EXTENSION OF THE VOTING RIGHTS ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

EXTENSION OF THE VOTING RIGHTS ACT

MAY 6, 7, 13, 19, 20, 27, 28, JUNE 3, 5, 10, 12, 16, 17, 18, 23, 24, 25, AND JULY 13, 1981

Serial No. 24

Part 1

Printed for the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

83-679 O WASHINGTON : 1982

COMMITTEE ON THE JUDICIARY

PETER W. RODINO, JR., New Jersey, *Chairman*

JACK BROOKS, Texas
ROBERT W. KASTENMEIER, Wisconsin
DON EDWARDS, California
JOHN CONYERS, JR., Michigan
JOHN F. SEIBERLING, Ohio
GEORGE E. DANIELSON, California
ROMANO L. MAZZOLI, Kentucky
WILLIAM J. HUGHES, New Jersey
SAM B. HALL, JR., Texas
MIKE SYNAR, Oklahoma
PATRICIA SCHROEDER, Colorado
BILLY LEE EVANS, Georgia
DAN GLICKMAN, Kansas
HAROLD WASHINGTON, Illinois
BARNEY FRANK, Massachusetts

ROBERT McCLORY, Illinois
TOM RAILSBACK, Illinois
HAMILTON FISH, JR., New York
M. CALDWELL BUTLER, Virginia
CARLOS J. MOORHEAD, California
JOHN M. ASHBROOK, Ohio
HENRY J. HYDE, Illinois
THOMAS N. KINDNESS, Ohio
HAROLD S. SAWYER, Michigan
DAN LUNGREN, California
F. JAMES SENSENBRENNER, JR., Wisconsin
BILL McCOLLUM, Florida

ALAN A. PARKER, *General Counsel*
GARNER J. CLINE, *Staff Director*
FRANKLIN G. POLK, *Associate Counsel*

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

DON EDWARDS, California, *Chairman*

ROBERT W. KASTENMEIER, Wisconsin
PATRICIA SCHROEDER, Colorado
HAROLD WASHINGTON, Illinois

HENRY J. HYDE, Illinois
F. JAMES SENSENBRENNER, JR., Wisconsin
DAN LUNGREN, California

CATHERINE A. LEROY, *Counsel*
IVY L. DAVIS, *Assistant Counsel*
HELEN C. GONZALES, *Assistant Counsel*
THOMAS M. BOYD, *Associate Counsel*

CONTENTS

HEARINGS HELD

TEXT OF BILLS

WITNESSES

APPENDIXES

APPENDIX 2.—DOCUMENTS INSERTED BY MEMBERS OF THE SUBCOMMITTEE

APPENDIX 3.—DOCUMENTS INSERTED BY WITNESSES

APPENDIX 4.—CORRESPONDENCE

APPENDIX 5.—STATEMENTS FOR THE RECORD

EXTENSION OF THE VOTING RIGHTS ACT

WEDNESDAY, MAY 6, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 2237, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Washington, Hyde, Sensenbrenner, and Lungren.

Staff present: Ivy L. Davis and Helen Gonzales, assistant counsel; and Thomas M. Boyd, associate counsel.

Mr. EDWARDS. The hearing will come to order.

Mr. Hyde.

Mr. HYDE. I move permission be granted that the proceedings here this morning and this afternoon be covered by television and any photographers wanting to take such pictures as they deem appropriate.

Mr. EDWARDS. Without objection, so ordered.

This subcommittee convenes, to begin hearings on legislative proposals to extend and amend the Voting Rights Act of 1965.

The right to vote is preservative of all other rights and our history is full of actions by this Congress to expand and extend the franchise and to safeguard it in our Constitution.

Unquestionably, the Voting Rights Act is the most important civil rights bill enacted by the Congress. Its sometimes dramatic successes demonstrate that it has been the most effective tool for protecting voting rights.

Prior to 1965, the percentage of black registered voters in the now covered States was 29 percent, registered whites stood at 73 percent.

In 1980, it is estimated that approximately 57 percent of eligible black voters were registered in these States and just under 80 percent of whites were registered. In 1980, the Justice Department entered an objection to a voting change affecting De Kalb County, Ga., which includes Atlanta. The percentage of registered eligible blacks was 24 percent, while white registration was 81 percent.

In 1968, less than one-half percent of all elected officeholders in the covered States were black; by 1980, the percentage had increased to 5.6 percent.

The greatest number were in Louisiana—approximately 8 percent—the smallest number were in Virginia—approximately 3 percent.

For Hispanics in Texas, voter registration has increased by 64 percent between 1976 and 1980. During that same period, the percentage of elected officials has increased by 29 percent.

Yet, in Victoria, Tex., with a minority population of 40 percent, there had never been a minority elected to any public office, as recently as 1979.

Application of the preclearance provisions have resulted in the election of minorities to city and county office for the first time.

All of the bills pending before this subcommittee acknowledge that the right to vote is a fundamental right which must be zealously guarded by our National Government. The right to vote knows no political affiliation.

The voting rights provisions of the Civil Rights Acts of 1957, 1960, and 1964, and the Voting Rights Act of 1965 and each extension have received broad-based support and have been enthusiastically endorsed by every President. I am hopeful this subcommittee's deliberations will culminate in a successful bipartisan bill.

I recognize the gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

One of the most important and controversial issues before this Congress will be whether or not to extend certain expiring sections of the Voting Rights Act, as amended in 1975.

As you know, the preclearance provisions of the act expire on August 6, 1982, and Chairman Rodino and others have introduced H.R. 3112, a bill designed to extend them for another 10 years.

I have already introduced a bill, H.R. 3198, which is designed to seek a middle ground.

What is preclearance? Very simply, it requires certain States and political subdivisions, principally in the South and Southwest, which the Congress has determined to have a history of racial discrimination in voting rights, to obtain permission from the U.S. Attorney General in Washington, D.C., or a U.S. district court in Washington, before changing its election laws.

This drastic remedy has been in place in some jurisdictions for nearly 16 years. In that time, nearly 35,000 electoral changes have been submitted by these jurisdictions, and 800 of them, or approximately 3 percent, have been objected to.

What action is proposed? Chairman Rodino wants to extend preclearance for another 10 years. I believe it is fair to say that there are some individuals in the other body who would like to see the preclearance provisions expire altogether in 1982.

Is there a third choice? Yes; I propose to substitute for the mandatory preclearance imposed on a few States a new requirement which would permit the Attorney General, or an aggrieved private party, to bring an action in any Federal court, not only the District Court for the District of Columbia, as present law requires, and, if a pattern or practice of voting rights abuses can be shown, impose preclearance for a maximum of 4 years.

This sanction would apply to all areas of the country where such activity can be shown. The salutary effect of my bill would be that all States would be treated equally, and would recognize the fact that voting rights abuses in those previously selected jurisdictions are no better or worse than the rest of the country.

It would, in effect, grant parole to States and localities which have sought to rehabilitate themselves, because improvements have occurred, and recognition of this is overdue.

My bill also permits the intervention by the Attorney General in any private voting rights suit anywhere in the country. It prospectively broadens the nationwide definition of voting rights abuse beyond just intent, attaching to the rest of the country the same effects test which has applied selectively since 1965.

I respectfully suggest that my bill constitutes a sensible middle ground between continuing the preclearance sections of the Voting Rights Act as they now exist for 10 additional years, for a total of 27 years in some cases, and the other equally unsuitable alternative of permitting the racial minority provisions to expire altogether, should Congress take no action at all.

Does my bill erase all the gains under the present Voting Rights Act? Of course not.

The national provisions of the Voting Rights Act still will be in effect, rendering the following practices illegal in the future, as they are now:

First. Literacy tests and understanding tests,
Second. Moral character tests,
Third. White-only primaries,
Fourth. Poll tax,
Fifth. Grandfather clauses of eligibility,
Sixth. Property qualifications for eligibility,
Seventh. Good character tests,
Eighth. Ballot stuffing,
Ninth. Inability or failure to count or tabulate votes,
Tenth. Intimidation, coercion, or threats to influence voting.

The remedies for isolated voting rights abuses are now covered in section 3(c) of the act, which enables any Federal court anywhere in the United States to find a violation and impose a suitable sanction, including preclearance where necessary.

If a pattern or practice can be established, my bill proposes that the local Federal court retain jurisdiction and require preclearance for a maximum of 4 years. That way, parole can be revoked and the culprit incarcerated once again.

In short, my view is that the handful of Southern States have been in the penalty box for nearly 17 years; they have improved their voting rights records, and hence ought to be treated like every other jurisdiction in the land.

The infringement on their sovereignty imposed by the selective application of preclearance for 17 years ought to be ended.

Yes; voting rights abuses can and doubtless will recur, not just in the South, but anywhere in the country.

Section 3(c) of the act will remain in force, and this provides an effective remedy to redress the isolated voting rights abuse anywhere in the Nation.

What I am substituting for the present preclearance sections is a requirement for such mandatory preclearance for 4 years anywhere in the Nation, whenever a pattern or practice of abuse can be shown.

I think this compromise can find Senate acceptance, and this is the key factor in trying to find a middle ground.

I apologize for the prolixity of my opening statement, but there is a lot of misunderstanding of what I am trying to do.

So I thought I would take this opportunity to correct it.

Mr. EDWARDS. We appreciate what you are trying to do and we appreciate the statement.

The gentleman from Illinois.

Mr. WASHINGTON. I join you this morning in welcoming these witnesses.

We are beginning today a series of hearings of great significance.

In statements such as "States forced to come to Washington, hand in hand," and similar statements that have already been bandied about by some of my colleagues today and other days, the fact of the matter is that this is a relatively young country, with a history of slavery and segregation in which people were denied rights because of the color of their skin.

It may be unpleasant to hear, but it's a manifestly true reality of the situation.

This body has a history of denial or superficial acceptance of the reality of race relations in this country.

I, for one, do not intend to indulge that nonreality, to do so would be a denial of my own history, of the history of my family, the history of my people, and of the history of this country.

It would be to deny the history of America. Citizens become alienated when doors slightly ajar have been slammed shut.

This country went through a tortuous war which came about because of the principles of democratic freedom. Then in 1877, when the rest of the country returned to business as usual, the States which had been the Confederacy chose treason, that began a systematic and economic participation of formerly enslaved.

During the course of these hearings, I hope we shall have a chance to hear personal accounts of what happened prior to the time this law was passed and what is still happening.

The goal of leadership is to exercise sound and responsible judgments on events measured over time, not to be swayed or stampeded.

We cannot stick our heads into the sand and wait until events dictate that Congress has no choice but to react.

Make no mistake that we sit here now in the midst of a world perched on the verge of upheaval. It takes different forms in different nations.

But the persistent theme is it controls their lives.

Now, the question before us is not whether the law should be extended for all time, but whether it should be extended for a mere 10 years.

It is, to me, an incredible event, occurring at an incredible time and it would determine to a large extent, how people throughout the world view this country.

To kill or water down the Voting Rights Act at this time would be the wrong signal to send out to our own people and to a troubled world. It would create a questionable situation for our allies and a real propaganda opportunity for our enemies.

