) are commonly referred to as the special provisions or remedies of the Act.

[8] The State of Alaska; Elmore County, Idaho, and Apache, Coconino, and Navajo Counties in Arizona had been covered in 1965 and subsequently, released from the Act's coverage. The 1970 amendments resulted in these areas being re-covered. However, with respect to the State of Alaska only certain election districts were re-covered and not the entire state. The election districts in Alaska were subsequently exempted in 1972 [*Alaska* v. *United States*, Civil No. 2122–71 (D.D.C. July 2, 1972)]. The three New York counties were exempted in April 1972, but the exemption was rescinded and the three counties recovered two years later [*New York* v. *United States*, Civil No. 2419–71 (D.D.C.) (orders of April 13, 1972, January 10, 1974 and April 30, 1974), aff'd 95 S. Ct. 166 (1974 (per curiam)].

1975 extension

Since jurisdictions which were originally brought under the special coverage provisions of the Voting Rights Act woud become eligible to bail out from under such coverage on August 6, 1975, the Congress, early that year, reviewed the progress which had occurred under the Act. Again Congress noted the increase in voter participation among blacks. Nevertheless Congress found that there continued to be a significant disparity between the percentage of black and white registered voters. Moreover, Congress learned that to date Section 5 had only had a limited impact. First, it was not until 1969 and 1971 that the U.S. Supreme Court rendered its first decisions interpreting the scope of Section 5. (*Allen* v. *State Board of Elections*, 393 U.S. 544); and (*Perkins* v. *Matthews*, 400 U.S. 379). Second, the Department of Justice did not issue Section 5 regulations giving guidance to covered jurisdictions as to their obligations under that provision, until September 10, 1971. Lastly, it was believed preclearance would prove most valuable in assuring that the 1980 reapportionments in the covered jurisdictions would not result in racial gerrymandering.

In August of 1975, Congress extended the Voting Rights Act of 1965 for 7 years, so that jurisdictions originally subject to the special provisions of the Act remained covered until August 6, 1982. Congress also made permanent the nationwide ban on literacy tests and other devices, which it had imposed on a temporary basis in 1970.

In addition, based on an extensive record, filled with examples of the barriers to registration and effective voting encountered by language minority citizens in the electoral process, Congress expanded the coverage of the Act to protect such citizens from effective disfranchisement. It found that voting discrimination against language minority citizens:

> is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conducted elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the Fourteenth and Fifteenth Amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.[9]

While cognizant of the breadth of voting discrimination existing against such citizens, Congress also recognized that the severity of the problems differed across the country. Consequently, in expanding the Act, two distinct triggers were developed to assure that areas with different barriers to the full participation of language minorities in the electoral process would not be subject to the same remedies.

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[9] 43 U.S.C. 1973 a.

To proscribe discrimination which, in many cases, was as egregous as that outlined in 1965,[10] Congress amended the definition of "test or device" to include the use of English-only election materials in jurisdictions where a single language minority group comprised more than 5 percent of the voting age population. It then extended coverage of the Act to those jurisdictions which had used a test or device as of November 1, 1972 and had registration or voter turnout rates less than 50 percent. Jurisdictions meeting this trigger and thus subject to the special provisions of the Act, including preclearance, were the States of Alaska, Arizona, and Texas; 2 counties in California; 1 county in Colorado; 5 counties in Florida; 2 townships in Michigan; 1 county in North Carolina; and 3 counties in South Dakota.

Where discrimination in voting against language minority citizens was less severe, although still disturbing, Congress required that language assistance be provided throughout the electoral process where members of a single language minority comprise more than 5 percent of the voting age population *and* the illiteracy rate of such persons as a group is higher than the national illiteracy rate. Jurisdictions covered under this second trigger were: all 143 counties in Texas were individually covered under this trigger; all 32 counties in New Mexico; all 14 counties in Arizona; 39 counties in California; 34 in Colorado; and 25 in Oklahoma.

PROGRESS UNDER THE ACT

The Committee recognizes that there has been much progress in increasing registration and voting rates for minorities since the passage of the Voting Rights Act of 1965; its sometimes dramatic successes demonstrates most clearly that it has been the most effective tool for protecting voting rights.

Prior to 1965, the precentage of black registered voters in the now covered states was 29 percent; registration for whites stood at 73 percent.

Today, in many of the states covered by the Act, more than half the eligible black citizens of voting age are registered, and in some states the number is even higher. Likewise, in Texas, registration among Hispanics has increased by two-thirds.

In much the same manner that progress can be seen in increased registration rates for minorities covered under the Act, improvements in the election of minority elected officials have also occurred.[11]

In July 1980, a total of 2,042 blacks held elective office in Southern States covered by the Act, compared with 964 six years ago. And in Texas and other southwestern areas first covered in 1975, Hispanics and blacks have been elected to office in many cities and counties for the first time. In Texas, particularly, there has been a 30 percent increase in the number of Hispanics elected officials between 1976 and 1980.

Yet these gains are fragile. The registration figures for minorities remain substantially lower than those for white voters.

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[10] See 1975 Hearing Record.

[11] 1981 Report of U.S. Commission on Civil Rights. *Supra.* See also Rolando Rios, "The Voting Rights Act: Its Effect in Texas," April 1981, p. 2, submitted by William Velasquez, Executive Director, Southwest Voter Registration Education Project (May 6th Hearing).

The evidence is similar for the jurisdictions covered in 1975. Example, in two covered South Dakota counties, 77.3 percent of whites were registered but only 52.7 percent of American Indians were registered. In Arizona, registration rate for whites was 71.5 percent but 48 percent for American Indians and 60.9 percent for Hispanics. Lastly, in New York's three covered counties, 69.8 percent of whites were registered as compared to a rate for Hispanics of 51.4 percent.[12]

The number of minority elected officials is still a fraction of the total number of elected officials; there are many jurisdictions with large minority populations which have no minority elected officials and which have never had any.[13] As Table 1, below, shows, only 5 percent of elected officials in the southern covered states are black, in an area where 26 percent of the population is black.[14]

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[12] 1981 Report of the U.S. Commission on Civil Rights, *Supra*.

[13] See generally, Rolando Rios, "The Voting Rights Act: Its Effect in Texas," supra; Testimony of Joaquin Avila, General Counsel, Mexican American Legal Defense and Education Fund (MALDEF).

[14] See Hearings, June 17, 1981, Eddie Williams, President of the Joint Center for Political Studies.

Table 1

Number and Percent of Black Elected Officials

In States Originally Covered by the Voting Rights Act, 1968 and 1980*

State	Percent Black Population	Number of Elective Offices 1968	Number of Black Elected Officials 1968	Percent of Elective Offices Held by Blacks 1968	Number of Elective Offices 1980	Number of Black Elected Officials 1980	Percent of Elective Offices Held by Blacks 1980
Alabama	24.5	4,060	24	.59	4,151	238	5.73
Georgia	26.2	7,226	21	.29	6,660	249	3.74
Louisiana	29.6	4,761	37	.78	4,710	363	7.71
Mississippi	35.1	4,761	29	.61	5,271	387	7.34
North Carolina	21.5	5,504	10	.18	5,295	247	4.66
South Carolina	31.0	3,078	11	.36	3,225	238	7.38
Virginia	18.7	3,587	24	.67	3,041	91	2.99
TOTAL	25.83	32,977	156	.47	32,353	1,813	5.60

* Source: National Roster of Black Elected Officials--1980. Joint Center for Political Studies, Washington, D.C.

Even where minorities have been elected, figures can be deceptive. Most of these elected officials are concentrated in local positions. Notwithstanding the highly publicized election of black mayors in large cities, Table 2 clearly indicates that the overwhelming number of black mayors are chief executives of towns which are all black or nearly so. For example, blacks hold 70 mayoral positions in these covered states; of these, 35 are in towns with a population of under 1,000 and which is 80 percent black.[15]

Table 2

Population Distribution of Cities with Black Mayors
Within States Totally Covered by the Voting Rights Act

State	# of Cities With Black Mayors	TOTAL POPULATION Number of Cities With A Total Population Of:			% BLACK POPULATION Number of Cities With A Black Population Of:		
		Under 1000	1000-3000	Over 3000	Under 60%	60-79%	80% or More
AL	15	8	2	5	1	6	8
GA	6	3	1	2	2	4	0
LA	11	4	3	4	3	3	5
MS	17	10	6	1	0	7	10
SC	13	11	0	2	3	2	8
TX	5	3	0	2	0	0	5
VA	3	0	0	3	3	0	0
TOTAL	70	39	12	19	12	22	36
		(55.7)	(17.1)	(27.1)	(17.1)	(31.4)	(51.4)

Source: National Roster of Black Elected Officials, 1980. JCPS, Vol. 10.
U.S. Census Bureau, Corrections to Advance Reports PHC80-V, 1980.

[15] Testimony of Eddie Williams, *Supra.*

As is evident from this review of the progress which has taken place under the Act, particularly since the 1975 extension, there is much to be hopeful about. At the same time, discrimination continues today to affect the ability of minorities to participate effectively within the political process.

The Committee notes

> that electoral gains by minorities since 1965 have not taken on such a permanence as to render them immune to attempts by opponents of equality to diminish their political influence.[16]
>
> (I)t is too early to conclude that the effects of decades of discrimination against blacks and other minorities have been eradicated and that they are now in a position to compete in the political arena against non-minorities on an equal basis without the assistance of the Voting Rights Act.[17]

COMPLIANCE WITH THE ACT

Section 5 review is designed to deter discriminatory voting changes and ferret out measures which could undercut minority voter participation and dilute minority voting strength. Approximately 900 jurisdictions in 23 fully or partially covered states are required to submit voting changes.

Thirty-five thousand voting changes have been submitted to the Attorney General for preclearance under Section 5 since 1965. The overwhelming majority, 30,000, were submitted between 1975 and 1980. Objections have been interposed to roughly 800 changes over the life of the Act; more than 500 have been interposed since 1975. Almost all of the states have had as many objections interposed within the last five years as had been filed against them in the preceding ten years. These changes touch upon every aspect of the electoral process, as shown by the chart below.

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[16] See Hearings, July 13, 1981, Drew Days, III, former U.S. Assistant Attorney General, Department of Justice).

[17] Id.

NUMBER OF CHANGES TO WHICH OBJECTIONS HAVE BEEN INTERPOSED BY THE DEPARTMENT OF JUSTICE BY TYPE AND YEAR FROM 1965 - FEBRUARY 28, 1981

TYPE OF CHANGE	1965 to 1969	1970 to 1974	1975	1976	1977	1978	1979	1980	1981	TOTAL
REDISTRICTING	--	55	11	11	3	12	2	9	--	103
ANNEXATION	--	9	86	68	55	1	15	9	1	243
POLLING PLACE	--	12	3	--	2	7	2	4	--	30
PRECINCT	--	5	--	--	--	--	--	2	--	7
REREGISTRATION OR VOTER PURGE	--	1	1	--	1	--	--	--	--	3
INCORPORATION	--	1	--	--	--	1	--	3	--	5
BILINGUAL PROCEDURES			--	3	2	--	--	1	--	6
METHOD OF ELECTION	4	145	31	61	38	24	17	14	3	334
FORM OF GOVERNMENT	--	4	1	1	1	1	2	--	--	10
CONSOLIDATION OR DIVISION OF POLITICAL UNITS	1	1	1	2	--	1	1	--	--	7
SPECIAL ELECTION	--	1	--	1	1	--	1	3	--	7
VOTING METHODS	--	--	--	--	--	--	1	1	--	2
CANDIDATE QUALIFICATION	2	5	2	1	--	--	--	1	--	11
VOTER REGISTRATION PROCEDURE	1	4	1	--	1	--	--	2	--	9
MISCELLANEOUS	14	8	1	3	--	2	4	2	--	34
TOTALS	22	251	138	151	104	49	45	51	4	811

SOURCE: U.S. Department of Justice, Civil Rights Division, Voting Section, February, 1981.

This is hardly a complete picture since not all election changes which have a discriminatory effect have been submitted to the Attorney General or to the D.C. District Court for review, as required by Section 5. A number of covered jurisdictions continue to defy the Act by either failing to submit changes or boldly implementing others to which objections have been interposed by the Attorney General.

Although the Department lacks an independent mechanism to monitor voting changes, the Attorney General has attempted to use several methods to identify unsubmitted changes including the existing preclearance process, unsolicited notification of changes from aggrieved persons, and review of voting rights litigation by private parties. Upon receipt of any information that the jurisdiction has made a voting-connected change within the meaning of Section 5, the Department sends a "please submit" letter to the jurisdiction indicating the changes are legally unenforceable unless precleared. In 1980, the Department sent 124 such letters.[18]

Many covered jurisdictions made changes shortly after passage of the 1965 Act, a number of which went unreviewed until recently.[19] In Georgia, enforcement suits filed between 1976 and 1980 against Dooly, Miller, Calhoun, Clay, Early and Morgan counties required those jurisdictions to implement less discriminatory district elections rather than the at-large elections instituted in 1965 without preclearance.[20] A 1981 court order required Clio, Alabama to preclear annexations made in 1967 and 1976. The two ignored the Attorney General's 1976 please submit request and continued to hold illegal municipal elections as recently as 1980.[21] Responding to a 1975 please submit request from the Attorney General, officials of Indianola, Mississippi acknowledged having made annexations without preclearance in 1966 and 1967 but failed to identify a 1965 annexation which doubled the white population and significantly diluted black voting strength for the next 16 years. Litigation brought in 1980 finally enforced Section 5.[22]

In Texas, minorities have used the Act to insure Section 5 enforcement. After two Section 5 enforcement suits and two letters of objection, Medina County—with a Chicano population of 43.4 percent in 1980—finally acquiesced to a non-discriminatory redistricting plan which enabled Chicanos to participate meaningfully in the political process.

Other jurisdictions continue to ignore objections interposed by the Attorney General. Sumter County, Georgia refuses to honor a 1973 objection to an at-large method of electing the school Board. And a 1976 objection to the Edgefield County, South Carolina at-large election law goes unheeded.[23]

Continued Voting Rights Discrimination

The Voting Rights Act was designed in 1965 to provide a speedy review mechanism to correct existing Fifteenth Amendment violations and to prevent future voting discrimination. Extensive testimony was

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[18] "The Voting Rights Act: Unfulfilled Goals", a Report of the U.S. Commission on Civil Rights, September 1981, p. 194.
[19] Hearings, July 13, 1981, Drew S. Days, III.
[20] Hearings, June 3, 1981, Laughlin McDonald.
[21] Id., Abigail Turner.
[22] Hearings, June 12, 1981, Charles Victor McTeer.
[23] Hearings, May 13, 1981, Jessie Jackson.

presented detailing the variety of methods used by inventive registrars and other state officials to keep racial minorities off the voting rolls and out of the voting booths.

As to those pockets of voting discrimination outside the covered jurisdictions the Act strengthened the remedies available through voting rights litigation. As the court noted in *South Carolina* v. *Katzenbach*, "(l)egistlation need not deal with all phases of a problem in the same way, so long as the distinction drawn have some basis in practical experience.[24]

Despite the gains in increased minority registration and voting and in the number of minority elected officials, the Committee has observed, during each consideration of the extension of the Act, continued manipulation of registration procedures and the electoral process which effectively exclude minority participation from all stages of the political process.

The observable consequence of exclusion from government to the minority communities in the covered jurisdictions has been (1) fewer services from government agencies, (2) failure to secure a share of local government employment, (3) disproportionate allocation of funds, location and type of capital projects, (4) lack of equal access to health and safety related services, as well as sports and recreational facilities, (5) less than equal benefit from the use of funds for cultural facilities, and (6) location of undesirable facilities, e.g., garbage dumps, or dog pounds, in minority areas.[25]

A study conducted by the U.S. Commission on Civil Rights on the enforcement of the Act since 1975, further buttresses the Committee's findings that voting violations are still occurring with shocking frequency.[26] For the purposes of this report, only some violations will be high-lighted.

DISCRIMINATION IN REGISTRATION AND VOTING

Hearings on H.R. 3112 indicate that there are numerous practices and procedures which act as continued barriers to registration and voting.

These practices include: inconvenient location and hours of registration, dual registration for county and city elections, refusal to appoint minority registration and election officials, intimidation and harassment, frequent and unnecessary purgings and burdensome reregistration requirements, and failure to provide or abusive manipulation of assistance to illiterates.

The U.S. Commission on Civil Rights reports that questioning by registration officials, especially if the official's attitude was "nasty" could easily deter some blacks from registering, because "they are scared of whites asking them questions. They (especially some of the older population) still remember the way things used to be to register and having to go through a lot of questions reminds them of those times." [27]

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[24] *South Carolina* v. *Katzenbach*, supra, at 338.
[25] Hearings, June 3, 1981, Dr. Brian Sherman; U.S. Commission on Civil Rights, State Advisory Committee Report, *Laurel and Laurel: A City Divided* (1981).
[26] U.S. Commission on Civil Rights "The Voting Rights Act: Unfulfilled Goals: September, 1981.
[27] U.S. Commission on Civil Rights, supra, at 55.

Intimidation of voters was also reported in Wrightsville, Georgia (Johnson County). A well-known black community leader who assisted black voters reported an incident in which blacks were accused by the election official of "blocking the entrance to the courthouse," which is the polling place. When he explained that he and the other blacks were standing an acceptable distance from the polling place, the election official called the state troopers to get them to leave. The respondent continued standing in front of the courthouse, and the election official called the sheriff and state troopers again. The respondent said that Federal Observers from the Department of Justice who were monitoring the activities told the official that he was not breaking the law. "Later, some white men in a truck stopped in front of the polling place. Guns were visible in the truck." [28] They began heckling black people at the polls. The blacks left the scene (some of them potential voters) while whites were not harassed by the official or the white men. An incident such as the one in Wrightsville discourages minorities from voting.

Evidence of intimidation and harassment was also found in Phoenix, Alabama, where Arthur Sumbry was convicted and sentenced to four years for unauthorized voter registration. Mr. Sumbray was assisting his pregnant wife, a deputy registrar.[29] Similar evidence exists in Pickens County, which has a black population of 42 percent. Sixty-seven percent of the eligible whites are registered; the county refuses to appoint deputy registrars; voting registrars have called the sheriff when groups of blacks have come to register, the sheriff has remained throughout their registration.[30]

New elections were ordered in Clio, Alabama in a suit brought in March, 1981, to enforce Section 5. A black candidate who had lost in the 1980 council election by five votes and was a candidate in the new council election believed she faced serious economic problems because of her candidacy. A loan secured by a second mortgage on her home from the only bank in the town was ordered to be made current two weeks before the town council election. The president of the bank called her with the notice; he has also been the Mayor of Clio for the past 25 years. After she filed an election contest in State court, the Mayor came to her house about the note.[31]

In 1975 the State of Texas, pursuant to Section 5, submitted a bill to the Attorney General requiring purging and re-registration. The bill required a purge of all currently registered voters and terminated the registration of those who failed to re-register by March 1, 1976.

The Attorney General objected to the change. He found that the purge had a potentially discriminatory effect:

> With regard to cognizable minority groups in Texas, namely, black and Mexican-Americans, a study of their historical voting problems and a review of statistical data, including that relating to literacy, disclose that a total voter registration purge under existing circumstances may have a discriminatory effect on their voting rights . . . Moreover,

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[28] U.S. Commission on Civil Rights, supra, p. 75.
[29] Hearings, June 1981, John Nettles.
[30] Id., Abigail Turner.
[31] Id.