That is the reality of it, there is no way to deny that reality.

In this context, we can't continue to react parochially to national issues if we want to be a great Nation.

I join you in welcoming the witnesses and beginning what I hope will not be an endless debate.

Mr. EDWARDS. The gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

I would like to join with my colleagues in welcoming the witnesses to the opening of the hearings on the extension of the Voting Rights Act of 1965 as amended.

I think it would be a shame for this Congress to let the essential provisions of this law expire in 1982.

The right to vote is the most important right that American citizens possess and equally important is the right to have that vote fairly counted so that the vote can be an effective expression of the individual citizen's viewpoint on political issues and candidates of the day.

Unlike my colleague from Illinois, Mr. Hyde, I have no particular hangup about the preclearance provisions contained in the present law.

I believe they should be extended in some form in the course of this legislation, but there are some substantial problems in the administration of those preclearance provisions which I would hope that the witnesses would address, both from the standpoint of people who might have their votes discriminated against, as well as from the standpoint of the Justice Department and of State and local officials in those States that do require preclearance.

However, I must express one concern I have with the administration of the present law and that is with the application of bilingual ballot provisions in certain jurisdictions where there has not been much of a demand for ballots printed in a language other than English.

We have seen documented cases in many areas of the country where local jurisdictions have been put to substantial expense in printing ballots in foreign languages, but there has been little demand for the voters to use those ballots.

I would hope a little bit more rational approach to this particular problem will result in consideration of this legislation.

I must express my regrets and my inability to hear many of the witnesses today since the Science and Technology Committee is marking up a Department of Energy authorization bill which contains several billions of dollars in authorization and some pretty sticky energy issues.

I must go to that particular markup. But my absence because of this conflict should not be construed as a lack of interest in securing a worthwhile extension of the Voting Rights Act of 1965.

I commit myself to that goal.

Mr. HYDE. Will the gentleman yield?

Mr. SENSENBRENNER. I yield to the gentleman from Illinois.

Mr. HYDE. I would like to state to my distinguished friend from Wisconsin that I have no hangups on the foreign language provision of the act.

Mr. SENSENBRENNER. It looks like we all have hangups of one kind or another; and I yield back the balance of my time.

Mr. HYDE. It certainly does.

Mr. EDWARDS. The gentleman from California, Mr. Lungren.

Mr. LUNGREN. Thank you, Mr. Chairman. I have to leave for a short time to take up another matter, but I plan to come back.

The fact that I have to leave does not reflect my attitude toward the significance of this legislation. It's a busy week with respect to the budget. It seems everybody schedules everything at the same time.

Mr. Chairman, since I was not a Member of Congress when the Voting Rights Act was last debated in 1975, I am especially anxious to hear the testimony today and entertain proposals as to how we should properly proceed.

I think the gentleman from Illinois, Mr. Hyde, has done us a service by introducing this proposal which at least serves as a vehicle for discussion.

I think it is important, that we not put under the rug or try to dismiss the significance of the questions about preclearance provisions of sections 4 and 5 of the act.

I understand in talking with some and hearing some of the testimony we have already had on previous occasions, the symbolism of this section of the law.

I think in terms of overall effect, whether this particular provision was the reason for it or not, there can be no doubt, the Voting Rights Act has had a tremendous impact across the country, and in particular, in the States so covered, with respect to the number of minorities participating in the political process and that is all to the good.

I also recognize the tremendous symbolism this represents to those members of the minority community because of their belief that this, in fact, has been one of the most effective sections of the act.

Nevertheless, I do think there are questions which have been raised about it; we have to go into those questions; and look at them in some detail, to see where, in fact, we find ourselves.

I am somewhat concerned about the language provisions of the act. I have not come down on one side or the other with respect to whether they should be continued in total as they now exist, but I do know people in my part of the State of California are concerned about it.

It is controversial. There is a question as to whether or not it is effective.

I would say with respect to the language requirements, I don't think it would be appropriate at this time to extend that for another 10 years, since they will last for some 4 or 5 years more.

As has been said by members of the panel, the vote is the most important constitutional right and should be protected and encouraged.

There has been a feeling in the Congress in previous years, particularly when the Voting Rights Act was first enacted, that it was necessary to provide specific Federal protections in order to guarantee that right.

There seemed to be a consensus in the Congress with respect to that. I don't think anybody here on the panel disagrees that right ought to be protected and enhanced.

Our query is, How do we do that most effectively and in a way that would promote participation in all parts of our society?

So, Mr. Chairman, my mind is an open one with respect to this act and, as I said, I believe the racial provisions are more properly before us since they expire in August 1982, as opposed to the language provisions, which expire in August 1985.

I do look forward to hearing today's witnesses and those to come.

Mr. EDWARDS. Thank you.

Our first witness today is Mr. Vernon Jordan, the most distinguished president of the National Urban League.

Mr. Jordan, we are delighted to have you here; we are delighted you have recovered from your grievous wounds; and you may proceed.

Without objection, your statement will be made a part of the record. If you will be so kind, introduce your colleagues.

TESTIMONY OF VERNON JORDAN, PRESIDENT, NATIONAL URBAN LEAGUE, ACCOMPANIED BY ELAINE JONES, NAACP, LEGAL DEFENSE FUND AND MAUDINE COOPER, VICE PRESIDENT FOR WASHINGTON OPERATIONS, NATIONAL URBAN LEAGUE

Mr. JORDAN. Mr. Chairman, members of the committee, I am Vernon E. Jordan, Jr., president of the National Urban League, Inc.

Seated on my left is Maudine Cooper, vice president for Washington Operations for the National Urban League; on my right, Ms. Elaine Jones, an attorney for the NAACP Legal Defense Fund.

I am pleased today to discuss with you a law most fundamental to our democracy—the Voting Rights Act of 1965.

Having been born and reared in Atlanta, Ga., as a southerner, I know personally that no right in all the Constitution's arsenal is more basic than the right to vote.

I know how indispensable that right has been in including blacks in the democratic process from which historically we have been excluded.

In the 1960's, I was director of the voter education project of the Southern Regional Council. As director, I had firsthand experience of how absolutely essential to Southern reform the Voting Rights Act was and must continue to be to black participation in the political process.

Mr. Chairman, I have brought here today testimony addressing itself to many of the basic issues that confront this committee, that confront this Congress, indeed, that confront this administration and the Nation.

Mr. Chairman, I would like to submit for the record, my written testimony and not read my prepared text, but rather, say to this committee what is really on my mind about justice, about fairness, about the right to vote and about the historic neglect of black people in this process.

I do have to admit a state of incredulity here, Mr. Chairman. I sit here as president of the National Urban League, a black man born and reared in this town, addressing myself to the possible extension of one of the most important laws in the history of this country; addressing myself to sound and good conscience attempts to find a midground for black people, who were here before the

Pilgrims landed, but who didn't get the right to vote in this country until 1965.

We are talking about, in good conscience, I believe, Mr. Hyde, about finding a midground. But I don't believe that for black people, given our history in this country, that there is a midground when it comes to our voting rights.

I don't believe that to do away with this act, to find a midground in this act, to find some political solution to this problem, is keeping the faith for those black people and white people who walked that 40-mile distance from Selma to Montgomery.

I am not unconscious of the fact this morning, Mr. Chairman, that this country, and the States affected by this law, had an opportunity early on to prevent the need for this act or its passage.

Those States and this Federal Government didn't choose to do so, and so black people in their righteous indignation on that long road from Selma to Montgomery, actually wrote the Voting Rights Act.

There is a black author who refers to those marchers as the "last defenders of the American dream."

As I sit here thinking about the "last defenders of the American dream" who believed in our way of democracy and political process—as I sit here, I am reminded of those black men and women who are not here today, who were killed in the thick of battle between 1962 and 1967.

As I sit here, I think of Medgar Evers, Clifton Walker, Michael Schwerner, James Chaney, and Drew Goodman, Louis Allen, Jimmy Lee Jackson, James Reed.

Samuel Young, Jr., Freddy Lee Thomas, and Vernon Dama. I think most of these people; I personally knew Vernon Dama from Hattiesburg, Miss.

I can remember in church meetings, lodge hall meetings in Jackson and across the South, meeting and talking with Vernon Dama, who now has gone on to his great reward, having died in the thick of the battle.

Mr. Chairman, I would like to read into the record, a prologue from the book, "Climbing Jacob's Ladder," which is an account of the activities that ultimately led to the events leading to the passage of the Voting Rights Act of 1965.

I hope the chairman will indulge me, because it is important.

"Little bands sang and prayed their way to the courage they needed to register to vote, to assert that they were men, and that they would overcome.

"Usually they did it in churches. In a tiny town of Terrell County, Georgia, a painting of Jesus hung over the pulpit of the little wooden building called the Mount Olive Baptist Church. On another wall hung a calendar with President Kennedy's picture, and, all around him, pictures of all the other American Presidents.

"Car doors slammed outside on a hot July night in 1962 as the Reverend Charles Sherrod, young, thin-faced, led the people who had braved the night to talk about voting in a county where even talk about it was dangerous: 'Yea, though I walk through the valley of the shadow of death, I will fear no evil * * *.' He stopped. 'If they come in,' he said, 'I'm going to read this over again.'

"Fifteen white men, four of them local law enforcement officers, came through the door and stood in a grim-faced row. 'If God be for us,' Sherrod intoned in prayer as they stood there, 'who will be against us? Into Thy hand we commend our minds and souls and our lives every day * * *.'

"In the back, the sheriff of Terrell County, 71 years old, rough-looking, closed his eyes and bowed his head. The Negroes began to sing. Voices that were weak at first, gained strength as they moved up the scale with the old, familiar words: 'We are climbing Jacob's Ladder * * * Every round goes higher, higher * * * We are climbing Jacob's Ladder * * *.'

"Sherrod spoke again, softly, almost singing the words. 'All we want our white brothers to understand is that Thou who made us, made us all.'

"Another voice spoke: 'Everybody is welcome. This is a voter registration meeting. . . .'

"Now the old sheriff of Terrell County came to the front of the Mount Olive Church. He explained how happy Negroes were in Terrell. 'We want our colored people to live like they've been living,' he said. 'There was never any trouble before all this started.'

"As he spoke, the whites moved through the church, confronting little groups of Negroes. Finally, the whites left.

"The Negroes began to sing the strains of another old Baptist hymn, one with some new words and some old, the rising anthem now of the whole movement: 'We shall overcome . . . We shall overcome . . . Oh, ohhh, deep . . . in my heart . . . I do believe . . . we shall overcome . . . some day . . . .'

"The intruders were in their cars now, leaving, as the Negroes inside the church gathered their courage to go out into the night. 'We are not afraid,' they sang, loudly.

"A few nights later, three small Negro churches in Terrell County, one of them the Mount Olive Baptist, with Jesus and the American Presidents on its walls, were burned to the ground."