> representations have been made to this office that a requirement that everyone register anew, on the heels of registration difficulties experienced in the past, could cause significant frustration and result in creating voter apathy among minority citizens . . .

Given these circumstances, the Attorney General stressed that:

> We are unable to conclude . . . that implementation of such a purge in Texas will not have the effect of discriminating on account of race or color and language minority status.[32]

The Civil Rights Commission noted that frequently discriminatory practices and procedures are implemented when black political participation is perceived as threatening to the status quo.[33] Witnesses from Alabama reported that it is no accident that five of the seven counties designated for re-registration in 1981 are in the "black belt." These re-registration bills are passed by the legislature as local legislation under "Gentlemen's Agreements." The State Representative of Perry County, in the black belt, won his last election by 82 votes. The sponsor of the Wilcox and Lowndes Counties' bill exempted the predominantly white counties in his district from compliance with the registration bill.

Another Alabama witness contrasted re-identification bills, where the burden was on elections officials, e.g. Jefferson County, and where the burden was on the voter, e.g., Choctaw County. In Jefferson County, which has a black representative in the legislature, the overall registration for blacks and whites increased by 10 percent following the 1979 voter re-identification. In Choctaw County, white registration declined by 22 percent and black registration by 47 percent following the 1978 voter re-registration.

The proposed Sumter County re-registration bill is similar to Choctaw's. Forty-five percent of this rural county's (50 miles long and 30 miles wide) population is below the poverty level; sixty-nine percent of the population is black; the illiteracy rate is high. The bill requires notice of the re-registration in the local newspaper, the hours are limited to 9 to 4 and re-registration can only occur in the precinct or beat where the voter resides.[34]

An extensive purge of Wilcox County voter rolls was conducted in 1980. This county has been designated for re-identification in 1981. Wilcox is in the black belt.

In Humboldt County, Nevada, registrars refused to register Indians for failing to properly fill out registration cards; non-Indians were not subjected to the same scrutiny.[35]

Witnesses described dual registration requirements in Mississippi [36] and Georgia [37] and dual re-identification requirements for voters in some areas of Virginia.[38] Most often registration sites are some distance apart.

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[32] U.S. Commission on Civil Rights, supra, p. 65.
[33] Hearings, June 16, 1981, Raymond Brown.
[34] Hearings, June 3, 1981, Eddie Hardaway, John Nettles, and Abigail Turner.
[35] *U.S. v. Humboldt County, Nevada*, Civil Action No. R 70–0144 HEC (D. Nev. 1979).
[36] Hearings, May 28, 1981, Rims Barber.
[37] Hearings, June 3, 1981, Laughlin McDonald.
[38] Ibid., May 20, 1981, Michael Brown.

Witnesses from Alabama and Georgia described the failure of elections officials to appoint additional registrars. In 1980, Dekalb County, Georgia officials adopted a policy to stop requests by community groups to conduct voter registration drives. Eighty-one percent of the eligible whites in the county were registered by only 24 percent of the eligible black voters. The League of Women Voters brought a Section 5 enforcement suit. The district court ruled the policy was a change within the meaning of Section 5. An objection was interposed by the Attorney General.

A 1980 appeal from the Governor of Alabama to all boards of registrars urging appointment of deputy registrars and expanded registration hours has reportedly generated little positive response.[39]

In 1981 a bill was introduced in the Alabama Senate to appoint city clerks as voting registrars at the request of the municipal governing body, thereby expanding registration opportunities. An amendment was offered by the representative from Wilcox and Lowndes Counties to exempt ten counties in the black belt from this expanded voting procedure.

Existing and changed locations of polling places can have a negative effect on minority voter turnout. For example, in Hopewell, Virginia, blacks are concerned about voting at the Veterans of Foreign Wars (VFW) Hall located in the white community. According to the president of the Virginia chapter of the Southern Christian Leadership Conference, there are no voting places in the black community. The present location is "like having the polls at a country club." Accordingly, "if one precinct was in the black community, then black people might become more accustomed to voting." [40]

In October 1979, the Board of Commissioners submitted a polling place change in the city of Taylor in Williamson County, Texas, to the Attorney General. According to the Department of Justice, the polling place would be moved from the "centrally located" City Hall to the National Guard Armory which is located "approximately ten to twelve blocks north of City Hall in a predominantly white area." The Department concluded that the new polling place would be "a significant inconvenience to the city's minority voters who may appear to be concentrated in the southern and southwestern portions of the city . . . [and] may have . . . the effect of deterring participation by some minority voters in elections . . ." The Attorney General was unable to conclude that the polling place change would not have the effect of discriminating against minorities.[41]

DISCRIMINATION IN THE ELECTORAL PROCESS

The Congress and the courts have long recognized that protection of the franchise extends beyond mere prohibition of official actions designed to keep voters away from the polls, it also includes prohibition of state actions which so manipulate the elections process as to render voters meaningless.

"The right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot." [42] Certain kinds

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[39] Hearings, June 3, 1981, Abigail Turner.
[40] U.S. Commission on Civil Rights, supra, p. 75.
[41] Id., at p. 77.
[42] *Allen* v. *State Board of Elections*, 393 U.S. 544, 569 (1969), *Reynolds* v. *Sims*, 377 U.S. 533, 555 (1964).

of practices or changes, can nullify minorities' ability to elect the candidate of their choice just as would prohibiting some of them from voting.[43]

There are a number of practices and procedures in the electoral process which individually or in combination result in inhibiting or diluting minority political participation and voting strength. Since the passage of the Act in 1965, reports presented by the U.S. Commission on Civil Rights [44] studies conducted by social and political scientists,[45] and Congressional hearings [46] have all identified discriminatory elements of the elections process such as at-large elections, high fees and bonding requirements, shifts from elective to appointive office, majority vote run-off requirements, numbered posts, staggered terms, full slate voting requirements, residency requirements, annexations/retrocessions, incorporations, and malapportionment and racial gerry-

Although these elections practices or devices are used throughout the country, in the covered jurisdictions, where there is severe racially polarized voting, they often dilute emerging minority political strength. In fact many of these devices were used to limit political participation of newly enfranchised blacks more than a century ago. Thus, effectively barring minorities from electing the candidate of their choice.

The Committee heard numerous examples of how at-large elections are one of the most effective methods of diluting minority strength in the covered jurisdictions. Frequently, this method of election is combined with devices such as anti-single shot voting, majority vote, numbered posts, residency restrictions and staggered terms. In Clark County, Alabama, the County Commission (4 Commissioners, 1 probate judge) was elected for 4-year terms from single-member districts. A majority vote was required for nomination in the Democratic primary. Blacks constituted 44 percent of the county population (1970 Census) yet no black had ever been elected to the county Commission. In 1971 the county shifted to an at-large system of elections; the county's Section 5 submission was not completed until 1978. The county claimed the shift to the at-large scheme was necessary to comply with the one-person-one-vote requirement. It offered no explanation of why this could not be done by redistricting the pre-existing single-member district system. The Department of Justice objected to the change.

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[43] *Allen* v. *State Board of Elections*, supra.

[44] U.S. Commission on Civil Rights: *Political Participation* (1968); *The Voting Rights Act: Ten Years After* (1975); *The Voting Rights Act: Unfulfilled Goals* (1981).

[45] E.g., C. Davidson and G. Korbel, *At-Large Elections and Minority-Group Representation: A Re-Examination of Historical and Contemporary Evidence*, Journal of Politics (Nov. 1981) (forthcoming); R. Engstrom and M. McDonald, The Election of Blacks to City Councils: *Clarifying the Impact of Electoral Arrangements on the Seats/Population Relationship*, American Political Science Review (June 1981); D. Taebel, *Minority Representation on City Councils*, 59 Social Science Quarterly 143–52 (June 1978); T. Robinson and T. Dye, *Reformism and Black Representation on City Councils*, 59 Social Science Quarterly 133–41 (June 1978); A. Karnig, *Black Representation on City Councils*, 12 Urban Affairs Quarterly 223–43 (Dec. 1976); C. Jones, *The Impact of Local Election Systems on Black Political Representation*, 11 Urban Affairs Quarterly 345–56 (March 1976).

[46] U.S., Congress, House, Subcommittee No. 5 of the Committee on the Judiciary, *Voting Rights: Hearings on H.R. 6400*, 89th Cong., 1st sess., 1965, pp. 123–311; U.S. Congress, Senate Subcommittee on Constitutional Rights of the Committee on the Judiciary, *Amendments to the Voting Rights Act of 1965: Hearings on S. 818, S. 2456, S. 2507, and Title IV of S. 2029*, 91st Cong., 1st and 2nd sess., 1969 and 1970, pp. 28–87, 396–431, 661–62; U.S. Congress, House, Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, *Extension of the Voting Rights Act: Hearing on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501*, 94th Cong., 1st sess., 1975, pp. 17–60; U.S. Congress, Senate, Subcommittee on Constitutional Rights of the Committee of the Judiciary, *Extension of the Voting Rights Act of 1965: Hearings on S. 407, S. 903, S. 1297, S. 1409, and S. 1443.*

Counties in Nebraska and New Mexico were successfully sued for attempting to dilute the Indian vote by instituting at-large election voting schemes.[47]

Since 1975, the Department of Justice has issued approximately 85 letters of objection disapproving election changes in the State of Texas. The proposed changes found to be discriminatory included: redistricting; majority vote requirements; numbered posts; polling place changes and annexations. In the City of Victoria, Texas, population over 50,000, Chicanos started to mobilize their political strength by increasing voter turnout. Victoria has an at-large, numbered post, system with a majority rule requirement. Realizing that Chicanos were gaining in strength, the city annexed numerous areas that were 85 percent Anglo. When the city tried to preclear the annexations, the Attorney General issued a letter of objection. This forced the city to adopt a mixed plan. For the first time ever, there is now a Chicano on the city council. Minorities there believe that without the Voting Rights Act, such representation would have been delayed indefinitely.

It is not uncommon for jurisdictions to resubmit, without revision, changes to which objections had previously been interposed. The town council in Bishopville, South Carolina had been elected at-large with non-staggered terms and a plurality vote requirement. Blacks constituted 49 percent of the population but prior to May 1975, no blacks had been elected to the council. The town proposed a majority vote requirement and staggered terms. Justice objected noting its objection to a proposal for staggered terms made the previous year.

In 1968, the town of Hayneville, Alabama incorporated so that 85 percent of its electorate was white, in a county which in 1970 was 77 percent black. The boundaries of the town were in the shape of a cross, at the corners of the cross were surrounding black populations which were excluded from the incorporated township. The annexation was not submitted until 1978. The Attorney General objected to the incorporation and advised Hayneville it could comply with the Act by expanding its boundaries to include the contiguous black neighborhoods whose residents desired to be in the town. The new boundaries, incorporating the additional areas, were enacted by the legislature in 1980.

Racial gerrymandering and malapportionment have resulted in districts of various shapes and sizes. In the 1880's the racially gerrymandered 7th Congressional District of South Carolina which was one of the black districts in the State and included Charleston was described in the New York Times as having the shape of a "boa constrictor." District IV of the 1978 Warren County, Mississippi redistricting plan was described as having a configuration resembling Tyrannosaurus Rex.[48]

One Wisconsin town attempted to gerrymander Indians out of their voting district (in the tradition of *Gomillion* v. *Lightfoot*) in an active attempt to keep them from voting.[49]

Some districts are grossly malapportioned. Seminole County, Georgia had elected its Commission from the same voting district since

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[47] *U.S.* v. *Board of Supervisors of Thurston County, Nebraska.*, Civil Action No. 79–0–380 (D. Neb. 1979); *U.S.* v. *San Juan County*, Civil Action No. 79–507 JB (D.N.M. 1979).
[48] Hearings, May 28th, Frank Parker.
[49] *U.S.* v. *Bartleme, Wisconsin*, Civil Action No. 78–C–101 (E. 1) Wisconsin, 1978.

1933—one of the districts, Donaldsonville, which is 40 percent of the county population and has the largest concentration of blacks, had over 2,200 voters; Rock Pond had a voting district with 160 registered voters. A suit was filed in 1980, claiming violations of the constitution. Under a consent decree the county was reapportioned into 5 new voting districts from which a black was elected from majority black Donaldsonville.

Benign explanations may be offered for why these methods have been selected, but the results have been telling: minorities remain severely underrepresented in county or state-wide positions.[49a]

Section 5 is an integral complement to Federal court litigation in a number of jurisdictions. Nowhere is this more clear than Tarrant County, Fort Worth. After multi-member state legislative districts had been declared unconstitutional in the *White* v. *Regester* decision (1973), a three-judge federal panel declared that multi-member state legislative districts were constitutionally permissible in Tarrant County and seven other populous Texas counties. In 1975, under court order to adopt single member districts, the state legislature passed House Bill 1097, which was objected to in Tarrant and Nueces-Corpus Christi Counties on the grounds that the districts were racially gerrymandered.

FEDERAL EXAMINERS AND OBSERVERS

The Attorney General, as part of the Justice Department's efforts to guarantee the right to vote under the fourteenth and fifteenth Amendments and the Voting Rights Act, has the power to send Federal examiners and observers to jurisdictions covered by the Act, and to any State or political subdivision where a court, at the urging of the Attorney General or an aggrieved person, finds that such officers are appropriate. In the former case, the appointment is not automatic. Section 6 sets standards which the Attorney General must follow in determining into which covered jurisdictions the examiners will be assigned. In the latter case, under Section 3(a) of the Act, a Federal court, in an interlocutory order or in a final judgment, is the arbiter of the need for such appointments.[50] In any case, examiners prepare lists of voters whom State officials are required to register.

Under Section 8 of the Act, whenever Federal examiners are serving in a particular area, the Attorney General may request that the Office of Personnel Management assign one or more persons to observe the conduct of an election. These Federal observers monitor the casting and counting of ballots.

During the earlier stages of the Voting Rights Act's life the use of examiners and observers was more prominent than is the case today. In the last decade, for instance, such officers were responsible for increasing minority registration by up to 27 percent in some areas.[51] In recent years, the Attorney General has assigned over 3,000 observers to monitor suspect elections.[52] In making such assignments, the At-

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[49a] Hearings, June 3rd. Abigail Turner Ibid., June 16th Raymond Brown.

[50] As is true elsewhere in the Act, incidents that would normally require appointment of examiners need not require that result if such incidents were unique and unlikely to reoccur. See Section 3(a).

[51] See House Hearings, 1975, p. 171–172.

[52] See House Hearings, 1981, Drew Days' testimony, p. 9–10.

torney General has developed administrative criteria which must be considered beforehand:

(1) The extent to which those who will run an election are prepared so that there are sufficient voting hours and facilities, procedural rules for voting are adequately publicized, and nondiscriminatorily selected polling officials are instructed in election procedures;

(2) The confidence of the minority community in the electoral process and the individuals conducting the election, including the use of minorities as poll officials;

(3) The possibility of forces outside the official election machinery (such as racial violence, threats of violence, or a history of discrimination in other areas) interfering with the election.[53]

There is no evidence to suggest that this method of Federal intervention in election procedure has been anything but restrained, and used sparingly in only the most essential situations. The Committee would point out that these officials serve only when the situation warrants.[54]

While not used in the same numbers as in previous years, examiners and observers were assigned to 500 elections in the covered jurisdictions in 1980.[55] In a separate development recently three counties not subject to Section 4 coverage were designated as sites for federal examiners.[56] The Committee's hearings on H.R. 3112, if anything, reflect the continuing existence of activity aimed at the intimidation of racial and language minority persons seeking to register and vote.[57] Finally, with the onset of nationwide reapportionment, a process which historically has led to actions impairing or diluting the voting rights of racial and language minorities, any relaxation of federal protections would be unwise. The Congress in 1975 specifically desired to cover these practices during the current extension period to combat this precise situation.[58]

Thus, based upon the record developed in its Subcommittee's hearings and the report of the U.S. Commission on Civil Rights, The Voting Rights Act: Unfulfilled Goals, the Committee concludes that it is essential to continue federal examiners and observers provisions of the Act in full force and effect in order to safeguard the gains thus far achieved in minority political participation, and to prevent future infringements of Voting rights.

Language Assistance

BACKGROUND

As indicated earlier, in 1975 Congress not only extended the time period for the coverage of jurisdictions brought under Section 5 in the original Act, but also expanded coverage of the Act to enforce the 14th and 15th Amendments guarantees of language minority citizens. Congress took this step (action) based on the extensive record

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[53] U.S. Commission on Civil Rights, supra, p. 22.
[54] See Section 3(a) and Section 6 of the Voting Rights Act.
[55] U.S. Commission on Civil Rights, supra, p. 268–269.
[56] U.S. Commission on Civil Rights, supra, p. 50–51.
[57] See Committee Hearings, 1981.
[58] See House Debates, 1975.

before it regarding voting and other discrimination faced by such citizens:

> Testimony was received regarding inadequate numbers of minority registration personnel, uncooperative registrars (and) disproportionate effect of purging laws on non-English speaking citizens because of language barrier . . . (t)he exclusion of language minority citizens is further aggravated by acts of physical, economic, and political intimidation when these citizens do attempt to exercise their franchise . . . Memories of past discourtesies or physical abuse may compound the problems for many language-minority voters. The people in charge are frequently the same ones who so recently excluded minorities from the political process . . . The Subcommittee (also) heard extensive testimony on the question of . . . the rules and procedures by which voting strength is translated into political strength. The central problem is that of distribution of the vote.[59]

Furthermore, the Committee learned that:

> Language minority citizens are also excluded from the electoral process through the use of English-only elections. Of all Spanish heritage citizens over 25 years old, for example, more than 18.9 percent have failed to complete five years of school compared to 5.5 percent for the total population. In Texas, over 33 percent of the Mexican American population has not completed the fifth grade.[60]

The Committee found that the high illiteracy rates referred to are "not the result of choice or mere happenstance; [61] they are the result of the failure to afford equal educational opportunities to members of language minority groups. This point has repeatedly been highlighted by the courts.[62]

As explained above,[63] Congress approached the range of problems facing language minority citizens in a twofold manner: The Section 4 trigger was revised so that the more severe discriminatory practices and procedures, which were similar in type and effect to those prohibited in the earlier covered jurisdictions, would be subject to Section 5 preclearance. The less severe, but equally troubling problems were those resulting from high illiteracy levels of members of language minority populations. To address these problems, Congress, in Section 203 of the 1975 Voting Rights Act, provided that language assistance for such individuals be made available throughout the election process.[64]

The continuing existence of discriminatory practices and procedures which are subject to Section 5 preclearance has been addressed elsewhere in this report addressed above. Other language assistance issues are addressed below.

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[59] Voting Rights Extension, Report No. 94–196, House of Representatives (1975) hereinafter referred to as the 1975 Committee Report, at pp. 16–18.
[60] Id. p. 20.
[61] Id.
[62] Case citations here from 1975 Committee Report and Vilma Martinez's statement.
[63] See discussion in the General Statement portion of this Report.
[64] Jurisdictions who were covered by the Section 4 trigger in 1975 also are required to provide language assistance for language minority citizens.

Section 203 of the Act

Basis for Enactment

The Voting Rights Act, as enacted in 1965, recognized that literacy tests and other devices had been used to prevent blacks from registering and voting; consequently, the use of such tests and devices was barred. In the early 1970's a number of federal court decisions found that English-only elections in areas with substantial non-English speaking citizens operated as a test or device to keep citizens from voting.

In 1973, the Seventh Circuit Court of Appeals ruled that:

> If a person who cannot read English is entitled to oral assistance, if a Negro is entitled to correction of erroneous instructions, so a Spanish-speaking Puerto Rican is entitled assistance in the language he can read or understand. [*Puerto Rican Organization for Political Action* v. *Kusper*, 409 F. 2nd 575, 580 (7th Cir. 1973)]

In 1974, another New York federal court decision emphasized the importance of offering bilingual assistance in order to guarantee the right of Spanish-speaking Puerto Rican citizens to vote. The court ruled that:

> In order that the phrase "the right to vote" be more than an empty platitude, a voter must be able effectively to register his or her political choice. This involves more than physically being able to pull a lever or marking a ballot. It is simply fundamental that voting instructions and ballots, in addition to any other material which forms part of the official communication to registered voters prior to an election, must be in Spanish as well as English, if the vote of Spanish-speaking citizens is not to be seriously impaired. [*Torres* v. *Sachs*, 309 F. Supp. 309, S.D. New York July 25, 1974]

Even as early as 1923, the U.S. Supreme Court expressly recognized that citizens cannot be denied their fundamental rights because of their lack of knowledge of the English language:

> Certain fundamental rights [are guaranteed] to all those who speak other languages as well as to those born with English on the tongue. Perhaps it would be advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means.[65]

Furthermore, the U.S. Supreme Court in *Gaston County* v. *United States*, 395 U.S. 285 (1969), recognized the inextricable relationship between the denial of equal educational opportunities and voting discrimination. The Supreme Court found that blacks who historically had received inferior education were discriminatorily affected by the use of literacy tests in voting even though such tests were no longer administered in a discriminatory manner and progress had been made in integrating the County's school system.[66]

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[65] *Meyer* v. *Nebraska*, 262 U.S. 390, 401.

[66] See also *Lassiter* v. *Northhampton Election Board*, 360 U.S. 45 (1959).

These series of judicial findings, together with the overwhelming evidence presented in its 1975 hearings,[67] led Congress to enact Section 203 of the Voting Rights Act (42 U.S.C. 1973 aa–1).

A recent case reiterated the point made in *Gaston County* v. *United States*, *supra.*, that the vestiges of discrimination are not easily or quickly eradicated:

> While many of the overt forms of discrimination wreaked upon Mexican Americans have been eliminated, the long history of prejudice and deprivation remains a significant obstacle to equal educational opportunity for these children. The deep sense of inferiority, cultural isolation, and acceptance of failure, instilled in a people by generations of subjugation, cannot be eradicated merely by integrating the schools and repealing the "No Spanish" statutes.... The severe educational difficulties which Mexican American children in Texas public schools continue to experience attest to the intensity of those lingering effects of past discriminatory treatment.[68]

IMPLEMENTATION

When Congress enacted Section 203, it had as its goal assuring that limited or non-English-speaking citizens [69] would receive the requisite language assistance necessary to permit them to effectively exercise their franchise. While enacted in part, in recognition of the long-term effects of unequal educational opportunities received by such citizens, the purpose of providing this assistance was not to encourage or discourage them from learning English. Language citizens disabled by educational disparities, not of their making, to register and to vote immediately.

Specifically, Section 203 requires that election, voter registration, and other voting-related activities be conducted bilingually if (a) more than 5 percent of the citizens of voting age in a jurisdiction are members of specified language minority groups *and* (b) the illiteracy rate of such persons, as a group, is higher than the national illiteracy rate. Illiteracy is defined as failure to complete the fifth primary grade. Coverage of this provision extends to political subdivisions in 30 different states, primarily Texas, New Mexico, Arizona, California, Colorado, and Oklahoma.

When the U.S. Department of Justice issued its guidelines for the implementation of this provision in 1976 and 1977 [70] it correctly interpreted the mandate of Section 203 to be that election related materials and assistance "be provided in a way designed to allow members

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[67] Hearings Before the Subcommittee on Civil and Constitutional Rights of the Judiciary, House of Representatives, Ninety-Fourth Congress, First Session (1975)—hereinafter referred to as the 1975 House Hearings.

[68] *United States* v. *Texas,* No. 5281 (E.D. Tex. Jan., 9, 1981) at pp. 66–67; (involved bilingual education issues).

[69] The Act, as amended in 1975, provides for language assistance to "language minority" citizens, defined (in 42 U.S.C. 1973 aa–1) as persons of Spanish heritage, American Indians, Asian Americans, and Alaskan Natives. The definition was determined on the basis of the evidence of voting discrimination before the Congress in 1975. No evidence regarding voting problems of other language groups was received. In fact, Congress examined the voter registration statistics for the 1972 Presidential election and found that they showed a high degree of participation by other language groups: German, 79 percent; Italian, 77.5 percent; French, 72.7 percent; Polish, 79.8 percent; and Russian, 85.7 percent. This compared with voter participation for all Spanish ethnic groups (Mexicans, Puerto Ricans, others) of 44.4 percent. See U.S. Bureau of the Census chart on voter participation in the 1975 Committee Report at p. 23.

[70] 28 CFR Part 55.

of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities.[71] The Guidelines explicitly state that compliance is best measured by the results achieved.[72] They further note that a jurisdiction is more likely to achieve compliance if it consults with language minority group members and their representatives.[73] Both the Justice Department [74] and Congress have suggested that an appropriate manner in which to comply with the letter and the spirit of Section 203 is to focus the language assistance so that only those language minority group members who actually need such assistance, whether written and/or oral, receive them. This method of providing assistance is referred to as "targeting".

While the tone set by the Department of Justice Regulations on how language assistance should be provided is laudatory, the assistance which has been provided to covered jurisdictions has been found to be less than vigorous. In 1978, the General Accounting Office (GAO) reviewed the enforcement efforts of the Department in this regard.[75] It found that implementation of the minority language provisions could be more effective if, among other things, the Department clarified what constitutes an effective compliance approach and if they provided more assistance to State and local officials.

More recent studies have also concluded that the Department of Justice Guidelines have not provided adequate assistance to State and local election officials who are responsible for implementing them.[76] Absent more specific guidance from the Department, or any other agency or organization, each affected county was left to devise its own method of implementation.

In 1979, the Federal Elections Commission (FEC) conducted the first comprehensive study to review the various methods used by counties to implement Section 203.[77] The Commission found that the most successful county programs, from both a cost and policy effectiveness view, were those which greatly utilized the resources available in the language minority communities for all facets of the registration and election process. Unfortunately, of the administrators responding to the FEC's questionnaire, 59 percent reported not having contacted such organizations for any purpose. The Commission concluded that local election administrators have exerted a limited effort to provide comprehensive bilingual election services. They apparently have been laboring under a widespread misconception:

> Firstly, that just formalistically making bilingual services available, without bringing them to the language minorities through the links of community organizations, will produce any great demand for them; and secondly, that the point of the legislation is primarily to have bilingual forms available and that the appropriate measure of its success, therefore, is

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[71] Id., Part 55.2(b).
[72] Id., Part 55.16.
[73] Id.
[74] Id., Part 55.17.
[75] Report of the Comptroller General of the United States—Voting Rights Act Enforcement Needs Strengthening, February 6, 1978.
[76] *Bilingual Election Services Report,* Vols. I, II, and III, Federal Elections Commission (1979) (hereinafter cited as FEC Report) and *The Voting Rights Act: Unfulfilled Goals,* Report of the U.S. Commission on Civil Rights (1981) (hereinafter cited as the 1981 Civil Rights Commission Report).
[77] FEC Report, *supra.*

> the number of bilingual forms used. The goal of providing bilingual election services is to facilitate the participation of language minority citizens in the electoral process. Providing bilingual printed materials is only one means toward this end. (*FEC Report*, Vol. *III*, at p. 58.)

The FEC Report further concluded that to assess the need for language assistance, administrators should not rely solely on statistics such as the proportion of registered voters who are language minority citizens or on the actual demand on election day for minority language materials and/or oral assistance. This practice, according to the Report, does not address the need to identify and assist unregistered language minority citizens who may be most in need of bilingual election services. Instead, the Report recommended that administrators work closely with local community organizations in order to attain a more accurate means of assessment.

RECORD FOR CONTINUANCE

The Committee record overwhelmingly shows that where language assistance in registration and voting is implemented in an effective manner, the cost accounts for only a small fraction of total election expenses.[78] This fact is particularly evident in recent elections which indicate that costs have decreased significantly over the years.[79] Before the Committee began its hearings, few had closely (examined) (analyzed) claims that excessive costs were associated with the implementation of Section 203. As the hearing Record unfolded, it became clear that such general assertions could not be substantiated. Thus, one witness, who previously associated himself with such claims, testified that it can no longer be contended that the cost of providing language assistance in the electoral process is excessive.[80]

The testimony and the record before the Subcommittee [81] clearly indicate that where cost is a problem it is so only because of factors unique to the relevant jurisdiction [82] and/or because the method used in providing language assistance is not efficient or cost-effective.

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[78] See testimony of State Senator Polly Baca Barragan of Colorado (May 7 Hearing); Vilma Martinez, President and General Counsel, Mexican American Legal Defense and Education Fund (MALDEF) (June 18 Hearing); Henry Der, Executive Director, Chinese for Affirmative Action (June 1 Hearing); and John Trasvina, Commissioner, Citizens Advisory Committee on Elections, San Francisco, California. (June 18 Hearing).

[79] The following expenditures for language assistance were reported to the Committee: in California, in 1978, Los Angeles County spent $290,000 or * * * percent of total election costs; for Orange County, compliance represented only 3.4 percent of total election costs; in Santa Clara County, 1.5 percent of the election budget was spent on compliance; and in San Diego County, compliance costs were about 3.4 percent of total election budget. In 1980, Los Angeles decreased its cost for compliance to $135,000 out of election expeditures of $7 million, thus representing 1.2 percent for language assistance. In New York, according to the State Attorney General (See hearing of June 18) start-up costs were the most expensive and even those weren't very high—$30,000/$16 million budget for New York City Board of Elections. Translation costs for entire state average $1000/year. In Westchester County, New York, he reported cost of $3,000/year or 2 percent of the budget for the County Board of Elections. In New Mexico, according to its Lt. Governor (May 13 Hearing), cost of providing language assistance for elections is not an issue; state pays for local election supplies. In 1980, New Mexico appropriated $15,000 for the primary election and $100,000 for the general election.

[80] Testimony of Honorable Paul McCloskey (June 18 Hearing). It should be noted that Congressman McCloskey continues to oppose Section 203, but not on the grounds of costs.

[81] This includes the FEC Report, *supra* and the hearing record.

[82] See testimony of the Honorable Mary Estill Buchanan, Secretary of State from Colorado (June 23 Hearing), who points out that printing language assistance materials is not inherently costly. Cost becomes a problem only because her State requires publication, in the newspaper, of all matters which will be presented to the electorate prior to an election. Since publication costs are high even monolingually, publishing such materials bilingually raises such costs for her State.

Surveys conducted in 1976 [83] and 1980 [84] found that providing bilingual registration and voting materials and oral assistance at the polls encourages voter participation among members of language minority groups.

The Committee Hearing record is replete with testimony further documenting the positive impact which the 1975 language assistance requirement has had in facilitating participation in the political process for language minority citizens; in many instances, such assistance encouraged first-time voters to exercise their franchise.[85]

The overwhelming majority of witnesses rejected the claim that providing limited or non-English-speaking citizens language assistance in the registration and voting processes promotes cultural separatism and discourages linguistic minorities from assimilating into mainstream American society.

One witness who testified regarding the importance of these provisions to Asian American communities pointed out that persons who oppose these provisions "do not understand the discriminatory experiences that Chinese Americans have had to suffer and which have made it difficult for Chinese Americans particularly the elderly, to learn English." [86] It was not until 1943, he notes, that Chinese persons were permitted to become naturalized citizens.

> This historic prohibition against citizenship by Chinese American (has) had a devasting impact on many of today's elderly citizens who were denied equal educational opportunities and socio-economic opportunities during their younger days. The brutality of this federal prohibition forced Chinese Americans to look inwardly to the Chinatowns of America where . . . interaction with other Americans occurred infrequently.[87]

This witness indicated that despite this history of discrimination, Chinese adults are still motivated to learn English and enroll in adult English language classes.

An equally compelling rebuttal was raised by a witness who noted that American Indians were not accorded citizenship until 1924 and that it was not until the 1960's that they were able to fully secure the right to vote in federal elecions.[88] This testimony made clear that since there are currently 206 different spoken Indian languages among the tribes and only 80 have writing systems, the provisions of oral language assistance in the electoral process is of particular importance to American Indian communities. This is particularly so

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[83] Mexican American Equal Rights Project, "Survey of the Effect(s) of Bilingual Elections in Three South Texas Counties in 1976: A Summary of Findings," (unpublished) December 1976, San Antonio, Texas. (See Appendix E of the Status of Civil Rights in Texas Report, Vol. I: *A Report on the Participation of Mexican Americans, Blacks and Females In the Political Institutions and Processes in Texas.* 1968–1978.

[84] Hearings, May 6, 1981, William C. Velasquez, Executive Director, Southwest Voter Registration Education Project.

[85] See Statements of Dr. Charles Cottrell, Professor of Political Science, St. Mary's University (May 27 hearing; Manuel Ysaguirre, Human Relations Director, AFL–CIO and President, State of Texas Labor Council for Latin American Advancement, (June 5 Hearing) David Dunbar, General Counsel, National Congress of American Indians, (June 18 Hearing); Henry Der, Executive Director of Chinese for Affirmative Action (*Supra*) and Joaquin Avila, Associate Counsel for MALDEF, San Antonio, Texas (June 5 Hearing).

[86] Hearings, June 10, 1981, Henry Der, Executive Director of Chinese for Affirmative Action.

[87] Id.

[88] Hearings, David Dunbar, General Counsel for the National Congress of American Indians, supra.

since in some areas, the percentage of adults living on Indian lands who are not fluent in English may range as high as 60 to 70 percent.

Claims that providing language assistance in the electoral process promotes cultural segregation were described as "sadly, woefully, and overwhelmingly in error." [89] Testimony clearly showed that contrary to such claims, such assistance has the effect of bringing into the integral and integrated workings of communities, with substantial language minority populations, "a sense of comradery, and participatory democracy." [90]

Further belying such claims is the high degree of participation by Mexican American citizens in the political process within the State of New Mexico. New Mexico, with an Hispanic population of 36.6 percent, has provided bilingual voter assistance almost continuously since it became a state. As a consequence, New Mexico is the only (mainland) state in which Hispanics hold statewide offices—in fact, they hold 40 percent of such positions; it also has the largest number of Hispanics elected to office—35 percent of its State Senators, 28 percent of its State Representatives, and 30 percent of its County Commissioners are Hispanics.[91] No other state approaches this degree of integration of Mexican-American citizens into its political system. One witness concluded that such political integration "moves us toward a more united and harmonious country." [92]

It is on the basis of all of this evidence that the Committee believes it necessary to extend the Section 203 provisions at this time.

Language assistance is provided to address the vestiges of voting discrimination against language minority citizens and is an integral part of providing the protections which the Act has sought to extend to all minorities.

AMENDMENTS TO SECTION 2 OF THE ACT

As discussed throughout this report, there are numerous voting practices and procedures which result in discrimination. In the covered jurisdictions, post-1965 discriminatory voting changes are prohibited by Section 5. But, many voting and election practices currently in effect are outside the scope of the Act's preclearance provision, either because they were in existence before 1965 or because they arise in jurisdictions not covered by Section 5.

Under the Voting Rights Act, whether a discriminatory practice or procedure is of recent origin affects only the mechanism that triggers relief, i.e., litigation or preclearance. The lawfulness of such a practice should not vary depending upon when it was adopted, i.e. whether it is a change. Yet, while some discriminatory practices and procedures have been successfully challenged under Section 2 of the Voting Rights Act, the Supreme Court's interpretation of Section 2 in *City of Mobile* v.

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[89] The Honorable Barbara Jordan, former Member, U.S. House of Representatives (June 18 Hearing).

[90] Id.

[91] Testimony of the Honorable Roberto Mondragon, Lieutenant Governor of New Mexico (Hearing of May 13).

[92] Testimony of the Honorable Robert Abrams, Attorney General of the State of New York (Hearing of June 18).

Bolden [93] has created confusion as to the proof necessary to establish a violation under that section.[94]

Prior to *Bolden*, a violation of Section 2 could be established by direct or indirect evidence concerning the context, nature and result of the practice at issue. In *Bolden*, Justice Stewart, writing for the plurality, construed Section 2 of the Act as merely restating the prohibitions of the Fifteenth Amendment. The Court held that a challenged practice would not be unlawful under that section unless motivated by discriminatory intent. The Committee does not agree with this construction of Section 2 and believes that the intent of the section should be clarified.

Section 2 of H.R. 3112 will amend Section 2 of the Act to make clear that proof of discriminatory purpose or intent is not required in cases brought under that provision. Many of these discriminatory laws have been in effect since the turn of the century.[95] Efforts to find a "smoking gun" [96] to establish racial discriminatory purpose or intent are not only futile,[97] but irrelevant to the consideration whether discriminatory has resulted from such election practices.

The purpose of the amendment to section 2 is to restate Congress' earlier intent that violations of the Voting Rights Act, including Section 2, could be established by showing the discriminatory effect [98] of the challenged practice. In the 1965 Hearings, Attorney General Katzenbach testified that the section would reach any kind of practice . . . if its purpose *or* effect was to deny or abridge the right to vote on account of race or color." [99] [emphasis added] As the Department of Justice concluded in its *amicus* brief in *Lodge* v. *Buxton*,[100] applying a "purpose" standard under Section 2 while applying a "purpose or effect" standard under the other sections of the Act would frustrate the basic policies of the Act.

By amending Section 2 of the Act Congress intends to restore the pre-*Bolden* understanding of the proper legal standard which focuses on the result and consequences of an allegedly discriminatory voting

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[93] 446 U.S. 55 (1980).

[94] Compare *McMillan* v. *Escambia County, Florida*, 638 F.2d 1239 (5th Cir. 1981), with *Lodge* v. *Buxton*, 639 F.2d 1358 (5th Cir. 1981), *Cross* v. *Baxter*, 639 F.2d 1383 (5th Cir. 1981), and *Thomasville Branch NAACP* v. *Thomas County, Georgia*, 639 F.2d 1384 (5th Cir. 1981).

[95] Hearings, June 24, 1981, C. Vann Woodward, J. Morgan Kousser.

[96] Id., J. Morgan Kousser, James Blacksher; *Lodge* v. *Buxton*, 639 F.2d 1358 (5th Cir. 1981).

[97] The Supreme Court and commentators have noted that legislative motivation is often impossible to ascertain, reliance upon this standard is futile, and its application may lead to undesirable and unwanted results. See *Palmer* v. *Thompson*, 403 U.S. 217, 225 (1971) ("it is difficult or impossible for any court to determine the 'sole' or 'dominant' motivation behind the choices of a group of legislators. Furthermore, there is an element of futility in a judicial attempt to invalidate a law because of the bad motives of its supporters. If the law is struck down for this reason . . . it would presumably be valid as soon as the legislature or relevant governing body repassed it for different reasons."); *United States* v. *O'Brien*, 391 U.S. 367, 383–84 (1968) ("Inquiries into congressional motives or purposes are a hazardous matter . . . What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork."); Note, *Discriminatory Purpose and Disproportionate Impact: An Assessment After Feeney*, 79 Col. L. Rev. 1376, n. 24 (1979); P. Brest, *Palmer Thompson: An Approach to the Problem of Unconstitutional Legislative Motive*, 1971 Sup. Ct. Rev. 95; J. H. Ely, *Legislative and Administrative Motivation in Constitutional Law*, 79 Yale L.J. 1205, 1212–17 (1970).