I suggest to you, Mr. Chairman, and members of the committee, that that bit of Southern history, that bit of reality, that bit of distasteful racism is one of the primary reasons that we have to extend the Voting Rights Act of 1965, as outlined in my testimony.

I think it is worthy of note, Mr. Chairman, that when the Voting Rights Act was finally approved on August 3, 1965, none of the 106 Congressmen from the 11 Southern States voted for final passage of the Voting Rights Act of 1965.

And, we should not ignore the fact that the distinguished Senator from South Carolina, Strom Thurmond, was opposed to the Voting Rights Act in 1965. He is opposed to it now.

Mr. Chairman, I am reminded of a situation in Alabama, Marengo County.

The Federal examiners had come to Marengo County, pursuant to the Voting Rights Act, having passed 7 days previously. The examiners arrived at 7:30. When they got to the office, 150 black people were waiting; at 8:30, 250 black people were waiting; at 3:00 o'clock, 300 were waiting. When they closed at 4:30, they had to tell 150 black people to come back in the morning.

A black man 92 years old, gray hair, with a cane, wearing his Sunday best, sat through the brief process of becoming a voting citizen. He was asked by one of the examiners: "Why didn't you ever try to register before?"

The old man, full of wisdom and mother wit and jostled in his life by the black experience, responded to the examiner's question as to why he hadn't tried to register before.

The old man said, and I quote him: "I never believed in putting myself in the way of trouble-a-comin'."

The old man was then asked: "Why are you here after 92 years?" The old man responded, Mr. Chairman, saying: "I am here after 92 years, because trouble ain't a-comin' like it used to did."

What he meant was, the trouble for him was intimidation. It was like Gus Courts who was shot in Mississippi. It was being intimidated by economic sanctions, by violence, by embarrassment.

But the Voting Rights Act of 1965 assured him the Federal examiners who were not hostile, would be there; that a process that would protect his right to vote was in place.

Consequently, for him and black people all over the South who registered under this bill, "trouble ain't a-comin' like it used to did."

I am not unmindful, Mr. Chairman, that we had in the period following the Civil War, the 13th, 14th and 15th amendments which had many things for blacks, but we had that followed by the Hays-Tilden Compromise of 1877.

So, history tells us we can go back to where we were; we can go back to a time when trouble is "a-comin' like it used to did;" and this Congress, this committee, this administration, has a responsibility to make sure and to insure that black people will have the right to vote.

We used to sing, Mr. Chairman, marching from Selma, to Montgomery, and all over the South, "Ain't going to let nobody turn us around."

If this Congress fails to extend the Voting Rights Act of 1965 in the form we have suggested, we won't have to say, "Ain't going to let nobody turn us around," because we will know that we have been turned around and that this Nation has turned its back on 25 million of its citizens, who, as I said in the early part of my testimony, landed here before the Pilgrims, but only got the basic right to vote in 1965.

We are here today to protect that right to vote. I think it important that we not send two terrible messages: First, that you don't send a message that black people and brown people will not have a fair opportunity to participate in our political process; if you don't extend this bill, you will be sending a signal that all that has been achieved can now be undone.

Second, you can't send a message discouraging millions of black and brown citizens, telling them their government is not only slashing programs, but taking from them the most basic and fundamental right in our democracy, the right to vote.

I thank you for the opportunity to not read from my prepared text, but to say what is in my heart.

I hope this committee and this Congress will find it in its good conscience and sound political judgment to reaffirm those several

thousand people who suffered and bled so that black people, brown people and poor white people and all people in this country would be secure in the right to vote.

Thank you very much, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Mr. Jordan, for most moving and persuasive testimony.

The committee will be operating under the 5-minute rule today. I recognize the gentleman from Illinois.

Mr. WASHINGTON. Thank you, Mr. Chairman, and thank you, Vernon Jordan for an inspiring statement.

Would you respond, Mr. Jordan, to this statement: We have learned as a Nation that voting discrimination exists everywhere. Therefore, shouldn't the same remedies be available everywhere?

That is, shouldn't section 5, preclearance, be applied everywhere?

Would you respond to that statement and I assure you I am not associated with it.

Mr. JORDAN. My response is, "If it ain't broke, don't fix it."

Very simply, it was broken in the South and we fixed it. In other places outside the South, to the extent it is broken, there are processes by which it can be fixed. This Voting Rights Act is applicable in those areas.

Rights under this act can be asserted; they have been and can be. The focus has to remain where it is.

That's especially true as it relates to section 5 and the preclearance provision of that section.

Mr. WASHINGTON. I won't excuse my own city, the great city of Chicago, but the argument is that perhaps some of those cities, scattered throughout these United States, should get the benefit of this act.

Mr. JORDAN. They are not precluded by section 5, as I understand it. The rights available in some areas are available in others. It is national in scope and can be applied. We have to leave it intact as it is.

I do not believe, Mr. Chairman, that efforts to make this nationwide are really sincere. I think it is a political ploy. The notion of picking on a particular part of the region doesn't hold much water for me.

I come from that region, I am proud of it, but I am well aware of the problems.

Mr. WASHINGTON. One other question: Should section 5, the preclearance section, be permitted to expire?

Mr. JORDAN. Not within the next 10 years.

Mr. WASHINGTON. Is that an optimistic prognostication? If I had my druthers, I would extend it in perpetuity.

Mr. JORDAN. I am realistic; I would extend it 10 years, if I could get it.

Mr. WASHINGTON. Thank you, Mr. Jordan.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

I think it would be fairer in talking about this legislation, I am not advocating doing away with this act or repealing it; nobody I know of proposes to do that.

No matter what we do, the Federal registrars, the Federal observers, will still be in place and all the poll taxes are still illegal.

Section 3(c) will continue in perpetuity, which permits court action to suspend any voting abuses which may be sought and even require preclearance.

Attorneys fees are provided for successful private attorneys who seek to enforce the act and these are criminal penalties.

An awful lot of good has been done and a lot of good will hang in there. No one wants to repeal that.

Therefore, it would be more helpful to talk about what is at issue here. That is not a question but a statement I wanted to make.

Mr. Jordan, your formal statement misperceives my bill. You talk about me wanting to impose a preclearance requirement anywhere in the country.

I don't want to do that unless there is a finding of a pattern of voting rights abuses. That's what I want to substitute for the mandatory preclearance.

I am not trying to strengthen the bill to death by requiring the same onerous and extraordinary burden now imposed on a few States, on every State.

I can see that that would destroy the efficacy of the bill; but I do want to substitute for the penalty box that the seven States have been in for 17 years, a single standard that applies everywhere.

I think voting rights abuses can occur in Seattle, Isanti, Minnesota, as well as Birmingham.

Mr. JORDAN. A point of difference: I don't view these six States as being in a penalty box, but as having demonstrated historically a clear willingness to not grant constitutional rights and, given the opportunity, would go back to the system where white, racist, ignorant people denied that right to vote.

There are some people who would like to bring that day back.

Mr. HYDE. That could not happen because Federal registrars will be provided for.

Mr. JORDAN. I also don't see your rationale for wanting to extend section 5 in the way you do.

I think that is provided for. I think we should leave it like it is. You would do us all a great service if you would see it our way.

Mr. HYDE. Isn't it true, Mr. Jordan, that black registration flourished following the 1965 passage of this act during the next 5 years, but has tapered off to a not-significant amount since that time?

Mr. JORDAN. I think we have to distinguish registration activity from the right to register and vote. There is no question about that.

We took the cream off the top and in the campaign from 1965 to 1970, for which I had major responsibility, there was a hard-core section of people we were not able to touch.

But the issue here has nothing to do with the cyclical fluctuation of black registration.

It has to do with the process——

Mr. HYDE. I would suggest, the issue is, how long is enough? After 17 years of history, the South, the white power structure, has made progress, the blacks have made progress in terms of registering, in terms of being elected to office.

At some point, you have to recognize an effort has been made and provide some incentive for that effort to continue.

Mr. JORDAN. I would acknowledge some of that progress. But I also acknowledge dilution has taken place as to black voting

strength, at-large voting, there is an effort to minimize black voting power.

Racial gerrymandering is still going on, discriminatory annexation to minimize the impact of the black vote——

Mr. HYDE. Those are all correctable, aren't they, under the Voting Rights Act?

Mr. JORDAN. As it now stands.

Mr. HYDE. Taking preclearance out, you mean then you are without a remedy to those activities?

Mr. JORDAN. It is the one assurance we have that we will be protected.

What you have to understand, Mr. Hyde, is that I don't trust white people in the South with my rights. I didn't before the act; I don't 17 years later, and the preclearance of section 5 is the one guarantee that I know I can historically depend upon.

Mr. HYDE. I understand that, but I also believe in equality——

Mr. JORDAN. God knows I believe in it.

Mr. HYDE. As a Republican from Chicago, I am sensitive to the problems of being a minority, but I suggest to you, you can't ignore 17 years of effort——

Mr. JORDAN. You won't get much sympathy from me as a Republican Catholic.

Mr. HYDE. I know that, I am just adding to the confrontational aspect. But I suggest to you, in the 17 years that have expired, progress has been made, and at some point, you have to recognize that all jurisdictions should be treated equally——

Mr. JORDAN. I agree with you, if in their treatment of people that had been done, and that was not the case.

Mr. HYDE. That was in 1964.

Mr. JORDAN. I can tell you, Mr. Chairman, you ought to take a trip with me to the South——

Mr. HYDE. I have been there.

Mr. JORDAN. I want you to go with me; it is different than hanging out with Republican Catholic friends.

Mr. HYDE. Can I trust you?

All right, I yield back the remainder of my time.

Thank you, Mr. Chairman

Mr. EDWARDS. I also understand we will have witnesses later in the hearings, not today, who will document a number of the submissions that were made under section 5 from the covered jurisdictions that would indicate some of the gerrymandering that was being attempted, and rejected, of course, by the Department of Justice.

Mr. JORDAN. That's right, Mr. Chairman. There will be considerable testimony in that regard.

It was not the intention of my testimony to deal with specifics. I wanted to arouse the legal and constitutional responsibility of this committee and this Congress to deal with the blacks in this country, and poor white people in this country, who have historically been shackled with this unconstitutional burden.

I hope I have done this successfully and I even hope Congressman Hyde will see the light and come see us.

I will be happy to come visit you, even in Chicago.

Mr. HYDE. I would love to take you through Chicago.

Mr. JORDAN. I used to drive for the CTA, Chicago Transit Authority, and I know a little bit about it.

Mr. HYDE. Fine; we'll both pray for each other.

Mr. EDWARDS. Counsel, Ms. Gonzales.

Ms. GONZALES. Under the proposed change, is there a distinction that would occur, in that under the act, if there is potential racial gerrymandering or the like, it can be brought to the attention of the Department of Justice and administratively taken care of quickly, rather than as in the proposed change, requiring that you have to go to court?

Mr. JORDAN. That's my understanding from what these nice lawyers next to me say about the case and I accept their word.

Ms. JONES. Under section 5, the preclearance is an effective administrative procedure, where we could get justice quickly. In looking at Mr. Hyde's bill and his language to add a new section 12(g), to the act and let section 5 expire, under his provision, you would have to go into court on a case-by-case basis and engage in long, protracted litigation, costing a lot of money.

Mr. HYDE. Will counsel yield to me?

Ms. GONZALES. Yes.

Mr. HYDE. You have fairly stated the difference, but I have a preference for court proceedings where the rights and rules of evidence and burdens of proof have a full play. I think more justice for both sides is available there.

Yes, you can get quick justice in an administrative proceeding with one man sitting behind the desk, but I think we have a court system to adjudicate rights under the rule of law.

I am for all the rights for all the parties that a court proceeding can provide. When they are with you, it's great, but when they are against you, you may want someone more impartial.

Mr. EDWARDS. Mr. Sensenbrenner.

Mr. SENSENBRENNER. No questions.

Ms. JONES. Just in responding to Mr. Hyde's discussion on the courts: Even under the act now, the judicial process is there, because after an objection is entered from the Justice Department, one can always go to court.

Mr. HYDE. Come up to the District of Columbia and go to court here and sustain a burden of proof that you are not discriminated against.

Ms. JONES. At this point, you still have a preclearance provision and the court option is there.

Now, if you want to discuss the court option after the preclearance provision, that's a different matter.

One of the things we have been talking about is the tremendous burden in the courts. There has been a lot of jurisdiction, a lot of discussion, a lot of legislation about the courts being overburdened, and there is so much going on in the court.

The law is clearly established. The Justice Department has developed expertise, so there is no isolated bureaucrat sitting over making some decisions.

Mr. HYDE. I am not philosophically opposed to preclearance, as such. I would mandate preclearance where a pattern or practice exists of voting rights abuses under section 3(c).

I am against saddling it indefinitely on a certain few States. That's my objection.

As far as the courts being overburdened, I can't think of any more significant litigation than voting rights, and it requires the dignity of a court process, rather than an administrative judge.

Ms. JONES. There will be subsequent testimony on how effective this administrative process is.

Mr. HYDE. There have been 35,000 submissions and 800 objections.

Ms. JONES. Those 800 objections can be equal really to 800 lawsuits, so, can you imagine what 800 lawsuits would have done in the jurisdiction?

Also, we have a situation in Mississippi where it has taken some 17 years.

Mr. HYDE. 800 lawsuits over 17 years doesn't seem significant.

Ms. JONES. You are overlooking the deterrent effect of the existence of the preclearance.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman. This bill would eliminate the minority language provision in the act as it stands today. Mr. Rodino has introduced a bill (H.R. 3112) to extend the special provisions of the Voting Rights Act, as well as the racial minority provision.

Do you believe that these provisions ought to be considered separately since the latter don't expire until 1985; or how do you think the committee should judge them?

Mr. JORDAN. We feel they should view them jointly.

Mr. BOYD. Wasn't it the view of the Leadership Conference in 1975, that these issues should be viewed separately?

Mr. JORDAN. It is the view of Jordan in 1981, they should be viewed jointly.

Mr. BOYD. Thank you. Thank you, Mr. Chairman.

Mr. EDWARDS. If there are no further questions, we thank Mr. Jordan and his colleagues for being with us.

Mr. JORDAN. We thank you, too, Mr. Chairman.

[The statement of Vernon E. Jordan, Jr., follows:]

STATEMENT OF VERNON E. JORDAN, JR., PRESIDENT, NATIONAL URBAN LEAGUE, INC.

Good morning, Mr. Chairman and members of the Subcommittee. I am Vernon E. Jordan, Jr., President of the National Urban League, Inc. The National Urban League is a 70-year old non-profit community-service organization which has historically been concerned with seeking equal opportunities for all Americans in all sectors of our society. Through our network of 116 affiliates nationwide we are dedicated to educating the poor and minorities to their fundamental rights as citizens of this country, advocating the enforcement of those rights when they are neglected, and opposing the erosion of those rights when they are jeopardized. I am pleased today to discuss with you a law most fundamental to our democracy—The Voting Rights Act of 1965.

Having been born and reared in Atlanta, Georgia, as a Southerner I know personally that no right in all the Constitution's arsenal is more basic than the right to vote. I know how indispensable that right has been in including blacks in the democratic process from which historically we have been excluded. The right to vote has been directly related to our economic growth and the sense of self-worth and dignity that blacks are beginning to gain in this country.

In the 1960's I was Director of the Voter Education Project of the Southern Regional Council. As Director, I had first hand experience of how absolutely essential to Southern reform the Voting Rights Act was and must continue to be, to block participation in the cause for political process.

The Voting Rights Act and the Civil Rights Act of 1964 were great and rare affirmations of equality. There is more, much more to be done before equality that Americans have dreamed about is achieved. Those of us engaged in the struggle for equal rights and equal opportunity know all too well that the gains made by black Americans have been modest and indeed fragile. But if these times are not propitious for moving ahead, let them not be ripe for moving backward.

We consider today two key but differing legislative initiatives that make that issue an imminently momentous challenge. The first is H.R. 3112, introduced by Representative Rodino (identical to S. 895 co-sponsored by Senators Mathias and Kennedy), which extends the special provisions of the Voting Rights Act and addresses the proof requirement of Section 2. The second is H.R. 3198, introduced by Representative Hyde, which effectively repeals Section 5, one of the most essential provisions in the Voting Rights Act.

THE NATIONAL URBAN LEAGUE POSITION

We in the National Urban League are here today to express our strong unequivocal support for the extension of the Voting Rights Act. Given that major provisions of the Voting Rights Act are slated to expire in August 1982, the National Urban League believes that certain key elements must be included in that extension: (1) a ten year extension of special provisions of the Voting Rights Act relating to race and color; (2) a seven year extension of special provisions relating to language minorities; and (3) the addition of a provision proscribing practices which result in a denial or abridgement of the right to vote on account of race, color or membership in a language minority.

KEY LEGISLATION

H.R. 3112 extends the special provisions relating to race and color and language minorities to August 1992. Although the language minority provisions are not due for expiration until 1985, this legislation would appropriately fix Sections 5 and 203 with the same expiration date, adding needed continuity to minority protections. An extended date to 1992 would insure protection against discriminatory redistricting after the next decennial census in 1990.

It also addresses the need to clarify voting discrimination law in light of recent pronouncements in *Mobile* v. *Bolden*. Language would be added to outlaw procedures which result in discriminatory effects as well as those with a discriminatory purpose.

H.R. 3198, Representative Hyde's initiative, proposes to replace Section 5 with a provision to impose a preclearance requirement anywhere in the country. Accordingly, by effectively rescinding Section 5, H.R. 3198 renders enforcement of a nationwide preclearance provision nearly impossible.

SECTION 5—PRECLEARANCE REQUIREMENT

Critics of the Act argue that it has served long enough, that the nation has outgrown the need for it. They especially deem Section 5 obsolete, an anachronistic and unfairly punitive burden that America should now correct.

But this counsel arises from what is and has been, the most mistaken and, in many ways, the most harmful view there is of the American racial experience, i.e., the view that past racial injustices can be compensated for in a flash. But make no mistake. The attitudes and interests that kept blacks, Hispanics and other minorities away from the political process and political power were not built up in a flash, but in massive detail over many generations. And make no mistake about how those attitudes and interests permeated every component of the electoral structure of this land.

In the holding of *Rome* v. *United States*, 446 U.S. 64 L. 2nd 119 (1980), the court found that the federal preclearance requirement had not outlived its usefulness. Justice Thurgood Marshall said of the 1975 extension" . . . Congress' considered determination that at least another seven years of statutory remedies were necessary to counter the perpetuation of 95 years of pervasive voting discrimination is both unsurprising and unassailable."

Section 5, which has become the critical focus of the Act during the last decade, was enacted pursuant to Congress' power under the 15th Amendment to legislate protections against voting discrimination. This preclearance provision requires that any new changes in voting or election procedures initiated by "covered jurisdictions" must be approved or precleared by the Justice Department of the U.S. District Court in Washington, D.C. It appropriately places the burden on heretofore recalcitrant jurisdictions by requiring that new changes not be discriminatory in

purpose or in effect. It specifically protects blacks and language minorities in regions where their voting interests have been quelled.

Section 5 was enacted only after a century of near futile litigation in which constitutional arguments failed to curtail adequately discriminatory electoral procedures. It was enacted only upon Congress' long awaited recognition of the fact that disenfranchisement takes many innovative forms. It came only after other civil rights legislation was cleverly skirted or ignored and blacks and other minorities still largely remained outsiders to the political process. For example, "After seven years of court battles that began after the passage of the 1957 Civil Rights Act, only 37,146 of more than half a million Negroes of voting age were registered in 46 counties in which suits had been brought." [1]

Congress' anticipation of states' efforts to circumvent the Act's prohibition against discrimination via literacy tests has been proven an astute and timely assessment. For on the heels of the passage of the Voting Rights Act, scores of jurisdictions attempted ostensibly innocuous alterations in electoral systems which were in fact designed to dilute the black vote. In 1969, the Supreme Court addressed challenges to Section 5's authority to reach such *de facto* discrimination. *Allen* v. *State Board of Elections*, 393 U.S. 544, 569-70 (1969), dispelled notion that Section 5 was only applicable to situations directed related to the right to vote with the announcement that: "The right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot."

Even so, the establishment of sophisticated gerrymanders continued in jurisdictions covered under Section 5 and still continue today.

We recognize, however, that parties in office try to remain in office and one way of doing that is by making choices regarding election rules and district boundaries in their favor. Some amount of that is no more than the normal working of a representative political system. But what cannot be tolerated is any use at all of that power to exclude particular classes of people from full access to the political process and the fruits thereof.

However, where there has been a history of disenfranchisement of a group of citizens based on race, political schemes must be evaluated in their local context.

Today diminution and dilution of existing voting patterns and practices must be avoided at all costs. We must be vigilant and ever-mindful of sophisticated procedural devices and schemes which effectively nullify equitable access to the electoral process. What we currently face are 1980 versions of the pre-1965 poll tax and literacy requirements. We see jurisdictions increasingly switching to at-large elections, redistricting, anti-single-shot laws,[2] majority run-off requirements, and annexation of areas heavily populated by whites. While some suggest that these methods represent the normal rough and tumble of American politics, we, in the National Urban League, believe otherwise.

In Mississippi, for example, there have been as many Justice Department objections to electoral changes since 1975 as there were between 1965-75. Reminiscent of post-Reconstruction and malapportionment are recent attempts by 14 Mississippi counties to gerrymander boundaries of county supervisors' districts. Section 5 prohibitions and court challenges have rejected more than 30 attempts to switch to at-large voting systems in Mississippi.

In North Carolina, the number of enactments concerning voting changes for all 100 counties from 1925 to 1940 number only half of the amount of voting changes enacted since 1965. And those 193 enactments identified since the passage of the Voting Rights Act pertain only to the 39 North Carolina counties covered by Section 5 as compared to the 100 counties concerned during disenfranchisement.[3]

Section 5, however, is not, by any means, limited to Southern states. It in fact applies to all or part of 23 states—including Alaska, Arizona, Hawaii and parts of New England, spanning the four corners of this nation.