[98] See Committee Hearings, 1981, Memorandum From: Hiroshi Motomura, To: Sally Determan.

[99] Hearing on S. 1564 before the Committee on the Judiciary, United States Senate, 89th Cong., 1st Sess., pp. 191–92 (1965).

[100] 639 F.2d, 1358 (5th Cir. 1981).

or electoral practice rather than the intent or motivation behind it.[101] Section 2 prohibits any voting qualification, prerequisite, standard, practice or procedure which is discriminatory against racial and language minority group persons or which has been used in a discriminatory manner to deny such persons an equal opportunity to participate in the electoral process. This is intended to include not only voter registration requirements and procedures, but also methods of election and electoral structures, practices and procedures which discriminate.[102] Discriminatory election structures can minimize and cancel out minority voting strength as much as prohibiting minorities from registering and voting. Numerous empirical studies based on data collected from many communities have found a strong link between at-large elections and lack of minority representation. [103] Not all at-large election systems would be prohibited under this amendment, however, but only those which are imposed or applied in a manner which accomplishes a discriminatory result.

The proposed amendment does not create a right of proportional representation. Thus, the fact that members of a racial or language minority group have not been elected in numbers equal to the group's proportion of the population does not, in itself, constitute a violation of the section although such proof, along with other objective factors, would be highly relevant. Neither does it create a right to proportional representation as a remedy.

This is not a new standard. In determining the relevancy of the evidence the court should look to the context of the challenged standard, practice or procedure. The proposed amendment avoids highly subjective factors such responsiveness of elected officials to the minority community. Use of this criterion creates inconsistencies among court decisions on the same or similar facts and confusion about the law among government officials and voters. An aggregate of objective factors should be considered such as a history of discrimination affecting the right to vote, racially polarity voting which impedes the election opportunities of minority group members, discriminatory elements of the electoral system such as at-large elections, a majority vote requirement, a prohibition on single-shot voting, and numbered posts which enhance the opportunity for discrimination, and discriminatory slating or the failure of minorities to win party nomination.[104] All of these factors need not be proved to establish a Section 2 violation.

The amended section would continue to apply to different types of election problems. It would be illegal for an at-large election scheme for a particular state or local body to permit a bloc voting majority over a substantial period of time consistently to defeat minority candidates or candidates identified with the interests of a racial or language minority. A districting plan which suffers from

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[101] The alternative standard of proving that a voting practice or procedure is unlawful if a discriminatory purpose was a motivating factor would still be available to plaintiffs in such cases. As the Supreme Court held in *Village of Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977), plaintiffs would not be required to prove that a discrimination purpose was the sole, dominant, or even the primary purpose for the challenged practice or procedure, but only that it has been a motivating factor in the decision.

[102] See *Allen* v. *State Board of Elections*, 393 U.S. 544, 569 (1969).

[103] See discussion in previous section entitled *Discriminatory Methods of Election.*

[104] These objective standards rely on *White* v. *Regester*, 412 U.S 755 (1973) but is not controlling since it established a constitutional violation.

these defects or in other ways denies equal access to the political process would also be illegal.

The amendments are not limited to districting or at-large voting. They would also prohibit other practices which would result in unequal access to the political process.[105]

Section 2, as amended, is an exercise of the broad remedial power of Congress to enforce the rights conferred by the Fourteenth and Fifteenth Amendments. In *South Carolina* v. *Katzenbach*, 383, U.S. 301, 325–26 (1966), the Supreme Court held that under these provisions "Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting." Pursuant to its authority to enforce the Fourteenth and Fifteenth Amendments, Congress has the power to enact legislation which goes beyond the specific prohibitions of the Fourteenth and Fifteenth Amendments themselves so long as the legislation is appropriate to fulfill the purposes of those constitutional provisions. *Fullilove* v. *Klutznick*, — U.S. —— (1980); *City of Rome* v. *United States*, 446 U.S. 156, 173–78 (1980); *South Carolina* v. *Katzenbach*, *supra*. This includes the power to prohibit voting and electoral practices and procedures which have racially discriminatory effect. *City of Rome* v. *United States*, *supra; Fullilove* v. *Klutznick*, *supra*.

The need for this legislation has been amply demonstrated. This legislation is designed to secure the right to vote of minority citizens without discrimination, and to eliminate "the risk of purposeful discrimination." *City of Rome* v. *United States*, 446 U.S. 156, 177 (1980). Discriminatory purpose is frequently masked and concealed, and officials have become more subtle and more careful in hiding their motivations when they are racially based.[106] Therefore, prohibiting voting and electoral practices which have discriminatory result is an appropriate and reasonable method of attacking purposeful discrimination, regardless of whether the practices prohibited are discriminatory only in result. Cf. *City of Rome* v. *United States*, *supra*, at 176–78; *Oregon* v. *Mitchell*, 400 U.S. 112, 132–33 (opinion of Black, J..); *id.* at 144–47 (opinion of Douglas, J.); *id.* at 216–17 (opinion of Harlan J.); *id.* at 231–36 (opinion of Brennan, White, and Marshall, JJ.); *id.* at 282–84 (opinion of Stewart, J., joined by Burger, C.J., and Blackman, J.). Voting practices which have a discriminatory result also frequently perpetuate the effects of past purposeful discrimination, and continue the denial to minorities of equal access to the political processes which was commenced in an era in which minorities were purposefully excluded from opportunities to register and vote.[107] These Section 2 Amendments also provide an appropriate and reasonable remedy for overcoming the effects of this past purposeful discrimination against minorities. Cf. *City of Rome*, *supra; Oregon* v. *Mitchell*, *supra*.

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[105] For example, a violation would be proved by showing that election officials made absentee ballots available to white citizens without a corresponding opportunity being given to minority citizens similarly situated. As another example, purging of voter registration rolls would violate Section 2 if plaintiffs show a result which demonstrably disadvantages minority voters. Only purges having a discriminatory result are prohibited. The majority vote requirement would also be prohibited under the standards applicable to other discriminatory vote dilutions.

[106] See, e.g., *McMillan* v. *Escambia County, Florida*, 638 F.2d 1239, 1246 n.15 (5th Cir. 1981); *Robinson* v. *12 Lofts Realty, Inc.*, 610 F. 2d 1032, 1043 (2d Cir. 1978).

[107] See, e.g., *Kirksey* v. *Board of Supervisors of Hinds County, Mississippi*, 554 F.2d 139 (5th Cir. 1977) (*en banc*), *cert. denied*, 434 U.S. 968 (1977).

It is intended that citizens have a private cause of action to enforce their rights under Section 2. This is not intended to be an exclusive remedy for voting rights violations, since such violations may also be challenged by citizens under 42 U.S.C. §§ 1971, 1983 and other voting rights statutes. If they prevail they are entitled to attorneys' fees under 42 U.S.C. §§ 1973*l*(e) and 1988.

AMENDMENTS TO SECTION 4(a) OF THE ACT

Over the past century, The Congress repeatedly has enacted legislation in an attempt to secure the guarantees of the Fifteenth amendment. The Enforcement Acts authorized the executive branch to enfranchise newly emancipated black; the results were dramatic. Under the Hayes-Tilden Compromise the Federal government acquiesced to pressures of states' promises to diligently enforce the Civil War Amendments. Upon repeal of the Enforcement Acts disfranchisement of blacks was swift and complete, and until the Voting Rights Act of 1965, enforcement of the fifteenth amendment was left to the judicial branch.

The legislative history for the 1965 Act makes clear the inability of one branch of government to effectively enforce that right, despite congressional acts streamlining the judicial process for voting rights litigation.[108]

Pursuant to Section 2 of the Fifteenth Amendment Congress passed the Voting Rights Act of 1965. The Act gave the executive branch a greater role in enforcing the right to vote and strengthened judicial remedies in voting rights litigation.

Disturbed at the lack of progress in minority participation within the political process in the covered jurisdictions, Congress in 1975 began to explore alternative remedies. Proponents of these different remedies argued that the Voting Rights Act, as written, provided no incentive for the covered jurisdictions to do other than retain existing voting procedures and methods of election. The record showed that frequently the changes which did occur continued the effects of past discriminatory voting practices. After exploring these proposals, Congress chose not to adopt changes in the Act's remedies at that time.

After listening once again to the litany of discriminatory practices and procedures which continue to dominate these covered jurisdictions, the Committee determined that some modification of the Act was necessary to end the apparent inertia which exists in these jurisdictions.

The Committee believes these proposed changs to the bailout provision, set forth in H.R. 3112, as amended, will provide the necessary incentives to the covered jurisdictions to comply with laws protecting the voting rights of minorities, and to make changes in their existing voting practices and methods of election so that by eliminating all discriminatory practices in the elections process increased minority participation will finally be realized. This is a reasonable bailout which will permit jurisdictions with a genuine record of nondiscrimination in voting to achieve exemption from the requirements of Section 5.

A major change in current law is that counties within fully covered states will be allowed to file for bailout independently from the State.

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[108] 16 Stat. 140.

The amendment does retain the concept that the greater governmental entity is responsible for the actions of the units of government within its territory, so that the State is barred from bailout unless all of its counties/parishes can also meet the bailout standards; likewise, any county bailout would be barred unless units within its territory could meet the standard.

Because of the continuing record of voting rights violations which has been presented to the Congress in 1970, 1975 and at this time, and further documented in numerous studies and reports, the jurisdiction is required to present a compelling record that it has met the amended bailout standards.

The amended bailout provisions become effective on August 6, 1982. From August 6, 1982 to August 5, 1984, the jurisdictions will be required to comply with the current bailout provision. This 2 year delay will allow the Department of Justice to continue to effectively enforce Section 5 and also make necessary preparations and decisions about resources to respond to these bailout suits.

ALTERNATIVE PROPOSALS

In addition to H.R. 3112, as reported to the House, other proposals to amend the Voting Rights Act of 1965 are addressed in the Committee record. Some of these proposals were contained in legislation before the Subcommittee on Civil and Constitutional Rights.

Judicially Ordered Preclearance

Under current law, once a jurisdiction is brought under the coverage of the special provisions of the Act (according to the 1965, 1970, or 1975 triggers) the jurisdiction must automatically submit or preclear all of its proposed electoral changes, either to the Attorney General or to the District Court for the District of Columbia; most changes are precleared with the Justice Department. This process is commonly referred to as the automatic, administrative preclearance procedure, or more simply, preclearance. In addition, current law provides that administrative preclarance may be required for a period of time, as part of a judicially imposed remedy, in areas not automatically subject to the special provisions of the Act.

A proposal to replace existing procedure with a judicially imposed preclearance process was discussed in the hearings.[109] Under this proposal, administrative preclarance would be imposed by a court anywhere in the country, if it made a judicial finding that a pattern and practice of voting rights abuses existed in a specific jurisdiction.

The hearing record demonstrates most emphatically that the effect of this approach would be to signify a return to the pre-1965 litigative approach, which the legislative history of the 1965 Act showed to be most ineffective in protecting the voting rights of minorities.[110] This proposal would mean that for each of the currently covered jurisdictions, which number over 900, a lawsuit would have to be initiated to require the jurisdiction to submit. Given the overwhelming evidence of a continuing pattern and practice of voting discrimination against

[109] On May 6, H.R. 3473 was introduced by Representative Hyde to further clarify the changes proposed in his earlier bill. H.R. 3473, thus, superceded H.R. 3198.
[110] See 1965 House Hearings.

racial and language minorities in the covered jurisdictions, the prospect of returning to a lengthy, and costly litigation process is contrary to the purpose of the Act.

Recognition of these two factors led to the decision to not pursue this proposal.

Nationwide Extension/Expansion of the Act

While no legislation proposing nationwide extension of the Act was before the Committee, the issue did arise during the deliberations on the extension of the Voting Rights Act. The suggestion has been raised in various forums that the Act should be extended and applied nationwide, rather than retain the present focus on voting discrimination problems in certain regions of the country.

The following points were made in response to this suggestion: (1) the Voting Rights Act has numerous provisions which proscribe discriminatory practices and procedures or provide remedies for such practices and procedures, wherever they occur.[111] Most of these major provisions are permanent provisions which apply nationwide; (2) the triggering mechanism of the Act was devised to address a problem of substantial underrepresentation and under-participation of minority citizens wherever that problem existed and is not *per se* regional. The Section 5 preclearance procedure affects all or part of 22 states in the country. In fact, more people are covered under Section 5 (over 4.8 million) in the three covered New York counties than are covered in the State of Alabama (3.9 million), Mississippi (2.5 million) or South Carolina (3.1 million). By comparison, 5.4 million are covered in Georgia and 5.3 million in Virginia; [112] (3) without a precise showing of need,[113] the expansion of Section 5 coverage to include all counties, states, and local jurisdictions in the country seems arbitrary and wasteful, especially at a time when there is much concern about excessive governmental intrusion into state and local matters; (4) in the absence of a detailed showing of need, serious constitutional questions are raised about applying this "uncommon exercise of congressional power" to the country as a whole.[114] The U.S. Supreme Court in *South Carolina* v. *Katzenbach*, *supra*, and *City of Rome* v. *United States*, *supra*, upheld the constitutionality of Section 5 precisely because it was tailored to address a specific problem about which Congress had amassed detailed evidence in its hearing record; and (5) nationwide preclearance would raise serious administrative burdens for the Department of Justice, especially since it must process all submission within 60–120 days.

Limiting Preclearance

It has also been suggested that the types of electoral changes subject to preclearance review should be limited. For example, only those changes which have produced the most objections from the Justice

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[111] See Sections 2, 3, 10, 11, 12, and 201 of the Act (42 U.S.C. 1973). Section 4 triggers the jurisdictions which are required to submit changes under the Section 5 preclearance provision; Sections 6 to 9 and 13 relate to the appointment and duties of federal examiners and observers. Section 14 contains definitions of relevant terms used in the Act; Sections 15–19 and 202 are miscellaneous provisions; the balance of the Act also relates to miscellaneous issues.

[112] Testimony of New York State Attorney General Robert Abrams. *Supra.*

[113] While extension of Section 5 nationwide was suggested in the hearings, no specific evidence of voting discrimination in areas outside those presently covered was presented. See Hearings, May 19, 1981, Robert Brinson, City Attorney, Rome, Ga.

[114] Hearings, July 13, 1981, testimony of Drew Days, Professor, Yale Law School and former U.S. Assistant Attorney General, Civil Rights Division, Department of Justice.

Department. While some changes may adversely affect a greater number of people, others may have precisely the type of discriminatory impact which Congress sought to prevent, even though the numbers involved are smaller.[115] One such example is the change in location of polling places. As noted earlier, the placement of polling places is an important factor in determining whether minorities exercise their right to vote. Numerous instances of polling places located in or moved to places which are inconvenient, inaccessible, or intimidating to minorities have been documented.[116] The lesson which both Congress and the courts learned from the pre-1965 litigation experience is that jurisdictions did not limit their efforts to discriminate to one type of voting practice. "The discriminatory potential in seemingly innocent or insignificant changes can only be determined after the specific facts of the change are analyzed in context. The current formula allows for such factual analysis." [117]

Repealing Language Assistance Provisions

At the time that the Subcommittee on Civil and Constitutional Rights initiated its review of the Voting Rights Act it had before it three identical bills [118] which proposed to delete or repeal the general language assistance provisions,[119] as well as those provisions of the Act which in 1975 brought jurisdictions such as Texas under Section 5 coverage.[120] One effect of this latter amendment would be that in Texas neither blacks or Hispanics would be protected by Section 5. These bills also proposed striking certain language from the Act, which would have resulted in uncertainty about the standing of Hispanics and other language minority citizens to utilize the various remedies provided in the Act, including the appointment of federal examiners and observers, the Section 2 prohibits against discriminatory voting practices and standards, and the Section 3 remedies provided to eliminate such discriminatory practices.

The evidence in the Committee record strongly contradicts claims raised by supporters of the proposals to repeal Section 203. Instead it strongly supports the action of the Committee to report all of the provisions of H.R. 3112 to the House.[121] No evidence or testimony was introduced to justify eliminating any covered jurisdiction from Section 5 coverage. It should be noted that support for the passage of all of the provisions of H.R. 3112, including those to extend Section 203, and Section 5 coverage for 1975 jurisdictions, was received from jurisdictions subject to its requirements.[122]

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[115] See testimony of Drew Days, *Supra*; U.S. Commission on Civil Rights Report, supra (1981).

[116] See, for example, Civil Rights Commission Report (1981) Supra.; testimony of Drew Days, Supra.

[117] Drey Days, Supra.

[118] H.R. 1731 (introduced by Representative McClory on February 5, 1981), H.R. 1407 (introduced by Representative McCloskey on January 28, 1981), and H.R. 2942 (introduced by Representative Thomas on March 31, 1981).

[119] Section 203 of the Act [42 U.S.C. 1973aa–7].

[120] Sections 4(f)(4) [42 U.S.C. 1983a].

[121] See previous discussion of these issues in the Language Assistance portion of this Report.

[122] See testimony of: Barbara Jordan, former Member of Congress from Texas, *supra;* Robert Abrams, State Attorney General of New York, *supra;* Roberto Mondragon, Lieutenant Governor of New Mexico, *supra;* Douglas Caddy, former Director, Elections Division, Office of the Texas Secretary of State (June 5 Transcript); and Dr. George Sheldan, Florida State Representative (June 23 Transcript). Also written communications were received by the Committee from: the legislature of the State of Alaska, from the Governor of Arizona, from the San Francisco Board of Supervisors.

Exclusive Jurisdiction of the U.S. District Court for the District of Columbia

Another issue discussed during the Subcommittee's deliberations was the suggestion that the D.C. District Court's exclusive jurisdiction over Section 5 preclearance suits and bailouts suits be repealed. The record shows that the decision Congress made in 1965 that the federal interest in securing Fifteenth amendment protections is served by granting exclusive jurisdiction over certain aspects of voting rights litigation to the D.C. District Court, is still valid.[123]

In 1966, the U.S. Supreme Court, citing other federal statutes limiting litigation of claims to courts in the District of Columbia, found that this limitation of jurisdiction was an appropriate exercise of the constitutional authority of Congress under Article III, § 1 of the United States Constitution *South Carolina* v. *Katzenbach*, 383 U.S. 301, 331–32 (1966). The decision to grant exclusive jurisdiction was based upon a desire to assure uniform interpretation and enforcement of this most important Act. As the U.S. Supreme Court recently noted in its review of the Section 5 preclearance requirements, " . . . centralized review enhances the likelihood that recurring problems will be resolved in a consistent and expeditious way." *McDaniel* v. *Sanchez*, —— U.S. —— (June 12, 1981). The Court further noted that the centralized review provided by the Department of Justice and the Federal District Court for the District of Columbia has played a major role in making Section 5 work efficiently and fairly.

Since the evidence strongly supports maintaining this exclusive jurisdiction, the proposal for repeal was not pursued.

Amending the Current Bailout Provision

The final proposal considered during the review of the Voting Rights Act was one to amend the current bailout provisions of the Act which provides covered jurisdictions with a mechanism through which they may terminate their Section 5 responsibilities.