As a matter of fact, in New York, three covered counties—King, Bronx and Manhattan—together encompass a larger population than any single Southern state.

Voting discrimination cases continue to flourish in our courts, the large majority of which relate to the dilution of the black vote. Currently, pending litigation for the state of Mississippi, for example, includes that states' attempt to attain Section 5 approval of its "open primary" bill. The "open primary" bill would eliminate party primaries and require a majority vote to win office. The end result of such a

---

[1] Bass, Jack, "Election Laws and their Manipulation to Exclude Minority Voters," 1981, p. 26.

[2] These are laws which mandate voting for one candidate for each available seat; violations resulted in an elimination of that individual's ballot—a dilution of the black vote in that many knew that choices at the ballot boxes were limited to very few candidates.

[3] Suitts, Steve, Southern Regional Council, "Blacks in the Political Arithmetic After *Bolden:* A Case Study of North Carolina, p. 48.

proposal, of course, would be that black candidates running as independents will not have a fair and equal opportunity to participate in the electoral process. Yet, the bill has been submitted for Section 5 preclearance on four occasions and has met three consecutive objections, and the battle continues.

Discriminatory redistricting schemes, however, continue to be a constant threat to political equity since redistricting is an ongoing process. To address this ongoing possibility of constitutional infringement, Section 5 has been targeted to those regions which have historically legislated the disenfranchisement of black and other politically-excluded minority populations. It is for this historical and demographic reason that Section 5 focuses its energies and its resources where they are required most. Indeed, 10 percent of submitted redistricting schemes have been rejected already and the next decennial census will surely trigger more illicit submissions.

History has taught us that nothing short of Section 5's requirement that a newly drafted electoral scheme have a nondiscriminatory purpose or effect can insure the protection guaranteed by the 15th Amendment.

As to the administrative burden on submitting jurisdictions, the Act requires only correspondence by mail or phone while guaranteeing a decision from the Attorney General in 60 days. In our view, such a requirement is not unduly burdensome in light of the potential voting discrimination prevented and the thousands of voters affected by each Section 5 objection.

Representative Hyde's proposal removes from the Justice Department this simple effective administrative procedure and places an additional litigation burden on the attorney general and the already over-burdened courts. I daresay that costs will skyrocket, inefficiency will prevail, and justice will be delayed and therefore denied.

Wherever a pattern or practice of voting discrimination is found, this proposal which will require a finding by a court of a violation, dilutes the Department of Justice's ability to enforce Section 5 at all. At any rate, H.R. 3198 is redundant in that Section 3 of the Voting Rights Act already addresses the preclearance requirement for uncovered jurisdictions.

SECTION 2—NONDISCRIMINATION IN VOTING

But while we recognize the efficacy of Section 5's reach to designated jurisdictions, we also recognize the fact that this special provision is not enough. Section 2 of the Voting Rights Act is a permanent provision covering all states. And though it mirrors the 15th Amendment's guarantee of the right to vote, we know that is not enough. We must now push to synchronize basic voting discrimination law to parallel what we know to be integral to the right to vote. Both H.R. 3112 and H.R. 3198, we believe, appropriately address this issue.

Mobile v. *Bolden* makes necessary the amending of Section 2. The 15th Amendment does not establish any test of purpose; it says categorically that no one shall, on account of race or color, be denied the right to vote. It assumes—and indeed how could it not?—that the fact of denial is evil enough, without inquiry into the minds and intents of the deniers. And before *Mobile* v. *Bolden*, no one seriously doubted that the Voting Rights Act operated on that same basis. But to whatever extent the Supreme Court in *Mobile* v. *Bolden* may have implied that voting is not one of the fundamental constitutional rights protected by strict judicial scrutiny, we can only conclude that such an opinion flies in the face of American history.

We know that whenever blacks have had the freedom to vote—at any time in history—that right has been granted and enforced by the federal government. Out of Reconstruction came the 15 Amendment and the Enforcement Act of 1870, which outlawed all manner of discrimination in federal elections. The South's reaction was intimidation and physical force, exemplified by the Mississippi Plan—armed militia that operated with the sole purpose of restricting the black vote. After Reconstruction, Southern states turned to "understanding" and literacy tests, "grandfather clauses" and property qualifications, poll taxes, gerrymandering and white primaries to effect the near complete disenfranchisement of blacks. The Enforcement Act lay largely dormant in the fact of manipulative regional schemes and the Supreme Court's apparent acquiescence in *Plessy* v. *Ferguson*. It was only after *Brown* V. *Board of Education* and the passage of 1957 Civil Rights Act—after nearly a century—that serious enforcement mechanisms began to take shape.

But even as late as 1981, a Southern judge acknowledges that frailty of unprotected rights, no matter how fundamental! In *Lodge* v. *Braxton*, 639 F2d 1381 (1981) N. 46, considering a challenge to an at-large voting system brought by blacks in Burke County, Georgia, Judge Fay, in writing for the Court, stated: "The problems of blacks in Burke County should not be viewed in a vacuum. The present treatment of blacks in the South is directly traceable to their historical position as slaves. While many individual political leaders have attempted to bring meaningful reforms to fruition, it is equally true that the white communities, for the most part,

have fought the implementation of programs aimed at integration with every device available."

CONCLUSION

We cannot afford to differentiate between resons why the votes of blacks and other minorities are short-changed or diluted: one reason is patently as bad as another. It may be nearly impossible to get inside the heads of John Doe or Richard Roe and pick out specific intent for specific acts. But it is not difficult to see the social intent which lies behind and expresses itself in political structures and processes which hold back what the Supreme Court once called "discrete and insular minorities." Indeed, it is hard to avoid seeing it; only the singularly willful can manage to do so.

Section 5's explicit requirement of nondiscriminatory effect as well as purpose explains what architects of the Voting Rights Act had in mind when voting discrimination was outlawed in 1965. It was generally understood that the clear unlawfulness of the denial of the right to vote, as expressed in the 15th Amendment and Section 2, needed no further explanation. Now, however, since it has become necessary to do so, we strongly urge the addition of language in Section 2 proscribing practices which result in a denial or abridgement of the right to vote on account of race, color or membership in a language minority.

Since the passage of the Voting Rights Act we have witnessed significant increases in black voter registration as well as black elected officials. The abolition of the poll tax, the presence of federal examiners, the ban of literacy test and objections to racial gerrymandering have allowed black voter registration to climb to over 3.5 million and the election of over 2,000 black officials in Southern states.

But we also witness continuing plans to keep the black vote impotent. Since 1975, the Justice Department has filed over 500 Section 5 objections to discriminatory electoral systems. Seventeen years is not enough time to undo the ropes with which America's minorities have for centuries been bound into powerlessness. Indeed, were it not for the fact that coming back here every few years affords Congress the chance to renew its commitment to equality, I would question an expiration date so early as 1992. But, we all recognize the fact that these hearings represent both an opportunity and a challenge—an opportunity to make a strong record based on the presentations of various witnesses participating in all levels of voting rights activities; a challenge to all of you to show that you recognize the 20th century reality of racism and discrimination which keep large segments of this nation's population from full electoral participation.

Your questioning now and in the forthcoming weeks of hearings will not only provide the guidance for your presentation to full Committee, but will undoubtedly provide the framework for the Administration's formulation of its position to the Voting Rights Act. The next few weeks of Subcommittee activities, then, take on even greater significance.

I, therefore, strongly urge this Subcommittee to extend Sections 5 and 203 of the Voting Rights Act and bring Section 2 within the realistic bounds of enforcement, where history demands it be. The minorities of this country have an inalienable right to expect nothing less than fair and equal participation in the political process. And I am sure that the members of this Subcommittee recognize that nothing short of the recommendations we make here today will satisfy that right.

Thank you.

Mr. EDWARDS. Our next witness is Mr. Lane Kirkland, president, AFL-CIO, a great American leader.

Mr. Kirkland, we welcome you. Without objection, your full statement will be inserted in the record; and you may proceed.

[The statement of Lane Kirkland follows:]

STATEMENT OF LANE KIRKLAND, PRESIDENT, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. Chairman, I am pleased to present the testimony of the AFL-CIO in behalf of legislation to extend the Voting Rights Act of 1965. The AFL-CIO supported enactment of that landmark legislation, of the extension of the original Act and of the perfecting amendments that have been passed by the Congress. Today, we endorse H.R. 3112, as introduced by the chairman of the Judiciary Committee, and urge its enactment.

The Voting Rights Act, as President Lyndon Johnson reminded us on the occasion of its signing into law, "flows from a clear and simple wrong. Its only purpose is to

right that wrong. * * * The wrong is one which no American in his heart can justify. The right is one which no American, true to his principles, can deny * * * ." Our national history, and the inevitable lingering consequences of that history, made this Act necessary and make its continuation essential. We cannot forget our failure for nearly a century to end the discriminatory denial of citizenship rights or pretend that we have in fifteen years returned the situation to what it would have been had there been no discrimination or had there not been a long-term failure to correct that wrong.

In 1870, after brutal struggle, we amended our Constitution to provide that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude." In addition to enunciating the profound principle, the Amendment specifically authorized the Federal Government to enforce that principle through appropriate legislation. And Congress was not slow to take up the task. In that same year actions which obstruct the execise of the right to vote, whether by private persons or public officials, were made a crime, and a year later Congress provided for detailed federal supervision of the electoral process.

But, as we all know, times and concerns changed, and denial of the franchise became a way of life in parts of the country. For 95 years, the promise of the Fifteenth Amendment was honored in the breach, and this despite a long series of court decisions striking down particular discriminatory practices and despite actions by the Congress in 1957, 1960 and 1964 designed to facilitate court enforcement. And so, as the Supreme Court summarized the Congressional purpose shown in the legislative history of the 1965 Act:

"The Voting Rights Act was designed by Congress to banish the blight of racial discrimination in voting, which had infected the electoral process in parts of our country for nearly a century.

* * * * * * *

"Congress felt itself confronted by an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution. * * * Congress concluded that the unsuccessful remdies which it had prescribed in the past would have to be replaced by sterner and more elaborate measures in order to satisfy the clear commands of the Fifteenth Amendment." [*South Carolina* v. *Katzenbach, 383 U.S. 301, 308, 309, upholding the Act's constitutionality.*]

The law that emerged meets the classic tests of sound governance. Congress acted in accord with and to advance our highest ideals. That action was in response to clear and convincing evidence of a need to act. The present means for meeting that need were adopted only after more conventional alternative means were tried and found wanting. Even then the legislature acted with circumspection. Section 5 of the Act, the "sterne[st]" of its provisions, applies only to jurisdictions in which there were barriers to exercising the franchise that in fact affected the extent of voter participation. While it has been argued that this is a defect and that Section 5 should apply across the board, no one to my knowledge has adequately explained how the law would then be administered or why over-extensive regulation in the interest of simple symmetry is a virtue. Finally, the framers of the 1965 Act took pains to devise and enforcement system that is simple and speedy. Under Section 5, the heart of the Act, a covered jurisdiction sends to the Attorney General a copy of the voting law that jurisdiction wishes to follow and material on the law's purpose and effect. The Attorney General must reply within 120 days; if his response is that the law meets the Act's requirements, that is the end of the matter; if not, the jurisdiction may seek a declaratory judgment from the federal courts. That is an example of administrative efficiency that meets the standards of the sternest critics of government.

It is not surprising then that there is near universal agreement that the Act has been the most successful of this country's civil rights laws. Blacks and the language minorities protected by the bilingual provisions are now participating in political life in greatly increased numbers, both as voters and as candidates. But that relative success does not mean that our nation has reached a state of grace. How much remains to be done is evident from the statisitics alone: Section 5 has been in force for 15 years. Pursuant to its requirements that covered jurisdiction clear with either the Attorney General or the federal courts every proposed change in voting laws or priactices, more than 800 such proposals have been rejected. Even if we assume that in some instances the discriminatory effect was inadvertent, it is evident that there remains a solid determination in some quarters to block equality of voting rights.

Indeed, in one state—Mississippi—since 1975 there have been as many Section 5 Attorney General objections to proposed discriminatory changes in voting laws as there were in the previous ten years of the Act's existence.

Statistics, of course, are only a lifeless summary of a living reality. Numbers cannot gauge the depth and range of emotion—the will for power, the fear of those who are different, the racial class and cultural antagonism—expressed in laws restricting the right to participate in political life. Nor can numbers measure the effects of 95 years of exclusion from the right to vote and the right to run for office, of 15 years of effective remedial action, or of an abrupt end to that effective remedy. But those numbers, as well as common sense, are sufficient to warn us that we are discussing today's problem not yesterday's, and that it is far more likely than not that to end or weaken this law is to end or to weaken the civil rights of the blacks and language minorities the law now protects.

How then should the Congress approach the question of continuing or abandoning the Act? We believe the Act itself provides the answer. Section 5 places the burden on the submitting jurisdiction to show that its proposed change "does not have the purpose and will not have the effect" of denying or abridging the right to vote on account of race or color or membership in a language minority. Under this provision, those whose laws and practices have discriminated in the past must demonstrate that they do so no longer.

We suggest that Section 5 provides a fair and reasonable principle to apply in the present debate. We submit the burden should be put on those who would limit or repeal the Act to prove their case. Let them demonstrate that the legacy of nearly a century of rights ignored has been wholly overcome, that the lessons of 1870–1965 concerning the inadequacy of the right to sue after a change in voting laws no longer applies, and that these few years of adequate response by the federal government have brought about such a total change of heart that such a response is no longer needed. Or, if they seek changes under the soft euphemism of perfecting amendments, let them demonstrate that their proposal provides stronger safeguards for civil rights than the present system. We do not believe that the opponents of the Act are able to carry this burden, but we deeply believe that it is theirs to carry.

TESTIMONY OF LANE KIRKLAND, PRESIDENT, AFL-CIO; ACCOMPANIED BY RAY DENISON; LEGISLATIVE DIRECTOR, AND LAURENCE GOLD, ASSOCIATE GENERAL COUNSEL

Mr. KIRKLAND. Thank you, Mr. Chairman. I am joined by Ray Denison on my left. He is the legislative director. On my right is Larry Gold, associate general counsel.

Mr. Chairman, I am pleased to present the testimony of the AFL-CIO in behalf of legislation to extend the Voting Rights Act of 1965.

The AFL-CIO supported enactment of that landmark legislation, of the extension of the original act and of the perfecting amendments that have been passed by the Congress.

Today, we endorse H.R. 3112, as introduced by the chairman of the Judiciary Committee, and urge its enactment.

The Voting Rights Act, as President Lyndon Johnson reminded us on the occasion of its signing into law, "flows from a clear and simple wrong. Its only purpose is to right that wrong. The wrong is one which no American in his heart can justify. The right is one which no American, true to his principles, can deny."

Our national history, and the inevitable lingering consequences of that history, made this act necessary and make its continuation essential.

We cannot forget our failure for nearly a century to end the discriminatory denial of citizenship rights or pretend that we have in 15 years returned the situation to what it would have been had there been no discrimination or had there not been a long-term failure to correct that wrong.

In 1870, after brutal struggle, we amended our Constitution to provide that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude."

In addition to enunciating that profound principle, the amendment specifically authorized the Federal Government to enforce that principle through appropriate legislation.

And Congress was not slow to take up the task. In that same year, actions which obstruct the exercise of the right to vote, whether by private persons or public officials, were made a crime, and a year later, Congress provided for detailed Federal supervision of the electoral process.

But, as we all know, times and concerns changed, and denial of the franchise became a way of life in parts of the country.

For 95 years, the promise of the 15th amendment was honored in the breach, and this despite a long series of court decisions striking down particular discriminatory practices and despite actions by the Congress in 1957, 1960, and 1964 designed to facilitate court enforcement.

And so, as the Supreme Court summarized the congressional purpose shown in the legislative history of the 1965 act:

> The Voting Rights Act was designed by Congress to banish the blight of racial discrimination in voting, which had infected the electoral process in parts of our country for nearly a century.
>
> Congress felt itself confronted by an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution.
>
> Congress concluded that the unsuccessful remedies which it had prescribed in the past would have to be replaced by sterner and more elaborate measures in order to satisfy the clear commands of the 15th amendment.

The law that emerged meets the classic tests of sound governance. Congress acted in accord with and to advance our highest ideals.

That action was in response to clear and convincing evidence of a need to act. The present means for meeting that need were adopted only after more conventional alternative means were tried and found wanting.

Even then, the legislature acted with circumspection. Section 5 of the act, the sternest of its provisions, applies only to jurisdictions in which there were barriers to exercising the franchise that, in fact, affected the extent of voter participation.

While it has been argued that this is a defect and that section 5 should apply across the board, no one, to my knowledge, has adequately explained how the law would then be administered or why over-extensive regulation in the interest of simple symmetry is a virtue.

Finally, the framers of the 1965 act took pains to devise an enforcement system that is simple and speedy. Under section 5, the heart of the act, a covered jurisdiction sends to the Attorney General a copy of the voting law that jurisdiction wishes to follow and material on the law's purpose and effect.

The Attorney General must reply within 120 days; if his response is that the law meets the act's requirements, that is the end of the matter; if not, the jurisdiction may seek a declaratory judgment from the Federal courts.

That is an example of administrative efficiency that meets the standards of the sternest critics of Government.

It is not surprising then that there is near universal agreement that the act has been the most successful of this country's civil rights laws.

Blacks and the language minorities protected by the bilingual provisions are now participating in political life in greatly increased numbers, both as voters and as candidates.

But that relative success does not mean that our Nation has reached a state of grace. How much remains to be done is evident from the statistics alone: Section 5 has been in force for 15 years.

Pursuant to its requirements that covered jurisdiction clear with either the Attorney General or the Federal courts every proposed change in voting laws or practices, more than 800 such proposals have been rejected.

Even if we assume that in some instances the discriminatory effect was inadvertent, it is evident that there remains a solid determination in some quarters to block equality of voting rights.

Indeed, in one State—Mississippi—since 1975, there have been as many section 5 Attorney General objections to proposed discriminatory changes in voting laws as there were in the previous 10 years of the act's existence.

Statistics, of course, are only a lifeless summary of a living reality. Numbers cannot gauge the depth and range of emotion—the will for power, the fear of those who are different, the racial class, and cultural antagonism—expressed in laws restricting the right to participate in political life.

Nor can numbers measure the effects of 95 years of exclusion from the right to vote and the right to run for office, of 15 years of effective remedial action, or of an abrupt end to that effective remedy.

But those numbers, as well as common sense, are sufficient to warn us that we are discussing today's problem, not yesterday's, and that it is far more likely than not that to end or weaken this law is to end or to weaken the civil rights of the blacks and language minorities the law now protects.

How, then, should the Congress approach the question of continuing or abandoning the act? We believe the act itself provides the answer.

Section 5 places the burden on the submitting jurisdiction to show that its proposed change "does not have the purpose and will not have the effect" of denying or abridging the right to vote on account of race or color or membership in a language minority.

Under this provision, those whose laws and practices have discriminated in the past must demonstrate that they do so no longer.

We suggest that section 5 provides a fair and reasonable principle to apply in the present debate. We submit the burden should be put on those who would limit or repeal the act to prove their case.

Let them demonstrate that the legacy of nearly a century of rights ignored has been wholly overcome, that the lessons of 1870–1965 concerning the inadequacy of the right to sue after a change in voting laws no longer applies, and that these few years of adequate response by the Federal Government have brought about

such a total change of heart that such a response is no longer needed.

Or, if they seek changes under the soft euphemism of perfecting amendments, let them demonstrate that their proposal provides stronger safeguards for civil rights than the present system.

We do not believe that the opponents of the act are able to carry this burden, but we deeply believe that it is theirs to carry.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Mr. Kirkland, for splendid testimony.

The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. Thank you, Mr. Chairman.

I too, Mr. Kirkland, want to commend you for a very precise, very emphatic and well-placed statement.

I also want to extend my appreciation to you for being one of the first to jump in the breach and take this President on in terms of his budget cuts.

You stood tall and the fact is you have not hesitated, you jumped right in there, as you usually do. I appreciate that.

Would you comment on the colloquy that has been going on between Mr. Jordan and Mr. Hyde?

Mr. KIRKLAND. Yes, sir, I think I recall it.

I think the preceding can be summed up in a remark by a former Governor of the Southern States to the effect, Mississippi Governor James Coleman said in 1960: "Any legislature can pass a law faster than the Supreme Court can erase it."

I think this sums up in a nutshell the essence of the problem. We all know the history of the series of devices, many of them ingenious and creative, designed to preclude effective participation by blacks in political life.

That ingenuity is capable of keeping a few steps ahead of the process of litigation, I believe.

It was not for no reason at all, that this administrative process was substituted for the process of litigation. We have had experience with the process of litigation and the consequences of that led to the decision to impose this administrative process. And for a very good demonstrated reason.

Mr. WASHINGTON. Is it a fact, they have used that judicial process as a dodge and as an attempt to ferret out the proponents of civil rights and exhaust their reservoir of talent and funds?

Mr. KIRKLAND. I think many, many years of history, going back to 1970, certainly supports that.

Mr. EDWARDS. I think it is a very important point the witness just made as to the remedies provided, where there were those denials of the right to vote, including gerrymandering.

However, the lawsuits were so expensive, the ranks of lawyers for the Attorney General's office was too thinly spread throughout the covered jurisdictions, that by the time the appeal process was over, the elections were long gone.

So, that was the reason——

Mr. KIRKLAND. Some other device might be substituted with the same effect, which would again require protracted litigation.

Mr. EDWARDS. Very good point.

Mr. Sensenbrenner?

Mr. SENSENBRENNER. Thank you, Mr. Chairman.