The current provision allows jurisdictions with a genuine history of nondiscrimination to bailout. Twenty-four jurisdictions have successfully bailed out, all but one since 1975. Bailout suits are heard by a court of three judges in the District Court of the District of Columbia. Once a jurisdiction bails out the court retains jurisdiction for a period of 5 years, during which time the court may, upon motion of the U.S. Attorney General, reopen the case.

On June 17, 1981, just prior to the Subcommittee's final 5 days of hearings, a new legislative proposal was introduced.[124] This bill, unlike its two predecessors (H.R. 3198 and H.R. 3473), retained the current automatic, administrative preclearance remedy on an indefinite basis, subject to a jurisdiction bailing out from under a coverage of Section 5. The bill proposed changes to the criteria which the jurisdiction seeking to bail out had to meet. Generally, the jurisdictions would have been required to have complied with the requirements of the law in the area of voting and not have received any substantial objection by the Department of Justice or the Federal District Court for the District

[123] See especially testimony of former U.S. Assistant Attorneys General for the Department of Justice, Drew Days, *supra*, and Stanley Pottinger (June 17 Transcript). Both opposed any change in the exclusive jurisdiction of the D.C. District Court.

[124] H.R. 3948 (introduced by Representative Henry Hyde).

of Columbia, to a proposed change during the ten-years preceding the filing of the bailout suit. In addition, the jurisdiction would have had to engage in constructive efforts designed permanently to involve voters protected by the Act in the political process.

When this proposal was introduced, recognition was given to the fact that there are jurisdictions which deserve to remain covered under the Section 5 preclearance provision because there are "vestiges of discrimination present in their electoral system and because no constructive steps have been taken to alter that fact." [125] The Committee hearing record clearly and overwhelmingly supports that assertion.

During the hearings, concerns were raised about how the bailout criteria in H.R. 3948 would be interpreted. In order to bail out under H.R. 3948, a jurisdiction would have to show that it made all submissions to the Attorney General or the D.C. District Court during the previous ten years as required under Section 5, and that the Attorney General did not interpose a "substantial" objection during that time period. This language would not require jurisdictions to submit election changes before implementing them. Moreover, it treated some Section 5 objections as insignificant without giving specific guidance as to how such a determination was to be made. These concerns were especially troubling in light of the fact that H.R. 3948 authorized bailout suits to be filed in any local federal district court. As indicated previously, exclusive review of voting changes by the Attorney General and the D.C. District Court was in large part credited for the effectiveness of Section 5. The need for centralized review and uniform standards is even more compelling where political subdivisions within fully covered states can file for bailout.

Under H.R. 3948, the jurisdiction was required to have engaged in constructive efforts to involve minority voters permanently in the electoral process.

The Committee agreed the thrust of this proposed standard could be important in encouraging jurisdictions to finally take steps to eradicate the results of a history of voting discrimination. The problem with this important standard was its vagueness which could lead to inconsistent decisions on the same or similar facts presented to local federal district courts. Of equal concern was the absence of an objective measurement of the success of these constructive efforts to increase minority participation, i.e., did they increase minority voter registration and voting, and did they eliminate discriminatory barriers to voting procedures and the elections process.

The Committee agreed that a carefully drafted amendment to the bailout provision could indeed act as an incentive to jurisdictions to take steps to permanently involve minorities within their political process, especially when jurisdictions realized that by doing so they could be exempted from Section 5 requirements. The Committee took note of the various concerns raised. Equally as important to the Committee was the need for consistent and uniform application of any revised bailout standards—that is, maintaining exclusive jurisdiction over bailout suits in the District Court for the District of Columbia. Thus, began the genesis of the Committee amendment to H.R. 3112 which was reported by the committee to the House.

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[125] See Opening statement of Representative Henry Hyde, Hearing, June 17, 1981.

Omnibus Proposal

Immediately prior to full Committee consideration of H.R. 3112, a new omnibus, proposal amending the Voting Rights Act was introduced.[126]

One provision of this legislation proposed amending the current formula for determining the application of the special provisions of the Act. Under this provision, application of the special provisions would be based on the entry by a three judge panel in any federal district court of a final judgment that a pattern or practice of voting discrimination exists.

The concerns raised about this provision included: (1) the emphasis on reverting to the litigative process for "pattern or practice" of voting violations.[127] This is especially troublesome because it once again places the burden on the aggrieved parties to show that the practices and procedures are not discriminatory. When Congress passed the Voting Rights Act in 1965, it recognized the inherent disadvantage which that burden placed on those who had experienced voting discrimination. Consequently under Section 5, Congress placed the burden of proof on the covered jurisdictions since they are the ones that propose, enact, and implement the voting laws. When the U.S. Supreme Court upheld the constitutionality of Section 5, it specifically found that this shift in the burden of proof was a rational approach to prohibit voting discrimination.

A second major change reflected in this proposal is the establishment of a new "intent" test voting rights cases. The amendment to Section 2 of the Act would prohibit voting practices or procedures which have the purpose or the "reasonable forseeable effect" of denying or abridging the voting rights of minorities.

The Committee believes that the more appropriate and more effective standard to use is that contained in Section 2 of H.R. 3112. That amendment proscribes practices or procedures which result in denial or abridgment of voting rights of minorities. This "result" or "effect" test is one which already has a judicial history upon which jurisdictions and aggrieved parties can depend.

The final major provision of this proposal changed the trigger mechanism for providing minority language assistance. It would require bilingual voting materials and assistance when five per cent or more of the citizens of voting age in a State or political subdivision are members of a single language minority group and the rate of non-minority voter registration exceeds the rate of such language minority group by ten per cent or more.

Problems raised by this proposal are: 1) that language assistance would be based on registration rates rather than on literacy rates which is a better indicator of the need for such assistance; 2) it does not use the level of voters activity as a trigger but instead relies only on registration levels; and 3) no public or private agency currently collects nationwide registration or statistics on a county by county subdivision basis. It is therefore currently impossible to use one of the proposed triggers.

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[126] H.R. 4271 introduced on July 27, 1981 by Representative Caldwell Butler.
[127] See earlier discussion about the ramifications of such a change.

For all of the reasons set forth earlier [128] the Committee recommends retaining the current language assistance trigger.

SECTION-BY-SECTION ANALYSIS

Section 4(a)

The effect of this amendment is to retain the current bail-out standard until August 5, 1984.

Section 4(b)

The amendments made in H.R. 3112 to Section 4(a), relating to the new standard for bailout, are effective on and after August 6, 1984.

The Committee believes the two year waiting period is essential to allow the Justice Department sufficient time to prepare for the expected increase in bailout litigation without undermining the Department's capacity to enforce the Act.

Section 4(b)(2)

This amendment provides that political subdivisions within fully covered states may initiate a declaratory judgment action seeking to bail out independently of the state. This expands current law.

When referring to a political subdivision this amendment refers only to counties and parishes except in those rare instances in which the county does not conduct voted registration; only in such rare instances, such as independent cities in Virginia, can a jurisdiction smaller than a county or parish file for bailout.

It should be noted that for a state or political subdivision to qualify for bailout, all of the units of government within that state or political subdivision must meet the bailout criteria.

Lastly, for purposes of bailout, political subdivisions are defined as of the date they were covered under Section 4(b) of the Act.

Section 4(b)(4)

This section provides that a declaratory judgment for bailout will be barred unless the jurisdiction carries the burden of proving that it and all units of government within its territory meet the bailout standards for the 10 years preceding the filing of the suit for declaratory judgment and during the time such suit is pending.

With respect to each of the bailout criteria, the Committee has continued existing law with respect to the burden of proof. This burden is reasonable because "the relevant facts" are "peculiarily within [the jurisdiction's] knowledge." *South Carolina* v. *Katzenbach*, 383 U.S. 301, 332 (1966).

A ten-year period of compliance is required to assure that the jurisdiction has established a genuine record of nondiscrimination. Evidence of continuing widespread discrimination in the covered jurisdictions has led the Committee to conclude that a ten-year period is reasonably necessary to assure against the risk of perpetuating "95 years of pervasive voting discrimination" that preceded enactment of the Voting Rights Act. *City of Rome* v. *United States*, 446 U.S. 156, 182 (1980).

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[128] See Language Assistance discussion.

Section 4(b)(4)(A)

A jurisdiction seeking to bail out must show that no test or device has been used within its territory for the purpose or with the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

This criterion for bailout has been selected because the use of a "test or device" is the very basis upon which initial coverage of section 5 was determined. In addition, the Committee believes that no jurisdiction should be able to bail out unless it has complied fully with the law from which it is seeking to be exempted.

Section 4(b)(4)(B)

A bailout judgment will await a final judgment in any pending voting discrimination suit.

The interests of judicial economy dictate that pending suits alleging denials of voting rights be adjudicated before a court determines the merits of a bail-out suit. Provisions in current law deter the filing of non-meritorious suits, which, in any event, will be disposed of quickly. [*See* Rules 11, 56(g) Fed. R. Civ. P.; Rule 38 Fed. R. App. P.; 42 U.S.C. § 19731(e).] Therefore, the risk of allowing a jurisdiction to bail out when it may be found soon thereafter to have discriminated in voting substantially outweighs the mere delay in obtaining a bailout judgment.

For purposes of this section final judgment is defined as a final decision of any court. Not included is an interlocutory decision or order. Thus, a final decision of a district court is a "final judgment" even though an appeal might be pending.

Consent decrees under this section are treated the same as final judgments as a bar to bailout. Traditionally such decrees are treated as the functional equivalent of final judgments. *See*, e.g., *United States* v. *Columbus Separate School District*, 558 F. 2d 228, 230 n.8 (5th Cir. 1977), *cert. denied*, 434 U.S. 1013 (1978). The Committee does not believe that a departure from this practice is justified.

Section 4(b)(4)(C)

This section provides that to bail out there must be a showing that no federal examiner has served in the State or political subdivision seeking to bail out.

The appointment of examiners by the Attorney General is controlled by specific standards set forth in the Act. The Committee believes that the sending of examiners provides strong evidence of continuing voting rights violations. The hearing record shows that jurisdictions to which examiners have been sent are those where there has been continuing voting rights abuses.

The Committee believes it unwise to subject the bail out suit to relitigation of whether each assignment of federal examiners was justified. In other areas under the Voting Rights Act Congress has made certain decisions conclusive. *E.g.*, *Briscoe* v. *Bell*, 432 U.S. 404 (1977).

Section 4(b)(4)(D)

This subsection requires that to bail out, a State or political subdivision, and all governmental units within its territory must have complied with Section 5 of the Act.

This section is intended to require that a jurisdiction seeking to bail out prove that the governmental units within its territory have complied with section 5 of the Voting Rights Act. Because jurisdictions may bail out together, the Committee believes that they should all satisfy the bailout requirements.

The Committee bill represents a significant expansion of the jurisdictions eligible to bail out without creating the prospect of unmanageable litigation in the court. The Committee believes that requiring each governmental unit within the territory of a jurisdiction seeking to bail out to comply with the requirement of section 5 is consistent with *City of Rome* v. *U.S.* 446 U.S. 156 (1980).

Compliance means that the State or political subdivision, and all governmental units within the jurisdiction have submitted all voting law changes in a timely manner, have not implemented any election law changes prior to submitting it for preclearance, and have repealed all changes to which the U.S. Attorney General has objected or for which the District Court for the District of Columbia has denied a declaratory judgment.

The Committee has heard testimony indicating that numerous jurisdictions have been lax with respect to timely submissions, and that many submissions are either sent in years late or never come in at all. In these cases the rights of voters under the Voting Rights Act are violated not only when the voting change is first enforced but on each occasion thereafter when it is enforced without having been submitted and precleared. This requirement for timely submissions applies even if the voting change, when submitted, was not found objectionable. The Committee decision to condition bailout on a record of timely submissions by requiring a ten-year period from the last date of any such violation provides an incentive for jurisdictions to take seriously the requirement of not enforcing any un-precleared changes. It thus assures that the Justice Department's ability to enforce the Act will not be undermined.

Jurisdictions must repeal all legislation and other voting changes that were objected to before they are permitted to bail out so that they will not be able to enforce any such legislation once they are exempted from the Act's coverage.

The term "all governmental units" as used in this section refers to all jurisdictions within a State or political subdivision which are required to make Section 5 submissions under *U.S.* v. *Board of Commissioners of Sheffield County, Alabama*, 435 U.S. 110 (1978).

The term "preclearance" as used herein refers to the process of submitting for review to the U.S. Attorney General or to the District Court for the District of Columbia all proposed electoral changes prior to their implementation.

The term "successfully objected" is used in this subsection to mean that if a jurisdiction which receives an objection to a proposed change by the U.S. Attorney General takes that same proposed change to the U.S. District Court for the District of Columbia and receives a declaratory judgment precleaving that change, then such objection is not successful. *See Beer* v. *U.S.*, 425 U.S. 130 (1976). However, if after an objection is interposed by the Attorney General the jurisdiction seeks a declaratory judgment, but submits a revised plan to

the court, then the objection stands and is a "successful" one, whatever the court's disposition of the revised plan.

Lastly, it is the Committee's intent that compliance with Section 5 means that even if a Section 5 objection is ultimately withdrawn or the judgment of the District Court for the District of Columbia denying a declaratory judgment is vacated on appeal, the jurisdiction is obligated not to enforce the proposed change during the period in which the objection or declaratory judgment denial was in effect.

Section 4(b) (4) (E)

Bailout is barred if, pursuant to Section 5 of the Act, the Attorney General has interposed an objection to a submission under Section 5 or a declaratory judgment seeking approval of a change has been denied.

A declaratory judgment for bailout may not be issued until submissions pending pursuant to Section 5 have been resolved.

The Committee believes that the absence of objections which have not been set aside by the D.C. District Court or withdrawn by the Attorney General is an essential criterion for bailout to avoid "creat[ing] the risk of purposeful discrimination" by jurisdiction with a "demonstrable history of racial discrimination in voting." *City of Rome* v. *United States*, 446 U.S. 156, 177 (1980).

Section 4(b) (4) (F)

It is the purpose of this entire section to require covered jurisdictions as a prerequisite to bailing out to eliminate voting practices and methods of elections wihch discriminate against minority voters and to open up the electoral process to greater minority participation. Since the bailout provisions allow jurisdictions to exempt themselves completely from the coverage of the special provisions of the Act, including the preclearance requirement, the jurisdiction seeking bailout must do more than simply maintain the status quo, if the status quo has the purpose or effect of discriminating against minority voters or if the status quo continues the effects of past discrimination against minority voters.

The Committee believes that a jurisdiction seeking to bail out should meet certain positive and result-oriented requirements, in order to "counter the perpetuation of 95 years of pervasive voting discrimination." *City of Rome* v. *United States*, 446 U.S. 156, 182 (1980). The burden of such a showing is reasonable because "the relevant facts are peculiary within the knowledge of the states and political subdivisions themselves." *South Carolina* v. *Katzenbach*, 383 U.S. 301, 332 (1966).

Section 4(b) (1) (F) (i)

A jurisdiction must demonstrate to the court that its voting procedures and methods of election are nondiscriminatory.

The basis for this standard is the extensive committee record which shows clearly that discriminatory voting procedures and methods of election continue to prevail throughout the covered jurisdictions. This evidence indicates that the types of voting procedures and methods of election which have continuously been used in a discriminatory manner include: unduly restrictive voter registration procedures, multi-member legislative districts, at-large county-wide and citywide

voting which denies a substantial minority population an equal opportunity to participate, majority vote-runoff requirements, prohibitions on single-shot voting, and others. Although they are not necessarily unconstitutional under existing standards, these voting procedures and methods of election cited by the Supreme Court and lower Federal courts as having a "built-in bias" against minorities do not permit minorities "to enter into the political process in a reliable and meaningful manner." *White* v. *Regester*, 412 U.S. 755, 766–67 (1973); *Zimmer* v. *McKeithen*, 485 F. 2d 1297 (5th Cir. 1973) (*en banc*).

For example, while in some areas with few minority citizens, at-large election may be a reform measure, the Committee heard extensive evidence about discriminatory at-large election systems in the covered jurisdiction.

The Committee's greatest concern is that a jurisdiction seeking bailout be required to show that it, and governmental units within its territory, have eliminated voting procedures and methods of election which discriminate against or submerge minority voters. The requirement to eliminate means the elimination of all such structural and procedural barriers.

This requirement cannot be met, for example, simply by claims that a jurisdiction has no structural barriers, but rather calls for empirical evidence that its methods of election and voting procedures have neither the purpose nor the effect of discriminating.

Voting procedures encompass requirements for voter registration and the registration process, and methods of election include the electoral process and the means by which public officials are elected.

Section 4(b)(4)(F)(ii)

These requirements are not meant to imply that the proscribed conduct has occurred in all jurisdictions. The Committee record indicates that in many areas this requirement is necessary to insure that minority citizens are not inhibited or discouraged from participating in the political process.

Intimidation and harassment of voters or others seeking to exercise rights protected by the Voting Rights Act are especially troubling because of the long-term impact it can have on such persons and their communities.

It is the Committee's intent that where such conduct has occurred, the jurisdiction seeking to bailout takes steps to assure that such conduct, whether by government officials or others, will not be repeated, including giving notice within its territory that such conduct will not be tolerated.

Section 4(b)(1)(F)(iii)

This subsection places an affirmative duty on covered jurisdictions to expand the opportunities for minority citizens to register and vote.

The Committee hearing record is replete with examples of restrictive registration practices and procedures, such as restricted hours and locations for registration, dual registration practices, and discriminatory reregistration requirements, which continue to exist throughout the covered jurisdictions. A jurisdiction could meet the requirements of the subsection by offering expanded opportunities for

registration through the appointment of deputy registrars who are accessible to minority citizens, offering evening and weekend registration hours, or providing postcard registration. Other examples of constructive efforts include appointment of minority citizens as deputy registrars, pollworkers, and to other positions which indicate to minority group members that they are encouraged to participate in the political process.

Section 4(b)(2)

This section requires the plaintiff in the bailout suit to present objective evidence of the level of minority participation in the political process.

Coverage under section 4 was triggered initially by showings of low participation and it would be anomalous to terminate coverage where continued depressed levels of minority participation, show that voting discrimination is still a problem. Evidence of participation levels can include election results as well, because such results are often sound indicators of whether minorities have a fair opportunity in the electoral process. The Committee has hard extensive evidence about jurisdictions with significant minority populations that have not elected any minority officials, and this fact, while not conclusive, would be relevant. A number of the covered jurisdictions already maintain records from which the evidence required by this section can be derived. The jurisdictions are not all bound to present the evidence in precisely the same form, but it is intended that the evidence be objective and reliable rather than subjective or anecdotal.

Section 4(b)(3)

The issuance of a declaratory judgment for bailout is prohibited if there is proof that the jurisdiction or any governmental unit within its territory has engaged in voting discrimination, unless the jurisdiction can show such violations were trivial, promptly corrected and not repeated.

It is intended that this provision reach voting discrimination for which there may be no administrative or judicial record such as could be shown to meet the requirements in the preceding paragraphs 4(b)(1)(A) through (E). Such discrimination is nonetheless violative of constitutional and statutory provisions regarding the right to vote.

Any violation of constitutional or statutory voting laws protecting against voting discrimination should be presumed to be not trivial, and the jurisdiction must show that any such violations were trivial, promptly corrected, and were not repeated. For example, if a qualified minority voter has been turned away from the polling place by accident or mistake in the jurisdiction's poll books, and the mistake was immediately corrected and not repeated, this would not bar bailout. However, if a voter or poll watcher has been attacked or beaten up at the polling place by a public official or with the participation or acquiescence of election officials, this would not be considered trivial even if corrected and not repeated.

Section 4(b)(4)

The State or political subdivision seeking bailout must give reasonable public notice of the proposed settlement of the bailout suit to enable interested persons to intervene.

An aggrieved party is defined broadly to include any person who would have standing under the law. Such persons may intervene at any stage, including the appeal, and would include those who would intervene on behalf of either the plaintiff or the defendant. Prevailing intervenors are entitled to attorneys' fees.

Section 4(b) (5) (B)

Under this section a declaratory judgment will be reopened upon the motion of the Attorney General or any aggrieved person alleging that conduct which would have barred bailout has occurred.

Any bailout procedure must be accompanied by a fair method of recovering jurisdictions where appropriate. Such a method exists under current law and this section incorporates such a system for the new bailout procedure. The decision to reopen the judgment to hear evidence does not automatically mean that the judgment will be set aside, but if, for example, there has been a finding of discrimination against the jurisdiction or against a unit of government within its territory, or if the jurisdiction has adopted a method of election which has been objected to previously or which would otherwise dilute the voters of minority citizens, the court should set aside the bailout judgment and the jurisdiction would again be covered by section 5. An aggrieved person eligible to seek reopening of the bailout judgment need not have participated in the litigation previously, and includes any person or group of people residing in the jurisdiction.

Section 4(b) (6)

If no judgment has been rendered within the time set forth, the chief judge of the District Court for the District of Columbia may request whatever assistance is necessary to expedite these cases.

Section 2

This section prohibits any voting qualification, prerequisite, standard, practice or procedure which results in discrimination. For purposes of this Section, conduct which has the effect, impact or consequence of discrimination on the basis of race, color, or member in a language minority group would be a violation of Section 2 of the Act.[1]

This section also states that the fact that a minority does not have proportional representation in a jurisdiction's elected bodies does not of itself constitute a violation of Section 2 of the Act.

Section 3

Extends the Section 203 language assistance provision until August 6, 1992.

The record before the Committee is clear: providing language assistance in the election process facilitates the integration of language minority citizens into the political mainstream and such assistance can be provided in an effective and cost-efficient manner.

The Committee strongly encourages local election officials to work closely with language minority citizens in their communities and devise an effective and cost-efficient way to target or direct their efforts only where language assistance is actually required. The Federal Elections Commission Handbook for Local Election Officials referred to previously should be most helpful in this regard. In many cases, as

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[1] *City of Richmond* v. *United States*, 422 U.S. 358, at pp. 367, 370, 371 (1975).

the hearing record indicated, the primary need in a specific language minority community is oral assistance in the registration and election process. If that is the case then it may be that providing written bilingual materials will only be required in a very limited way, if at all.

The Justice Department Guidelines correctly state that the best way to measure compliance is by the results achieved.

The title is amended to read "A bill to amend the Voting Rights Act, to extend the effect of certain provisions and for other purposes."

Cost Estimate Required by Clause 7(A) of Rule XIII of the Rules of the House of Representatives

The Committee adopts the cost estimate prepared by the Congressional Budget Office (CBO) as follows:

Fiscal year:	*Millions*
1982	-----
1983	-----
1984	-----
1985	$1.6
1986	1.7

Statements Under 2(1)(3) of Rule XI of the Rules of the House of Representatives

A. Oversight statement.—No oversight findings or recommendations required pursuant to clause 2(b)(1) of Rule X have previously been filed with respect to this area.

B. Budget statement.—This bill does not provide any new budget authority.

C. Cost estimate from Congressional Budget Office.—The following letter and enclosure was received from the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., September 14, 1981.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 3112, a bill to amend the Voting Rights Act of 1965 to extend the effect of certain provisions, and for other purposes.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin, *Director.*

Congressional Budget Office—Cost Estimate

1. Bill number: H.R. 3112.

2. Bill title: A bill to amend the Voting Rights Act of 1965 to extend the effect of certain provisions, and for other purposes.

3. Bill status: As ordered reported by the House Committee on the Judiciary, July 31, 1981.

4. Bill purpose: The bill extends the current law through August 1984 and amends the requirements that states and other political jurisdictions would then have to meet to forego review and approval by the Attorney General of their changes in voting laws and procedures. The review and approval, or "the preclearance requirement," by the Attorney General affects 9 states and parts of 13 others.

Under provisions of this bill, beginning in August 1984, any state or political jurisdiction subject to the preclearance requirement could be released from the requirement, if for the past 10 years it met the standards set forth in the bill. Among the requirements a state or political jurisdiction would have to show are that no voting test or device had been imposed within its jurisdiction, no judgement had been rendered finding that the denial or abridgement of the right to vote had occurred, no violations of preclearance rules had occurred, no objection to changes in law had been made by the Attorney General, and no declaratory judgement had been denied.

The bill would also extend the 1975 requirement for bilingual ballots and other voting material to 1992. Currently, this provision is scheduled to expire in 1985.

5. Cost estimate:

	Millions
Estimated authorization level:	
Fiscal year:	
1982	------
1983	------
1984	------
1985	$1.6
1986	1.7
Estimated outlays:	
Fiscal year:	
1982	------
1983	------
1984	------
1985	1.5
1986	1.7

The costs of this bill fall within budget function 750.

6. Basis of estimate: Since no substantive change in law would occur until August 1984, no additional costs will be incurred until fiscal year 1985. CBO assumes that, beginning in fiscal year 1985, some political jurisdictions will ask the district court to release them from the preclearance requirement. For the purposes of this estimate, it was assumed that 400 jurisdictions would meet the requirements set forth in the bill by fiscal year 1985 and would request release. CBO estimates that the Department of Justice would require an additional $1.2 million, and 40 positions, beginning in fiscal year 1985 to handle the cases arising from the jurisdictions seeking release from preclearance.

The estimate of outlays is based on historical spending patterns for Justice Department activities.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Jeffrey W. Nitta.

10. Estimate approved by:

C. G. NUCKOLS
(For James L. Blum,
Assistant Director for Budget Analysis).

D. Government operations oversight.—No related oversight findings and recommendations have been made by the Committee on Government Operations under clause 4(c)(2) of Rule X.

STATEMENT UNDER CLAUSE 2(1)(4), OF RULE XI OF THE HOUSE OF REPRESENTATIVES CONCERNING ANY INFLATION IMPACT ON PRICES AND COSTS IN THE OPERATION OF THE NATIONAL ECONOMY

The committee concludes that there will be no inflationary impact on prices and costs in the operation of the national economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

VOTING RIGHTS ACT OF 1965

AN ACT to enforce the fifteenth amendment to the Constitution of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Voting Rights Act of 1965"

TITLE I—VOTING RIGHTS

SEC. 2. No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision [to deny or abridge] *in a manner which results in a denial or abridgement of* the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2). *The fact that members of a minority group have not been elected in numbers equal to the group's proportion of the population shall not, in and of itself, constitute a violation of this section.*

* * * * * * *

SEC. 4.[1] (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the [seventeen] *nineteen* years preceding the filing of the action for the purpose or with the

[1] The amendments made by subsection (a) of the first section of this Act shall take effect on the date of enactment of the Act.

effect of denying or abridging the right to vote on account of race or color: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of [seventeen] *nineteen* years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2): *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this paragraph, determining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) through the use of tests or devices have occurred anywhere in the territory of such plaintiff.

* * * * * * *

SEC. 4.[2] (a) (*1*) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) *or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit*, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia [in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the nineteen years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of nineteen years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory

[2] The amendment made by subsection (b) of the first section of this Act became effective on August 6, 1984.

judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff] *issues a declaratory judgment under this section.* No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section *or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit,* or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia [in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2): *Provided,* That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this paragraph, determining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) through the use of tests or devices have occurred anywhere in the territory of such plaintiff] *issues a declaratory judgment under this section. A declaratory judgment under this section shall issue only if such court determines that during the ten years preceding the filing of the action, and during the pendency of such action—*

(A) such test or device has been used within such State or political subdivision for the purpose or with the effect of denying or abridging the right to vote on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2);

(B) no final judgment of any court of the United States, other than the denial of declaratory judgment under this section, has determined that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State subdivision seeking a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) have occurred anywhere in the territory of such State or subdivision and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds; and no declaratory judgment under this section shall be entered during the pendency of an action alleging such denials or abridgements of the right to vote;

(C) no Federal examiners under this Act have been assigned to such State or political subdivision;

(D) such State or political subdivision and all governmental units within its territory have complied with section 5 of this Act, including compliance with the requirement that no change covered by section 5 has been enforced without preclearance under section 5, and have repealed all changes covered by section 5 to which the Attorney General has successfully objected or as to which the United States District Court for the District of Columbia has denied a declaratory judgment;

(E) the Attorney General has not interposed any objection (that has not been overturned by a final judgment of a court) and no declaratory judgment has been denied under section 5, with respect to any submission by or on behalf of the plaintiff or any governmental unit within its territory under section 5; and no such submissions or declaratory judgment actions are pending; and

(F) such State or political subdivision and all governmental units within its territory—

(i) have eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process;

(ii) have engaged in constructive efforts to eliminate intimidation and harrassment of persons exercising rights protected under this Act; and

(iii) have engaged in other constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process.

(2) To assist the court in determining whether to issue a declaratory judgment under this subsection, the plaintiff shall present evidence of minority participation, including evidence of the levels of minority group registration and voting, changes in such levels over time, and disparities between minority-group and non-minority-group participation.

(3) No declatory judgment shall issue under this subsection with respect to such State or political subdivision if such plaintiff and governmental units within its territory have, during the period beginning ten years before the date the judgment is issued, engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) unless the plaintiff establishes that any such violations were trivial, were promptly corrected, and were not repeated.

(4) The State or political subdivision bringing such action shall publicize the intended commencement and any proposed settlement of such action in the media serving such State or political subdivision and in appropriate United States post offices. Any aggrieved party may interevent at any stage in such action.

(5) An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for [five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2).] *ten years after judgment and shall reopen the action upon motion of the Attorney General or any aggrieved person alleging that conduct has occurred which, had that conduct occurred during the ten-year periods referred to in this subsection, would have precluded the issuance of a declaratory judgment under this subsection.*

[If the Attorney General determines that he has no reason to believe that any such test or device has been used during the nineteen years preceding the filing of an action under the first sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

[If the Attorney General determines that he has no reason to believe that any such test or device has been used during the ten years preceding the filing of an action under the second sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) he shall consent to the entry of such judgment.]

(6) If, after two years from the date of the filing of a declaratory judgment under this susbection, no date has been set for a hearing in such action, and that delay has not been the result of an avoidable delay on the part of counsel for any party, the chief judge of the United States District Court for the District of Columbia may request the Judicial Council for the Circuit of the District of Columbia to provide the necessary judicial resources to expedite any action filed under this section. If such resources are unavailable within the circuit, the chief judge shall file a certificate of necessity in accordance with section 292(d) of title 28 of the United States Code.

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TITLE II—SUPPLEMENTAL PROVISIONS

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BILINGUAL ELECTION REQUIREMENTS

SEC. 203. (a) The Congress finds that, through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation. The Congress declares that, in order

to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.

(b) Prior to August 6 [1985] *1992*, no State or political subdivision shall provide registration or voting notices, forms, instruction, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language if the Director of the Census determines (i) that more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and (ii) that the illiteracy rate of such persons as a group is higher than the national illiteracy rate: *Provided*, That the prohibitions of this subsection shall not apply in any political subdivision which has less than five percent voting age citizens of each language minority which comprises over five percent of the statewide population of voting age citizens. For purposes of this subsection, illiteracy means the failure to complete the fifth primary grade. The determinations of the Director of the Census under this subsection shall be effective upon publication in the Federal Register and shall not be subject to review in any court.

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SUPPLEMENTAL VIEWS OF HON. HENRY J. HYDE AND HON. DAN LUNGREN

I am deeply saddened at the manner with which the Committee reported H.R. 3112 on the afternoon of July 31st. While the lopsided vote of 23 to 1 gives the appearance of virtual unanimity, the reality is quite the opposite. Beneath the surface broil strong currents of mutual distrust and discontent which carry with them the very real possibility that the 1981 amendments to the 1965 Voting Rights Act may be denied the truly bipartisan support they need and deserve if they are to gain enactment by the Congress before August 6 of next year.

I voted in favor of the amendments, because I had previously pledged to do so, and because the Act should be extended if the voting rights of those protected by it are to be secured. I have always believed that the right to vote—guaranteed by the 15th Amendment—is more important even than the rights of free speech. All the debate and rhetoric in the world is meaningless without the implementing force of a vote.

As ranking minority member of the Subcommittee on Civil and Constitutional Rights, I felt an obligation to make every effort to forge a compromise. Accordingly, I devoted a great deal of time and energy to galvanizing support for extension among those whose philosophical and political opposition runs far deeper than my own, but whose support is indispensable if this legislation is to become law.

In all, I introduced three bills directed toward fashioning a middleground on which the warring factions could eventually agree. My first two, H.R. 3198 and H.R. 3473, sought to replace the administrative preclearance provisions of Section 5 of the Act with a judicial remedy. They were born of my basic apprehension of summary administrative procedure and my deeply held belief that the laws of this country should properly be adjudicated in its courts rather than in the offices of its prosecutors.

My position on the feasibility of this approach gradually shifted as I heard witness after witness describe the delays which judicial remedies had caused in the years preceding the passage of the 1965 Act. Reluctantly, I came to embrace the conclusion that administrative enforcement is indeed a practical necessity: the risks of continued voting rights abuses are too great to fall victim to philosophical purity.

H.R. 3948, introduced with my colleague Dan Lungren on June 17, represented an effort to retain administrative enforcement of Section 5 permanently, subject to a realistic mechanism which would permit jurisdictions covered by the Act to achieve rehabilitation by showing adherence to criteria and guidelines significantly more strict than now required. Give them a way out, we thought, and make it difficult, but not unreasonable, by requiring those jurisdictions to improve conditions in order to qualify. By providing a procedure which would

isolate those jurisdictions which fail to qualify, the disapproving focus of the nation could be indeed therapeutic.

The structure of our proposal carried with it the tentative endorsement of some who never before believed that they could compromise in their opposition to extension. It would have required any covered jurisdiction seeking escape from administrative preclearance, or bailout, to convince a federal court that:

(1) no "test or devices", such as literacy tests, poll taxes or the like had been used in a discriminatory manner for a decade preceding the petition for relief;

(2) the preclearance requirements of Section 5 had been fully obeyed, including the timely submission of data as required by law together with swift compliance with adverse court determinations once ambiguous provisions of the Act were clarified, again for a ten-year period;

(3) the Department of Justice's Civil Rights Division had not made any substantial objection to any proposed electoral change submitted during the previous ten years; and

(4) the petitioning jurisdiction had gone beyond the requirements of current law and had embraced the spirit of the Act by making constructive efforts to alter practices and procedures now in effect and which may remain so under the grandfather clauses of the 1965 Act.

Once these showings were made to the satisfaction of the court, our proposal provided that jurisdiction would be retained by the court for an additional five-year period. Throughout this "parole" term, any aggrieved party, or the Attorney General, could request that the court review the issuance of bailout, arguing that the covered jurisdiction had acted in a way which was inconsistent with the initial eligibility standards. For example, if a jurisdiction attempted to enact a statute during the parole period which it could not have enacted prior to that time, it would be subject to revocation of bailout and the necessity to qualify all over again. In our view, this sanction was a heavy one, both in political and practical terms, and would discourage jurisdictions which might arguably consider a return to pre-1965 conduct.

Between June 17 and June 31, we and the Subcommittee Minority staff were engaged in constant negotiation with virtually every group interested in the voting rights question. At 7 p.m., on the evening of July 30, for example, only hours before the full Committee was to meet, additional changes to our proposal, submitted by representatives of the Black Caucus, were still being entertained. Among those changes to which we had agreed during the course of the negotiation period were the following:

(1) the logical use of "appropriate" federal district courts was discarded in favor of placing the forum for processing bailout petitions in the United States District Court for the District of Columbia. Furthermore, three judges, two of whom must be appointed by the chief judge of the District of Columbia circuit court, were required to form the panel rather than the single judge we had earlier envisioned;

(2) language was changed in the eligibility requirements to deny bailout if any objection had been raised by the Department of Justice during the ten-year period, or if any adverse "final

judgment" had been issued on the subject of voting rights abuse anywhere within the territory of the petitioning jurisdiction;

(3) the five-year parole period was extended to ten years with the effect that any jurisdiction seeking escape from administrative preclearance must be able to show ten years of exemplary conduct before bailout is issued, and another ten years after bailout is conditionally granted;

(4) the term "constructive efforts" was further defined to show that any such efforts must be directly aimed at the elimination of all structural or procedural barriers to minority voter participation as well as the eradication of voter harassment and intimidation where it exists;

(5) the effective date for the new bailout system was extended from August 6, 1982, as existing law would mandate, to August 6, 1984. There is little logical basis for such a delay, especially since the original 1982 date was chosen with a desire to avoid the fallout from 1980 redistricting decisions and since civil rights officials at the Department of Justice have informed me that it is unnecessary. Nevertheless, the spirit of compromise moved us to accept this further concession.

It is worth noting that the bailout mechanism in the present Act, which the original version of H.R. 3112 would have simply extended, allows for the use of a three-judge federal panel in the district court for the District of Columbia, but limits the showing a covered jurisdiction need make to the absence of a discriminatory test or device for a period of 17 years prior to the filing of the petition. No evaluation of the covered jurisdiction's past adherence to the law, its record of objections, or its efforts to remove existing discriminatory practices or procedures is required as in our proposal. The only reason the existing standard is presently effective is that the 17-year period extends to a point before the Act was passed, to a time when poll taxes, literacy tests, or other "tests or devices" were too frequently used to deny minorities the right to vote. On August 6, 1982, the seventeen-year period will revert only to the passage of the Act on August 6, 1965. Many more jurisdictions will doubtless then become eligible than would under our proposal.

Our understanding was that if an agreement could not be reached before full Committee markup on the 31st, negotiations would continue until floor consideration in late September or early October. Unfortunately, we were mistaken.

Late in the evening of July 30, and in the early morning hours of July 31, our draft and the agreements which had been reached up to that point, were stitched together and appended to new language, some previously the subject of heated debate during the negotiations and some merely the inspiration of the moment, to form a new amendment which two members of the minority were persuaded to sponsor. This, despite the fact that some of what was added was clearly inappropriate to even the most untrained eye, and that copies of the amendment were unavailable to the Committee membership for purposes of study until the moment it was being debated before them. In fact, most Committee members, including at least one of the sponsors, were unaware of its content when we arrived at work on the morning of the 31st.

What was ultimately reported is discussed at length in the remarks of my colleague, Congressman M. Caldwell Butler. In sum, several provisions in particular concern me.

First, bailout is absolutely unavailable, under the amendments to section 4(a) of the Act, if an action alleging a denial or abridgment of the right to vote is pending. That means that a $15.00 filing fee alone can effectively deny bailout to an otherwise deserving jurisdiction.

Second, each and every jurisdiction in a covered state must be granted bailout before a state legislature can become eligible. This means that one stubbornly racist county, over whom the state government may have little or no effective control, can indefinitely doom the state legislature to what the Supreme Court has termed the "extraordinary" procedures attendant to administrative clearance.