I would like to ask you, Mr. Kirkland, if you have any suggestions on how the preclearance machinery in section 5 of the act can be expedited in response to some of the complaints we have heard on its application, both today and prior to today?

Mr. KIRKLAND. I am not familiar with the complaints you are referring to, sir. The law provides for a time limit on a decision by the Attorney General, I believe, 60 days and another 60 days if further information is needed and termination after that.

So the maximum period of delay is 120 days under the act. It seems to me, that's a rather expeditious procedure.

Mr. SENSENBRENNER. Thank you. I would also like to ask you, Mr. Kirkland, if the AFL-CIO would be supportive of some change in the bilingual ballot requirements that are presently contained in section 203 of the act?

Before hearing your answer, let me say that I certainly have no objection to printing ballots in foreign languages, if there is a substantial demand for those ballots on the part of the voter. However, we have seen cases in a number of jurisdictions where thousands of foreign-language ballots have been printed and only a handful of those ballots have been requested by voters who come to vote.

As a result, there has been substantial opposition to further extension of this portion of the act by representatives who serve those particular jurisdictions.

Don't you think that we could get by this objection by utilizing the use test, that if a certain percentage of the foreign-language ballots were specifically requested, then the local jurisdiction would still have to print them, but if only a small percentage of those ballots is requested, then the local jurisdiction would no longer have to print them?

Mr. KIRKLAND. Well, sir, I would be reluctant to offer any suggestions that would tend to dilute the impact of the act. I think the problem in terms of language minorities remains how to encourage and facilitate greater participation and not to overcome that objective—allow considerations of printing costs or inconvenience to overcome those objectives.

We spend a great deal of time in our efforts to encourage greater participation in the political process on the part of our members and asserting the proposition that one vote counts.

We repeatedly illustrate that by going into elections that were swung by one or two votes. So, I am not impressed by the proposition that only a handful of people might be discouraged from voting by making it more difficult to get the ballots printed in their language.

That handful is very important to our democratic process.

Mr. SENSENBRENNER. I have seen statistics that one district in California, 25,000 to 30,000 ballots were required to be printed in the Spanish language and at the election only 50 to 60 people showed up to use those ballots.

Mr. KIRKLAND. Not doing it might have disenfranchised those 50 to 60 people. I think the expense is worth it to make it possible for them to exercise their rights.

Mr. SENSENBRENNER. Do you know of any national or local union affiliated with the AFL-CIO which is forced to comply with the similar requirements?

Mr. KIRKLAND. I would have to turn to my counsel for that.

Mr. GOLD. I am aware of at least one decision by a court in California requiring a union to conduct an election bilingually. Aside from that, there are organizations in our ranks that undoubtedly have taken that step on their own.

Mr. SENSENBRENNER. In the instance you cite, the union did not do it voluntarily, it was compelled to by a court order.

Mr. GOLD. Yes.

Mr. SENSENBRENNER. Do you know of any that print ballots, as a matter of course, in foreign languages predominant in that union?

Mr. GOLD. You are asking for information I do not have at this time.

Mr. SENSENBRENNER. I would appreciate it if you could look into that and supply the subcommittee with the information.

I yield back the balance of my time.

Mr. EDWARDS. Mr. Lungren.

Mr. LUNGREN. No questions.

Mr. EDWARDS. Ms. Gonzales?

Ms. GONZALES. Mr. Kirkland, are you aware the Department of Justice guidelines require jurisdictions to only provide whatever bilingual assistance, either oral or written, is actually required?

So, in fact, if in a particular jurisdiction they find they are serving a particular Hispanic or other language minority population, which does not need bilingual assistance they, don't have to provide it?

Is that your knowledge of how the Justice guidelines are applied?

Mr. KIRKLAND. As I understand, I am sure it is done in a practical way.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. Under section 5, the mechanism which applies to the 1964 census, is it possible under any circumstance whatsoever, for a covered jurisdiction to escape mandated preclearance, under section 5?

Mr. KIRKLAND. I suppose not.

Mr. BOYD. Where then is the incentive for the system to improve its electoral process?

Mr. KIRKLAND. In the law, sir.

Mr. BOYD. Where, Mr. Kirkland?

Mr. KIRKLAND. In the requirement.

Mr. BOYD. If the jurisdiction can't escape the requirement, where, then, is the incentive?

Mr. KIRKLAND. I am not sure what you mean, sir. You are going over my head.

It seems the law itself provides an incentive for providing a system of voting laws that doesn't discriminate; and assures that is the case.

Mr. GOLD. I would just add, it seems to me, the supposition of your question is that the only incentive to do right is to escape the preclearance mechanism.

I think an alternative premise is that an effective remedial system, a preclearance system which allows sound changes to go into effect and precludes unsound changes from going into effect, could be a very useful incentive for improvement of voting rights.

Mr. BOYD. Hypothetically, if improvements are made voluntarily in jurisdictions covered by the amendment and if the jurisdictions establish a process which is better than any other in the country, they still are unable to escape compliance, aren't they?

Mr. GOLD. That is correct. It seems to me and I misunderstand your intent. It seems to me, the point raised is similar to the point raised when Mr. Jordan was asked when section 5 would have to expire.

His answer was not within 10 years. I guess we would associate ourselves with that answer.

Mr. BOYD. Thank you.

Mr. EDWARDS. Mr. Lungren.

Mr. LUNGREN. Thank you, Mr. Chairman, Mr. Kirkland and others for being here. I apologize for not being here, Congress schedules things many, many weeks in advance and then there are some weeks we have nothing.

Mr. KIRKLAND. Some of the things you scheduled, I would just as soon you didn't.

Mr. LUNGREN. After going through your testimony and consulting with some who have been here throughout, my question is this: I am not that old, but I remember the 1960 elections and I read the famous book by Theodore White, talk about the widespread vote in Illinois that might make a difference in a presidential election.

I have relatives still living in the Chicago area and without besmirching any particular area, it is fair to say, that Cook County has been accused of many, many things, including votability of many of its residents.

Was the law originally enacted because of historic abuses in the electoral process such as exist in Cook County, which also has a history?

Mr. KIRKLAND. In the first place, I would suppose they are reachable by law in Cook County. The Voting Rights Act was addressed to particular historic abuses and the historic pattern of the deprival of citizens of this country of their right to vote.

We believe that still continues to be a problem and still continues to be the factor which led to that systematic abuse and deprival of the vote for black citizens in areas where they represented a substantial part of the population.

That protection is still needed and it ought not to be diluted by attempting to make this act a bill to deal with all possible conceivable abuses of voting practices in the country.

Mr. LUNGREN. I have no problem with the original premise you stated, the historical basis of this, and if there is continued evidence of discrimination against people of color because of inability to register and participate in the process, I don't disagree with that.

But it seems if voting rights are a fundamental proposition, it should be so without regard to jurisdiction. Whether or not vote fraud exists with a specific intent or whether it exists institutional-

ly because of political powers that be, that ought to be of concern to us.

I am not saying extend it nationwide, but in areas where there have been historical instances of abuse, it seems we would want to extend the act to those areas.

Mr. KIRKLAND. Pardon me, sir, I continue to regard that proposition as a means of diluting the effectiveness of the law for the purpose for which it was intended.

Mr. EDWARDS. Any further questions?

Mr. HYDE. I do apologize for having to leave.

I notice in your statement and in the previous witness' statement, it was argued that section 5 should not be applied across the board nationwide, for many reasons, if at all. It would be administratively impossible to administer, but most importantly, it would be unconstitutional.

It was the history of voting rights abuses which provided the rational basis for applying the act. So, I wish we could dispel that notion that anybody who wants to can just apply it nationwide, strengthen it to death, in other words.

If a pattern of abuse exists, then preclearance would be a remedy anywhere in the country. That doesn't seem to me to be all that unworkable.

Then we do have section 3(c), which covers the isolated instance anywhere in the country. It is mandatory preclearance, continuing to keep a few States in a subordinate standard, that I have difficulty with.

But I think the act will be very effective and we do have a problem on the other side of the Rotunda in getting something acceptable.

But I have no quarrel with anything you have said.

Mr. KIRKLAND. I don't regard the fact of the application of these criteria as to preclearance directing the attention of this act to several States in the South, as a handicap to those States.

I think it is a help to those States. I, like Vernon Jordan, grew up in the South and have some familiarity with attitudes and practices that have prevailed in the past.

I think I understand the delicate nature of the confidence of black citizens in the South, and the rights assured them under this act would be upset if it were not extended to full force.

The fact is, for generations in many of those States, the white establishment acted to deprive black citizens of their rights.

Mr. HYDE. That's stipulated.

Mr. KIRKLAND. That led to the results which constitute the criteria for imposing the preclearance requirement.

Now, I think it is a great help and advantage to those States in living up to their responsibilities toward all their citizens and to safeguard those States from a regression to a time when a certain element of those States' abuse the law and deprive people of rights so as to pervert the political process in those States.

Mr. HYDE. There is no point in you and I arguing about this. I think your position is very clear. I just assert that if the preclearance section is dissolved, in its place, what I am suggesting is if there is a pattern and practice then preclearance could be imposed—must be imposed for 4 years anywhere in the country.

That is not such an adulteration of the totality of this act, which is still going to be in force and effect, as to invite regression.

There are still criminal penalties; the courts are still there. Yes, it is a less stringent or strident, one might say, format, than we have now; but give some credit to history and for 17 years of good-faith effort.

These things are all relative. Things may not be what you and I would like them to be in the South, but they are vastly different from what they were.

I do not disagree with what you have said. You made a fine statement, and we shall do the best we can.

Mr. KIRKLAND. Our position is that the law has been a successful law, it is an effective law as now written, that it works with minimum bureaucratic delay, and works expeditiously and at a modest cost in manpower and time. I would not like to see a law that I think has been so well designed to serve its purpose weakened, and I have to regard your suggestion as a weakening of it, and it transfers the burden of responsibility——

Mr. HYDE. To the complainant, something not unusual in American jurisprudence.

Would you keep it in perpetuity? Do you have a timeframe as to when you would let them out of the penalty box?

Mr. KIRKLAND. I agree with Congressman Washington. It is a good law, one of those rare laws that works clearly and expeditiously, and no one is deprived of access to the court.

Mr. HYDE. No parole, no salvation whatever.

Mr. KIRKLAND. I do not share the view that enactment of this program is a slur.

Mr. HYDE. You characterize a different standard for some States than others as a mere lack of legal symmetry, rather than equality.

Mr. WASHINGTON. Will the gentleman yield?

Mr. HYDE. Absolutely.

Mr. WASHINGTON. I think it is perfectly necessary in order to provide certain standards. What triggered the standard is a pattern of certain States abusing the right to vote. The distinction has been made historically.

Mr. HYDE. I concede the pattern was there, but that was 17 years ago. I think my friend will agree with me that voting rights abuses have occurred and do occur outside the South.

Mr. WASHINGTON. Subsequent witnesses will indicate the number of cases that have occurred. I would suggest my colleague hold in abeyance your position until you hear this testimony.