Third, mere support for any legislation which results in an objection by the Department of Justice, whether that support is formal or informal, the work of elected officials or others, may still bar a jurisdiction from bailout for ten years.

Fourth, the definition of "final judgment" is broadened to include settlement or consent decrees as a bar to achieving bailout. We were willing to permit the court to review and examine such agreements and to include adverse final determinations on the merits as express bars to eligibility, but any good lawyer knows that any number of factors, including practical considerations such as the financial ability of a jurisdiction to fight the United States government through the courts, can determine whether or not to enter into consent decrees or settlements. The language of this amendment can only serve to encourage jurisdictions who might otherwise comply with government's demands without litigation, to instead fight through to the bitter end lest they be declared ineligible for escape from the administrative preclearance provisions of the Act. The law has always favored settlements. This provision encourages litigation.

Ironically, if the amendments reported by the Subcommittee were to gain enactment by the Congress in their present form, I believe there would be severe constitutional repercussions. I say this because the Act's constitutionality was upheld in the 1966 decision of *Katzenbach* v. *South Carolina*, and last year in *City of Rome, Georgia* v. *United States*, on the presence of certain unique factors. One was the belief that the 1965 departure from historical tenets of federalism was only "temporary", but necessary based on pre-1965 conduct in the covered jurisdictions. A great many things have changed in the South since 1965, as our hearings demonstrated, and new, more progressive racial attitudes have begun to replace the cultural bias of the past. This change is, as I have said, far from complete. It is sufficient, though, to effectively dilute the force of the showing before the court in 1966.

Moreover, the language I have discussed, together with other limitations on bailout incorporated into the amendment adopted by the Committee would make its availability highly unlikely, as a practical matter, thereby changing the temporary status of the Act to a more constitutionally suspect permanent condition. In my judgment, such a change can only survive constitutional scrutiny if the method of

escape is reasonably achievable. What was reported by the Committee cannot possibly satisfy that test.

The most onerous product of the Committee's actions is a growing belief with which we take issue, that the Act and the people it protects are being used for the political purpose of galvanizing support for the present leadership of the House in the 1982 elections.

Reason must prevail, and soon.

I suppose it is hopelessly utopian to suggest that some issues—Social Security and the Voting Rights Act come to mind—deserve to be above partisan politics. Too much is at stake for too many people for some to play Russian roulette with their fears and hopes. They have a right to expect more from their elected representatives.

The struggle for equitable and effective legislation in this most important area is not over—it has just gotten underway.

HENRY J. HYDE.
DAN LUNGREN.

SUPPLEMENTAL VIEWS OF THE HONORABLE ROBERT McCLORY

During the hectic moments before the 1981 amendments to the Voting Rights Act were reported by the full Judiciary Committee, I intended to offer amendments to alter the standards by which minority language ballots become federally mandated. In the interest of time, I chose not to formally propose them; that decision should not be interpreted as a change in my position.

When the Act was last considered in 1975, amendments were made to it which broadened its coverage to include American citizens whose illiteracy rate was below the national average and whose language dependency rested on a language other than English. This expansion affected two portions of the Act: the administrative preclearance provisions of title I, section 4, and the supplemental provisions of title II, section 203. Each contains a separate trigger but both are based on the erroneous assumption that illiteracy in English presumes literacy in another language as well as an equation between language minority status and the historic discrimination which has been the singular burden of black Americans since the first slaves were brought to this country in 1619.

The argument has been made that, because of their reliance on a language other than English, non-English speaking minorities have been the victims of economic and political discrimination resulting in a dilution of their ability to influence their own destiny via the vote. The same might be said of Hasidic Jews or Polish-Americans or Asian-Americans. But unless their voting age population level approaches the arbitrary five percent threshold outlined in section 4(f)(3) or in section 203(b), they do not acquire the significant guarantees that the Act prescribes.

Our society has developed on the "melting pot theory", that is, that the whole of America is a nation of immigrants, and that each of us, or our forefathers, probably encountered discrimination as a result of the language we used or the habits we brought with us from our homelands. The result was that necessity forced us to learn English if we wished to succeed; we valued our heritage, as I do my Irish name, but we recognized that as Americans, we were required to acquire a facility in English if we were to assimilate effectively and take part in running this nation.

Many of those who favor the creation of bilingual ballots based on a reliance on a language other than English wish to permit the transfer of power without assimilation. This effort represents a dramatic shift in the one-man, one-vote concept of government which is the premise of our democracy. We should therefore be very careful about the changes we make to that concept, however subtle they may be.

The 1975 amendments have the effect, whether intended or not, of encouraging minority language dependency and therefore self-im-

posed segregation, both politically and culturally. Indeed, if the language minorities now included under the administrative preclearance provisions of sections 4 and 5 are any accurate indication, federal law will continue to outlay any state legislation which would have the effect, even if the purpose is benign, of reducing their group representation at any level of government.

I believe such a federal policy, as contrasted to a localized state practice, is both misguided and inappropriate, and will have the counterproductive long-term effect of diminishing the homogeneous character of our people. Large cultural constituencies whose concerns are more parochial than national ultimately threaten a move away from the precepts of republican democracy toward the uncertainties of coalition rule.

When H.R. 3112 is considered on the floor, I plan to offer amendments intended to focus the language of the bill on those whose condition brought about its passage in the first place: black Americans. Their plight is unique in the annals of American history and, unless others can demonstrate that their past includes the horrors of slavery or the dehumanizing experience of chattel equivalency, they should not be permitted the same protections by way of piggy-back legislative consideration. In my view, the 1975 hearing record does not meet that test; in fact, the language minority amendments to the Act were adopted as a result of a compromise during the House and Senate conference. Unfortunately, they did not then receive the attention they deserved. Perhaps this time it will be different.

ROBERT MCCLORY.

DISSENTING VIEWS OF HON. M. CALDWELL BUTLER

Introduction: Considering the Voting Rights Act in 1981

In 1965 the Voting Rights Act was passed to protect the right to vote of Blacks in the south. The legislation was later amended to extend its protections to language minority citizens. In 1975, as a member of Congress, I actively participated in Congress's deliberations on the Voting Rights Act. I was then and still am an advocate of a strong Federal role to assure that no citizen is denied the voting guarantees of the Fifteenth Amendment for reason of race, color, or native language.

Since its enactment in 1965, the Civil Rights Act has been amended by Congress twice: in 1970 and in 1975. In each instance Congress has reaffirmed the sanctity of the right to vote in our democratic society. For the third time since the Voting Rights Act was passed, Congress is reviewing the progress made under the Act to determine the appropriate Federal role in protecting the voting rights of minority group citizens. The original intent of the Act, the enfranchisement of Black citizens, was largely accomplished within the first five years after the Act's passage. Throughout the South, Black citizens register and vote at comparable rates to White citizens. For example, in the 1980 Presidential election, the rate of Black voter registration in the south was estimated to be 59.3 percent as compared to a White voter registration rate of 66.2 percent. In addition, the number of elected Black officials in the South has increased impressively since 1965. As reported by the U.S. Commission on Civil Rights in its 1981 report on voting rights, the number of elected Black officials has increased from less than 100 in 1965 to 2,042 in 1980. The States of Louisiana and Mississippi, for example, rank among the top four States in the county for the number of elected Black officials at all levels of government. The Georgia State Assembly has the highest percentage of Black members of any State in the country. Likewise, in my home of Roanoke, Virginia, where Blacks comprise only 22 percent of the total population, our city council is chaired by a Black mayor and vice-mayor.

In considering the Voting Rights Act of 1981 the Congress is faced with a vastly different social and political environment than that which existed in 1965 and which justified the Act. As I see it, our task is to pass legislation which takes into account this new environment, and as such, is a precise response to the need beyond 1982 for Federal protection of the voting rights of minority group citizens. It is easier for Congress not to do this, but rather, to continue the current "shotgun" approach to enforcing voting rights by legislating an extension of the special provisions of the Act and thereby permanently penalize the southern states which historically were associated with voting discrimination. Though this may be the easier alternative it is neither the most effective nor appropriate. As the conditions which justified

the imposition of the special provisions of the Voting Rights Act become increasingly remote and outdated, the imposition of such requirements merely breeds contempt for the law.

The Committee Process

In August the House Judiciary Committee of the 97th Congress had the opportunity to develop new and creative voting rights legislation for the 1980's and beyond. Accomplishing this would have required a thorough, deliberate, and rational decision-making process. Instead the Committee hurriedly and haphazardly passed legislation which is conceptually unsound and technically incompetent. Greater consideration was given to reporting out legislation before the August recess than to assuring that its language was accurate and its potential impact was understood. A review of some of the steps which preceded the Committee's passage of this legislation will highlight these shortcomings.

The Judiciary Committee's consideration of the Voting Rights Act began on May 6, 1981 when the Subcommittee on Civil and Constitutional Rights began holding hearings. After seven weeks, and more than one hundred witnesses had testified, these hearings ended. The voluminous testimony presented in the Subcommittee's hearings established the record from which we were asked to formulate and report to the House effective voting rights legislation. Yet, two weeks after the hearings were concluded, when the full Committee was convened, a comprehensive summary or analysis of the Subcommittee's finding had not been prepared. This failure of the Subcommittee staff to synthesize the information into a workable and meaningful form all but rendered it useless.

On July 31 the Judiciary Committee ordered that H.R. 3112 as amended be reported to the floor. Contained within this legislation was a new "bailout" provision. The term "bailout" refers to the process whereby a "covered" State or political subdivision may terminate its coverage under the special provisions of the Act through appropriate legal proceedings. On this final day of Committee action, the "bailout" provision now included in the bill was introduced less than one hour before we were asked to vote on it. Only those members who were privy to the closed door session in which this bailout mechanism was negotiated were aware of its content. The proposal was introduced to the full Committee in such a frantic fashion that the final version was not identified by a bill number, but rather by the time that it was typed and photocopied for distribution to the members of the Committee. It was clear that neither the sponsors nor the Subcommittee staff had analyzed the impact of establishing this bailout provision. In addition, there was no opportunity to examine the provisions of the proposal and therefore no opportunity to object. This is a poor way to legislate and a disservice to the people we serve.

The Impossible Bailout

Although the concept of "bailout" has always been a part of the Voting Rights Act, in practice it has been illusory. When the Act was established in 1965, under Section 4(a), a State or political subdivision could bailout from the special provisions of the Act, if it could

show in a declaratory judgment suit before the U.S. District Court for the District of Columbia, that it had not used a "test or device" with a discriminatory purpose or effect for a period of five years. States and political subdivisions subjected to the special provisions of the Act because they had used such a "test or device", as determined on August 6, 1965, were eligible to bailout on August 6, 1970. However, in 1970, before this five year period expired, Congress amended Section 4(a) to extend the requirement to ten years; then, in 1975, before this ten year requirement expired, Congress amended Section 4(a) to extend the requirement to seventeen years. The Act, itself, is, of course, permanent. In 1982, if Congress were to take no action to amend Section 4(a), no provision of the Act would "expire". Rather for the first time in seventeen years, States and political subdivisions covered by the special provisions in 1965, would have a realistic opportunity to bailout. It is a responsible exercise of Congressional authority to create such an opportunity in 1982, either by Congress taking no action to amend the Voting Rights Act or by initiating new legislation.

The Courts have interpreted Section 4(a) in a manner which, combined with the Congressional action in 1970 and 1975 to amend Section 4, has made bailout impossible to achieve. For example, in *Virginia* v. *United States* the State of Virginia was denied bailout despite the fact that no evidence suggested that the literacy test which Virginia had once used had been administered in a discriminatory manner. The District Court for the District of Columbia ruled that though the State had administered the literacy test fairly to both Black and White voters, the existence of unequal educational opportunities for Blacks as compared to Whites disadvantaged Black voters in taking literacy tests. Therefore, the Court reasoned that the literacy test did have a discriminatory effect against Black voters and under Section 4(a) was grounds to deny bailout. This decision has imposed a presumption of guilt upon States and political subdivisions covered by the special provisions, which has made bailout impossible to achieve. The assumption that such impure motive exists is not borne out by the record of progress since the Act's passage and the good faith efforts by the majority of political officials to comply with the Act.

This inequity was exacerbated by the Supreme Court's decision in *City of Rome* v. *United States*. The Court ruled that no political subdivision within a State which is covered by the special provisions of the Act could seek to bailout independently of the State itself. Consequently, local political subdivisions covered by the Act, the great majority of which have no record of voting discrimination, are prevented from bailout for no reason other than their location in a State targeted by the Act. Only evidence which establishes that a widespread, pattern or practice of voting discrimination within a State should warrant denial of bailout to political subdivisions. In the absence of such evidence, preventing the bailout of complying political subdivisions is unfair, of questionable Constitutionality, and ought to be changed.

Bailout as an Incentive

Bailout should operate as an incentive for jurisdictions to advance the voting rights of minority group citizens. A bailout provision, based upon stringent, yet achievable requirements could create such an in-

centive. Enhancing the political participation of minority group citizens would become a jurisdiction's goal while satisfying the requirements for bailout would become the vehicle for attaining that goal. In the past I have supported bailout provisions based on this constructive logic and would do so again today. Unfortunately, the full Committee has made a mockery of the idea of reasonable bailout by crafting legislation which would establish requirements impossible to achieve. In short, H.R. 3112 as reported by the full Committee would effectively extend forever the special provisions of the Voting Rights Act on the particular States and political subdivisions currently covered by them. This is an excessive response to the problem of securing voting rights which provides no incentive for covered jurisdictions, to change obsolete election laws and procedures; it is therefore unacceptable to me.

The Bailout Provision of H.R. 3112

H.R. 3112 as reported by the full Judiciary Committee again amends Section 4(a), extending from 17 to 19 years the period of time for which a jurisdiction must prove in a declaratory judgment suit before the U.S. District Court for the District of Columbia that it has not used a test or device for the purpose or with the effect of denying or abridging the right to vote. Therefore, Southern states and their political subdivisions would not be eligible to bailout until August 6, 1984. However, on the next day, August 7, 1984, a new bailout provision would go into effect providing that any political subdivision covered by the special provisions at that time would remain subjected to them indefinitely, or until the political subdivision met the new requirements to bailout. Bailout would be permitted if in a declaratory judgment suit before the U.S. District Court for the District of Columbia, the petitioning political subdivision showed that during the ten years preceding its request for bailout, including the "pendency" of the action:

(A) No "test or device" had been used anywhere within its boundaries "for the purpose or with the effect of denying or abridging "the right to vote on account of race, color or native language;

(B) No "final judgment" had been entered against it by any federal court in which the political subdivision was found to have denied or abridged the right to vote on account of race, color, or native language. For the purposes of this subsection, consent decrees, settlements, or agreements relating to voting rights may constitute "final judgments" if they result in "any abandonment of a voting practice" challenged for its discriminatory purpose or effect. This requirement cannot be met, so long as any action is pending which "alleges" a denial of the right to vote;

(C) No Federal examiners had been assigned to its territory;

(D) It, "and all governmental units within its territory" had complied with the preclearance provisions of Section 5, by showing that no change within the preview of Section 5 had been enforced without being precleared and it had repealed all laws to which objections had been interposed by the Department of Justice or the U.S. District Court for the District of Columbia.

(E) No objection had been interposed to any submission made under section 5 or advocated "by or on behalf of the plaintiff or any governmental unit within its territory."

(F) It, "and all governmental units within its territory" had (i) eliminated voting procedures and methods of election which inhibit or dilute minority political participation; (ii) engaged in constructive efforts to eliminate voting intimidation and harassment affecting minorities; and (iii) engaged in constructive efforts to expand the "opportunity for convenient registration and voting for every person of voting age" by showing among other things, "the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process."

Section 2 of the bailout provision would provide that after the requirements for bailout contained in subsections A through F have been met:

> To assist the court in determining whether to issue a declaratory judgment under this subsection, the plaintiff shall present evidence of minority participation, including evidence of the levels of minority group registration and voting, changes in such levels over time, and disparities between minority-group and non-minority group participation.

In addition, a political subdivision seeking bailout must show that it, and "all governmental units within its territory" had not engaged in violations of the Constitution or of federal or state law relating to voting. This requirement could be waived if it is established that any such violations "were trivial, were promptly corrected, and were not repeated."

Any effort to bailout under the new provision, or to achieve a "proposed settlement" of a voting rights action must be publicized "in the media serving such State or political subdivision and in appropriate U.S. post offices." In addition, "at any stage" in the bailout proceeding, an aggrieved party may intervene.

If the preceding requirements are met by a political subdivision, it can bailout from the special provisions of the Act. The political subdivision would then be subjected to a "parole" period for 10 years. During this period, the court would be required to reopen the declaratory judgment suit in which bailout was granted, if a motion is made by the Attorney General "or any aggrieved person" which alleges that misconduct has occurred during the parole period which would have precluded the jurisdiction's bailout if it had occurred prior to the date of the court's authorization of the jurisdiction to do so. No standard of proof is required to accompany such an allegation of misconduct.

Changing the Rules of the Game

A careful review of the foregoing reveals 11 jurisdictional requirements which must be satisfied in order for a political subdivision to bailout. Most of these criteria have not been required for bailout in the past. As such, the legislation establishes an entirely new mechanism to determine bailout, based upon criteria for which political subdivisions have never been held accountable and for which there has been no previously developed system for determining their compliance.

In reporting this legislation, the full Committee has given its endorsement to "changing the rules in the middle of the game." While this is unfair to the few states which have sought to bailout since 1965, it is not new in the annals of voting rights legislation. Congress has freely changed the "rules of the game" each time it has considered the Voting Rights Act. In each instance the result has been the same; states and political subdivisions covered by the special provisions have been precluded from bailing out. H.R. 3112, as reported by the full Committee, would also accomplish this. Not only would the result of this legislation be objectionable, but a review of the bill, also reveals that it is superficial, poorly conceived and rampant with technical ambiguities. Regardless of one's philosophical views on the specific issues which any voting rights legislation must address, H.R. 3112 is the unacceptable product of careless thinking and sloppy draftsmanship.

"All or Nothing" Bailout

The legislation reported by the full Committee would establish an "all or nothing" approach to bailout. In order to bailout, a State must show that it and all political subdivisions within its boundaries have satisfied the requirements for bailout. The failure of any political subdivision within a State to meet any requirement, would preclude a State from bailing out. Linking the bailout of a State government to the conduct of all political subdivisions within its boundaries is unreasonable. Isolated instances of discrimination should not preclude a State government from seeking bailout on behalf of itself, and the political subdivisions within its boundaries which have complied with the Act. The failure to permit such a "partial" State bailout, would require every political subdivision within a State to file separately for bailout. The effect of this would be to impede the bailout process while greatly multiplying the legal and administrative costs of the entire process.

Burdensome Venue

Under H.R. 3112, as well as under current law, the District Court for the District of Columbia has sole jurisdiction to hear declaratory judgment suits for granting bailout. The jurisdiction of the District Court for the District of Columbia over this matter is judicially and practically illogical. Judges on the Court are removed from the unique circumstances which shape the electoral affairs of a locality therefore making it difficult to ascertain the true facts in the case. Usurping this authority from local Federal Courts, which are more appropriately located for a determination of the true facts, indicates a lack of faith in our Federal judicial system and is insulting to the judges who serve it. In addition, maintaining the jurisdiction of the District Court for the District of Columbia over bailout imposes unnecessary costs upon a locality seeking to bailout. These costs include: the expense for representatives of the political subdivision to travel to Washington; the expense of hiring a Washington lawyer familiar with litigating cases in the District of Columbia; as well as, the expense and impracticality of bringing witnesses from the locality to testify in the suit. For the small locality seeking to bailout, these expenses could be prohibitive to its successful completion of a bailout suit. In contrast, the Federal government brings to these cases a tremendous advantage which can

only be overcome by great expense. These problems could be lessened by establishing the jurisdiction of the Federal District Courts which are in proximity to the States and political subdivisions covered by the special provisions of the Act, to hear declaratory judgment suits.

The "all or nothing" approach to bailout followed by H.R. 3112 would make the establishment of jurisdiction by "local" Federal District Courts all the more necessary to assure that the bailout process was expeditiously conducted. Because the "all or nothing" approach would result in many political subdivisions within a State seeking bailout independently, a large number of bailout suits would be brought and would surpass the capability of a single court to hear them in a reasonable period of time. The consequent backlog of bailout suits would place an unnecessary burden on a single court while impeding the process whereby a political subdivision may bailout by making it wait indefinitely for its day in court.

For all these reasons I will introduce or support an amendment to H.R. 3112 which would establish the jurisdiction of three judge Federal District Courts in localities covered by the special provisions of the Act to hear declaratory judgment suits for the granting of bailout.

The Final Judgment Problem

Under the current law, in order to bailout, a State or political subdivision must show that no final judgment has been entered against it, in which it was found to have denied or abridged the right to vote. Subsection B of the proposed bailout provision retains this requirement but expands the definition of final judgment to include consent decrees, settlements, or agreements resulting in "any abandonment of voting practice challenged on such ground."

Several problems are created by expanding the definition of final judgment in the manner done in H.R. 3112. For example, the meanings of the words "agreement" and "settlement" are not clear. Are we to assume this refers to an "agreement" or "settlement" reached between litigants in a judicial action? Or does it mean the "settlement" of any citizen's objection, for example, the objection to the location of entrances to a particular polling place? Likewise the bill fails to make clear whether any allegation, regardless of its merits in a court of law, would constitute a "challenge" under this provision. The subsection is drafted so broadly that State and local jurisdictions would be unable to determine the effects of any voluntary actions they wish to take. As a consequence of these shortcomings, this requirement would discourage public officials from resolving disputed voting practices or procedures through voluntary informal conciliation. There would be no advantage for them to do so, if in the future such an agreement prevented the bailout of the political subdivision they serve. As such, this requirement would increase the likelihood that litigation would be used to reconcile disputes over voting practices and procedures which would otherwise be resolved out of court.

As a final provision, Subsection B would prohibit the granting of bailout "during the pendency of an action alleging such denials or abridgements of the right to vote." This proviso is both unreasonable and impractical. The current filing fee for a complaint in a civil action in the District Court for the District of Columbia is $10. Such a

fee would not deter any person or group from filing a groundless civil action which would prevent bailout during the litigation of the action (often 4 to 5 years) when no other concrete evidence suggested wrong-doing. The proviso would also presumably extend to the pendency of any appeals filed (whether meritorious or non-meritorious) and this would prohibit bailout for several more years.

Section 5 Misunderstood

Subsections D and E would establish three criteria for bailout based on compliance by a political subdivision with the preclearance requirements of Section 5. These three requirements reveal a misunderstanding of both the purpose and effect of Section 5. For example, under Subsection D a political subdivision must show that it has "repealed all changes" to which the Attorney General has interposed an objection. Section 5 requires political subdivisions to obtain the Attorney General's approval of a change in any voting practice or procedure before the change can be implemented. If the Attorney General objects to a proposed change in a voting practice or procedure, the change cannot be implemented. How can a change be repealed if the Attorney General interposed an objection to it and therefore blocked its implementation?

Objections interposed by the Attorney General under Section 5 provide little information useful for determining the need for a political subdivision to be covered by the special provisions of the Act. Objections can be interposed for a variety of reasons, including: the failure of the submitting political subdivision to provide sufficient information about the proposed change to the Attorney General; as well as, the determination by the Attorney General that the change would have an unfavorable impact upon the political interests of minority group citizens if it were implemented. Objections interposed under Section 5 do not indicate improper conduct, impure motives, or failure to comply with the Voting Rights Act. For example, in many instances following an objection to a proposed change in voting practices or procedures, a political subdivision resubmits a revised plan which is approved by the Attorney General and subsequently implemented. Preventing the bailout of a political subdivision because an objection was initially interposed fails to account for the political subdivision's affirmative effort to develop an acceptable plan which the Attorney General approved and under which it is currently conducting politics. By creating the risk that bailout would be prevented if a change submitted under Section 5 was objected to, a political subdivision would be discouraged from making needed changes in its electoral systems. It is ironic that the Committee would first predicate the need for this bailout provision on the contention that discriminatory voting laws still exist but yet would create such a disincentive for public officials to change them.

Under the provisions of Subsection E alone, Alabama, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia would be precluded from bailing out until 1990. While the sponsors of this legislation might contend that other political subdivisions would be similarly precluded, only six counties covered by the special provisions outside of the Southern and border States (located in California, New York, and South Dakota would) be similarly affected by this

requirement. A most recent example of this, involves the City of New York. The Attorney General's objection to the City's reapportionment plans, on the grounds that the City failed to provide adequate information for determining if the reapportionment of its voting districts was discriminatory, would consequently prevent New York City's bailout until 1991. No objections have ever been interposed by the Attorney General against any of the political subdivisions which are covered by the special provisions but are located in states outside of the south. The absence of objections to submissions made under Section 5 by these political subdivisions does not indicate their compliance with the Act. Rather, as the General Accounting Office reported in 1978, it reflects the regional bias against the southern states in the enforcement of Section 5 by the Department of Justice. It is unfair to determine eligibility to bailout by using statistics which do not reflect actual compliance with Section 5, but only reflect the enforcement priorities of the Department of Justice.

Meaningless Safeguards

Subsection F is intended to establish as a precondition to bailout, the requirement that a political subdivision show that it had made affirmative efforts to promote the political participation of minority group citizens. An examination of the subsection reveals it is based on a superficial understanding of the statutory provisions of the Voting Rights Act and would not establish any safeguard of minority voting rights which does not currently exist. The subsection would make bailout contingent upon the elimination of acts which are explicitly prohibited under the Act, and the performance of other acts, which if not performed would constitute a violation under the Act. The subsection is therefore a statement of the obvious; in order to bailout a political subdivision must have complied with the Act.

In addition to being conceptually shallow, the language of the subsection exemplifies the technical problems throughout the bailout provision. For example, under paragraph (i) a State or political subdivision must show that it has "eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process." The registration of voters, the tabulation of ballots, the redrawing of district lines, and the conduct of at-large elections are "voting procedures and methods of election" which are fundamental features of the American political system. The fact that such practices may be used insidiously and to the detriment of the political interests of minority group citizens is not cause to eliminate the practices, but rather, to change the practices so that they are implemented in conformance with the law.

A similar technical inaccuracy exists in the phrase "inhibit or dilute equal access to the electoral process." A qualified voter obtains access to the electoral process by registering to vote. The act of registering, and therefore gaining access to the political process, is not an act which can be "inhibited or diluted." It is either successfully performed or improperly denied. "Inhibit or dilute" are terms which modify the effect that a voting practice or procedure may have on the voting strength of members of the electorate. If the use of the terms "inhibit or dilute" is intended to make this reference, a political subdivision would have to show that it had statistically maximized the political

prospects of minority group citizens in order to bailout. Such a requirement would lead dangerously towards establishing a legislative precedent requiring that special groups within the national electorate be represented in proportion to their numbers.

Section 2 of the bailout provision is an ambiguously construed section which is a "catch-all" for other requirements for bailout that could not be concisely written into the legislation. Though the section requires that "evidence of minority participation" be presented for assisting the Court in making its determination to grant bailout, the section fails to define the amount of evidence which is required, the bounds by which statistical measures of "participation" are determined to be "good" and "bad", or the manner in which the Court should use the information to "assist" in its determination of whether to grant bailout. Like the provisions which preceded it, Section 2 establishes a requirement for bailout which could be subjected to numerous interpretations and therefore would not provide reliable guidelines to assist political officials to formulate policies which comply with the Act and contribute to promoting the political interests of minority group citizens.

Bailout: A Historic Concession

While I recognize that such extensive criticism in a dissenting view is unusual, I think it is important to focus on the bailout provision proposed in H.R. 3112. Though an examination of the provision indicates that its sponsors did not formulate the bill with a genuine interest in establishing realistic and functional legislation, the bailout provision contained in H.R. 3112 is a significant step in the legislative history of the Voting Rights Act. It is noteworthy because it represents a concession by the advocates of H.R. 3112 that the great progress which has been made since 1965 to promote the political interests of minority group citizens could justify the removal of the special provisions as a mechanism to protect the right to vote in some political subdivisions. Nonetheless, the failure of the Judiciary Committee to execute its responsibility to carefully examine all the requirements contained in the bailout provision compels the full House to do that which the Committee failed to do. It is my present intention to introduce or support separate amendments to nearly all of the individual conditions for bailout contained in H.R. 3112 with the hope that the House can advance legislation with a meaningful bailout provision.

The Results Test

Though the Judiciary Committee focused primarily on developing legislation which would assure that southern states remain covered by the special provisions of the Act, it also undertook to define a standard to judge discrimination in voting rights litigation. The Supreme Court's decision in *Mobile* v. *Bolden* (1980) raised the issue of what is the appropriate standard by which to judge discrimination in voting rights litigation: the showing of purposeful intent or the showing of imbalanced or discriminatory effects. The intent test defined by the Court is a stringent standard which requires that "a smoking gun" must be shown to successfully prove voting discrimination. The effects test requires showing that the electoral laws or voting practices used by a political subdivision results in minority group citizens having un-

equal access to the political process. The intent test and the effects test are opposites of one another and choosing between them is problematic. Intent is very difficult to prove, effects do not necessarily demonstrate discriminatory actions.

The Judiciary Committee has endeavored to reconcile this polemic by legislatively establishing a "results test" by which to judge discrimination. This initiative should have been undertaken only after a comprehensive examination had been made to determine the ramifications that such a standard would have for the conduct of politics by States, cities, and other political subdivisions. Instead the Committee developed this standard in the same careless and hasty fashion by which the final bailout provision was conceived and drafted. Out of the seven weeks of hearings conducted by the Subcommittee only one day was devoted to this issue. On that day, three witnesses presented arguments and information to support the adoption of the "effects" test. This brief and one-sided consideration of the issue is inadequate in order to review the questions which are raised by this action concerning proportional representation, one man-one vote, and rules for redistricting.

The "results test," contained in the legislation reported by the Judiciary Committee, would be established by an amendment to Section 2 of the Voting Rights Act. Section 201 of H.R. 3112 amends section 2 by striking out "to deny or abridge," where it appears, and inserting in lieu thereof, "in a manner which results in a denial or abridgement of." If amended in this fashion Section 2 would read as follows:

> No voting qualification or prerequisite to voting, or standard, practice or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantee set forth in Section 4(f)(2) of this Act.

The effect of this amendment would be substantial. For example, let's assume that a city council in a northern state was required by law to establish new voting districts for city council elections. Section 2, as amended, would require that as a result of the creation of those new districts the right of no minority citizen should be abridged. Let's assume that at present there are no majority Black voting districts in the city. Let's further assume that the city council, following natural geographic boundaries creates one voting district which is comprised of 70 percent Black and 30 percent White voters. Adjacent to this newly created majority Black district the city council creates a 35 percent Black and 55 percent White district, again following natural geographic boundaries. In this example, let's finally assume that the city council has no discriminatory intent or purpose and that the effects of their actions will be to increase the prospects of electing a Black city council member. Following this redistricting, a suit is filed by plaintiffs alleging a violation of amended Section 2. At trial experts using a computer-assisted analysis show that the city council could have drawn voting district lines which would have created two 51 percent Black and 49 percent White districts. A court applying the amended Section 2 might well, therefore, conclude that the effect of the new plan is to abridge the voting rights of Black citizens living in the

newly created 65 percent White and 35 percent Black district. One practical effect of the amended language proposed in H.R. 3112 would, thus, be to require State and local governments to study the effects of all proposed voting procedures and adopt only those which maximize statistically the voting impact of minority citizens. Ultimately, this logic could lead to non-continuous voting district boundaries, crazy quilt annexation patterns and the like. Such a required affirmative manipulation of voting procedures is a far cry from the original purpose of the Voting Rights Act. It is unlikely that any local political subdivision in urban or suburban America could successfully defend itself from suits under the amended Section 2 standard.

In considering the proper standard for judging voting discrimination the Congress must re-examine the intent of the Fifteenth Amendment. In the *Mobile* decision, Justice Stewart stated, "The Fifteenth Amendment does not entail the right to have . . . candidates elected but prohibits only purposefully discriminatory denial or abridgement by government of the freedom to vote." The "results" test proposed by the full Committee circumvents this interpretation of the Fifteenth Amendment and the Supreme Court's decision in *Mobile*. The "results" test is not a test of fair political conduct or the "freedom to vote," but a test of affirmative impact on the political interests of selected groups within the national electorate. The "results" test would impose strict liability on public officials for the adverse consequences of their actions regardless of the foreseeability of those consequences. As such, the results test does not provide incentives for responsible decision-making, but instead, discourages public officials from making any decisions which would alter the status quo.

The Reasonably Foreseeable Effects Test

An alternative to the unfettered "results" test as reported by the full Committee would be a test based upon "reasonably foreseeable effects." This standard, is a test of "intent" long followed by Common Law in civil litigation. It is based upon the assumption that decisions on voting changes are made by reasonably prudent individuals who intend the reasonably foreseeable effects of their actions, for which they should be held responsible. For example, a person who pushes a door intends and expects the door to open. Based upon this expectation the person must exercise caution in opening the door so as not to hit and harm a person on the other side of the door. Opening the door hurriedly represents neglect of this foreseeable consequence for which the person is then responsible. Following this approach, the city council in the earlier example, which according to the "results" test was found to have violated the Act, would not be culpable. Rather, the city council would be presumed to have intended the reasonably foreseeable effects of their proposed actions, i.e., an actual increase in minority voter participation.

By imputing to public officials the intent to have those results which are reasonably forseeable, they are encouraged to be informed and to make responsible decisions. Accordingly I will introduce an amendment to incorporate the reasonably foreseeable effects standard into both Section 2 and Section 5 of the Voting Rights Act, therefore establishing a single standard throughout the Act for judging voting discrimination. This action would substantially enhance the right of pri-

vate citizens to enforce the voting guarantees of the Fourteenth and Fifteenth Amendments, while establishing enforceable guidelines to ensure the proper conduct of public officials.

A New Approach

I would have preferred for the Judiciary Committee to have taken a new approach to voting rights legislation; an approach based on fairness, incentives for positive change, and safeguards to prevent future abuses. The inadequacies of H.R. 3112, as reported by the full Committee are evident from the preceding discussion. In addition, the piecemeal approach followed by the Congress in the 1970 and 1975 amendments to the Act has produced separate and inconsistent provisions for racial minority and language minority discrimination, disjointed statements of unlawful action, endless cross-referencing—in effect a legal maze. The legislation reported by the full Committee would merely exacerbate this problem. Accordingly, it is my intention to introduce a new approach to protect the voting rights of minority group citizens; an approach which will improve the clarity, consistency, and enforceability of the Voting Rights Act.

The legislation which I would propose would retain the preclearance provisions of the Voting Rights Act while updating and rationalizing its "triggering mechanism." Under this legislation, any state or locality would be automatically covered by the special provisions if a court had entered a final judgment on or after November 1, 1976, establishing that the jurisdiction violated the voting guarantees of the Fourteenth or Fifteenth Amendments of the Act. Such a state or locality would be automatically covered by the preclearance requirements of the Act for a period of from seven to ten years (as determined by a court) from the date the final judgment was entered. For example, in 1978 the Board of Commissioners of the City of Sheffield, Alabama was found to have violated Section 5 of the Voting Rights Act. Under the proposed legislation, the City of Sheffield would be automatically covered by the special provisions of the Act at least until 1985. Examples of other jurisdictions which would also be covered are Thruston County, Nebraska, Colleton County, South Carolina, and Fall River County, South Dakota. While the number of jurisdictions automatically covered by preclearance under this legislation is being studied, it is clear that a substantial number of jurisdictions in the South and in other regions of the country would be covered by the special provisions beyond 1982.

After 1982, any state or locality found by a court to have violated the voting guarantees of the Fourteenth or Fifteenth Amendments, or this Act, would be made subject to the preclearance requirements of the Act for a period of from five to ten years. Such a judicial determination of "wrong-doing" would replace the current outdated triggering mechanisms, which are based on low voter participation in past presidential elections (1964, 1968 and 1972). This proposal eliminates the concept of "bailout" by establishing specific periods for which Federal preclearance of voting changes would be required. Preclearance would not be extended indefinitely, but would expire automatically at the end of the period established by the courts, unless a new violation has been judicially determined to have occurred.

These changes in the current law will substantially reduce the num-

ber of jurisdictions subject to the preclearance requirements and correspondingly reduce the "preclearance workload" of the Department of Justice. The effect of reallocating these "freed" resources to voting rights litigation will be to strengthen and expand the Federal role in securing compliance with the basic voting guarantees of the Act.

Finally, this legislation would reorganize the Voting Rights Act, to consolidate and streamline the statute. All actions prohibited by the Act, e.g., use of a poll tax, use of literacy tests, failure to accurately tabulate a person's ballot, are incorporated into a single section rather than scattered throughout the statute. Likewise the proposed amendments change the device for requiring bilingual ballots from the rate of illiteracy to comparative rates of voter participation, while maintaining other substantive provisions in full. The effect of these changes would be to clarify and make more concise the meaning of the Act and to ultimately to enhance its effectiveness and enforceability.

Conclusion

The Voting Rights Act of 1965 has been fundamental to protecting the right to vote of racial and language minority group citizens. In the past sixteen years, both increased participation at the polls and success in pursuing public office has created pressure from minority group citizens to force the politics of the "old South" to change. Candidates for elected office cannot neglect the voting strength of minority group voters if they wish to hold public office. Once in office, public officials cannot neglect the concerns of minority group citizens without jeopardizing their prospects for re-election. While pockets of discrimination may still exist, voting discrimination is not the widespread problem it was in 1965 when conditions justified an extraordinary exercise of federal authority to protect voting rights. The same creativity and resourcefulness which was employed in 1965 to develop the Voting Rights Act must be used today to develop new legislation.

Section 2 of the Fifteenth Amendment states that, "the Congress shall have power to enforce this article by appropriate legislation." "Appropriate legislation" is that legislation which is a precise response to the current and future need for a federal role to protect voting rights. The full Committee failed in its responsibility to report "appropriate" legislation to the House of Representatives. It is inexcusable that reporting legislation to the House before the August recess took precedence to developing thoughtful and accurate legislation. It is ironic that the members of the Committee who have advocated a "strong" Voting Rights Act would report legislation which is so conceptually and technically flawed. Such legislation benefits no one, and would only add unnecessary costs and confusion to the enforcement of the Act.

There are numerous alternatives to the legislation reported by the full Committee. I intend to introduce or support legislation which remedies the conceptual and technical inadequacies of the legislation reported by the full Committee, and which initiates a new approach for Federal protection of the right to vote. By passing legislation which accomplishes these objectives the House would help to insure that the Fifteenth Amendment will be enforced by "appropriate" legislation in the 1980's and beyond.

M. Caldwell Butler.

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