Mr. HYDE. I will keep as open a mind as the gentleman will.

Mr. KIRKLAND. I would compromise with you, Mr. Hyde. I would be willing to accept 95 years of application of this law. That is the period of history that led to its creation.

Mr. HYDE. No wonder there is a little difficulty with organization in the South. I do not think all the States are good and some are bad. I think at some point due process of the law ought to apply to everybody, and that includes States as well as people. To keep a whole group of States in a second-class status, it just gives me difficulty. But we disagree, and so be it.

Mr. KIRKLAND. I simply do not read that into it. I do not regard South Carolina, my State, as a second-class State because it lives

with this law. In fact, I think the law has helped it to come into first-class performance of its duties to its citizens, and I doubt very seriously that would have occurred in its absence or would have survived the weakening or elimination of this law.

Mr. HYDE. I agree, the law has proven itself. We agree on that. I am just saying now, at some point, let us treat South Carolina the same as Nebraska in terms of its ability as a sovereign State to pass laws concerning its citizens, but let us keep remedies in the law if they abuse those rights.

Mr. EDWARDS. Any further questions? If not, Mr. Kirkland and your colleagues, we thank you very much for a splendid presentation.

Our next witness is William Velasquez, executive director of the Southwest Voter Registration Education Project.

Without objection, your statement will be placed in the record.

TESTIMONY OF WILLIAM VELASQUEZ, EXECUTIVE DIRECTOR, SOUTHWEST VOTER REGISTRATION EDUCATION PROJECT [SVREP], ACCOMPANIED BY ROLANDO L. RIOS

Mr. VELASQUEZ. Thank you, Mr. Chairman.

My name is William C. Velasquez and I am the executive director of the Southwest Voter Registration Project [SVREP]. SVREP is a nonpartisan 501(c)(3) voter registration project working in the States of California, Arizona, New Mexico, Utah, Colorado, and Texas. We have conducted 336 voter registration campaigns in these States since 1975. In addition, we have undertaken an extensive series of studies designed to measure the Hispanic participation in the political process and explore the impediments to full participation.

Accompanying me is Mr. Rolando Rios, counsel.

It was a simple idea to work in the Southwest, to register the unregistered people, which includes Mexican Americans and blacks, and try to raise the registration up to the national average; also, to do the same thing in turnout. So the idea is a simple idea, to get Mexican Americans, Indians, blacks, and those from the aging community, those are the principal areas we work in, get their registration up to national average and get their turnout to the national average.

The process, however, has gotten to be pretty tough. In the last couple of years, we had to hire an attorney. We are a low-overhead organization. In the last 5 years I organized a bunch of cities myself. We have one secretary, one attorney, one research director, one communications director, one of everything. So, it is an onerous problem for us to have to hire a lawyer, but in order to do an effective job of registration in the Southwest, you need a lawyer. Let me explain what I am talking about.

Before we began, the idea was to find out why is it that Mexican Americans do not participate? Is it because we are uneducated? Is it because we are unsophisticated? Is it because we do not care? Is it because we do not care about this country? Maybe some of you think that. As a matter of fact, I have got to admit in the back of my mind, I thought the same thing, that maybe we just do not care about the political process, and I am making a blanket statement, that when we began this thing, I thought we might not be that

sophisticated and did not appreciate the importance of participating in the American electoral process.

As we began conducting those 336 campaigns, we started seeing—I started changing my mind. The reason I changed my mind is because in many of those areas, and I will start naming them, if you want me to name a whole number of those, we will do that, it was not possible to win. Let me start off with a couple of things that we had to do in order to find out what we had to do in order to be effective.

For several years, the last 5 or 6 years there was a lot of activity in the Chicano community, strikes, boycotts, students were walking out of school. What was going on? We did a poll, 442 households, the biggest problems facing Mexicans in the United States, that was the question. The answers were business problems, bad schools, education. As a matter of fact, this summer we are going to do that study again, 1,200 households, do it all over the Southwest. But when we began, the biggest problem was at the local level. The city does not pave the streets in the Mexican part of town. Anybody who travels the Southwest knows that. In Pecos, West Texas, what will a Chicano with a degree do? He moves to New York, Washington, because he is not going to get a job with that, because if they are not going to pave streets, put in drainage, when people get drowned, they are not going to hire your son.

The biggest problems are at the local level. The biggest problems that Mexican Americans say exist are at the local level, and the biggest institutional problems are at the local level.

You will hear a lot of people coming up here the next few weeks complaining about things. I am not complaining, I am explaining. That is the way the rules are, and if you are not smart enough to deal with those ideas—in Medina County, it has not been redistricted since 1896. We had to go to court to get them to do it. Can you imagine the effect? Medina County has never elected a Chicano representative. You go down to that county, you are talking with the leadership in Medina County, they say we conducted excellent registration drives, but have never been able to win. You say why? After three or four beers, they start saying the real problem is that our people do not appreciate the vote. This is the Mexican American leadership saying that. They do not appreciate the hard work we do. These are our own leaders saying that.

Our simple observation is, we cannot work in Medina County because you are so outrageously gerrymandered. You cannot win.

Who cares if it is just one county. But the first 66 counties in a row that we looked at were all gerrymandered against Mexican Americans. That does not happen by accident.

We did not find one county in the State of Texas gerrymandered for Mexicans. California is worse. Some of you will not agree, but the 1970 census data did not have adequate information on Mexican Americans. So, as a matter of fact the lines were drawn not taking that into account. Exactly why, I think we were outrageously gerrymandered. It was done without us knowing what to do about it.

Ladies and gentlemen, 128 counties throughout the Southwest are gerrymandered against Mexicans, perhaps because of the redistricting of 1970, perhaps because we did not have the resources to

do something about it. Now, together with the Mexican American Legal Defense Fund and a few others, we are working to remedy that. We have sued counties and are currently negotiating with 47 jurisdictions. We have not lost a single case yet. I am not complaining about that, I am just pointing it out to you.

Some of the other things that happened we are not going to complain about either, but I have one big complaint I want to talk about, so I will pass up on all these other things.

Just a few months ago in a city election for the first time in history, this person had a decent chance for winning. There was a record turnout. The election was so close that they started to take a ballot box to the houses of ranchers to vote. We will not complain about that, because we caught this and those votes are not any good.

They also started letting people vote who were not registered to vote. We are not going to complain about that, either.

They allowed Republicans to vote in a Democratic primary, which is getting two shots at the Mexicans, but that is all right, we are not complaining about that, either.

We are not even complaining when in Crockett County—everybody is saying the ballot box is sacred. You have two keys, one for the sheriff, one for the county clerk. You open that box, because we suspect there are problems there and the ballots come out bundled with rubber bands and all the Mexican surnames are on one side, all the Anglos on the other. Somebody opened it, obviously. But we are not going to complain about those things, because if we are not smart enough to catch them, then it is our fault, and we will suffer the consequences.

But I will complain, gentlemen, when the deck is stacked and we cannot move. I have a one-person legal staff, one attorney. Do you know how long it will take me to go into 128 counties? I will tell you that some of these counties are easily won—you still have to go to court. I will give you a small county, Refugio County. Or Edwards County, which has 1,541 people living there. One county commissioner represents 1,541 residents.

These things can be won, but 128 for one attorney? How long will it take us to remedy the problem? What we are talking about here is remedying the problem. You are going to say that what ought to happen is maybe the Mexicans ought to register and vote. Let me give you some examples. Fortunately, we have a statistical advantage because we can extract data by computer.

In Texas, 1975, 488,000 Mexicans registered to vote. November 15, 1980, 798,000 registered to vote. It took us 100 years to register 488,000. With the passage of the Voting Rights Act, we have increased it by 64 percent in 4 years. I know Texas very, very well. I was raised there. I want to tell you now that is the principal reason those politicians are against this act. In those west Texas counties, I am going to tell you right now, elected office is a patrimony that you hand over to your son or whoever you want. It is theirs to give to whoever they want. Mexican Americans are intruding into this process, and they are mad, and that is the reason, gentlemen, they are against us.

As a matter of fact, I want to be so bold as to say that the Mexicans are repeating a process that has occurred many times in

this country. Think about it. Mexican Americans are intruding into a process, patrimony, that was theirs, and now you have a new element, and that element is an immigrant-type people coming to this country.

Despite what we all know and think about this country, to the immigrant groups, it is golden America; it is not golden California, it is golden America. They come here because it is a country of laws and it is a country that puts its money where its mouth is and practices what it preaches. That is why this country is golden America. They get to these areas like Texas and do not find it. This country does not guarantee you nothing. If you fight for it, you can get it. If we keep winning like this and the Voting Rights Act is changed as some people are hoping, and we have to go to court in all the 128 counties, can you imagine how long it will take to get remedies now? Can you imagine how long the people will have to wait to get these things done?

What I think is going to happen is for the first time you will find immigrants not being able to be the new blood, to revitalize the political process in the Southwest. All these cottonpickers and garment workers and all that and farmworkers, they are revitalizing the political process in the Southwest, because they are voting and doing away with the worst abuses. Now they have to start talking about abuses instead of handing it over to their friends.

Mexican American people read and say it says in the Constitution this is the way it is supposed to happen or I will sue somebody and get it done. The Mexicans are doing it now.

I think you ought to recognize that now is the time for Mexicans to do what your people did when they came over, to do the same thing. We are going to do a good job. We are going to help keep the Southwest true to the basic ideals that helped make this country.

I would hope the changes in the law are such that will not make this kind of thing impossible.

That is all I have to say.

[The statement of Mr. Velasquez follows:]

STATEMENT OF THE SOUTHWEST VOTER REGISTRATION EDUCATION PROJECT, PRESENTED BY WILLIAM C. VELASQUEZ, EXECUTIVE DIRECTOR

SUMMARY OF TESTIMONY

Introduction:

My name is William C. Velasquez and I am the executive director of the Southwest Voter Registration Education Project (SVREP). SVREP is a non-partisan 501(c)(3) voter registration project working in the states of California, Arizona, New Mexico, Utah, Colorado, and Texas. We have conducted 336 voter registration campaigns in these states since 1975. In addition we have undertaken an extensive series of studies designed to measure the Hispanic participation in the political process and explore the impediments to full participation. SVREP, together with the Mexican American Legal Defense and Educational Fund and other legal societies have sued, settled or are currently negotiating with forty-seven (47) jurisdictions to remedy some of the more outrageous gerrymandering we have found in the Southwest.

In the process of conducting the registration campaigns in the Southwest and through the large number of court cases we have found a great desire among Hispanics to participate in the electoral process. The desires of the Hispanic voter in the Southwest are much in keeping with what all Americans want. The overwhelming majority of the requests for assistance from the field are to impact the cities and the schools. Chicanos in the Southwest want paved streets, drainage, curbs and better schools. The tradition in the vast majority of

Southwestern cities is that the Mexican side of town is not paved, much less provided adequate municipal services, and the schools in our side of town are terribly inferior. Better municipal services and better schools consistently rank as the top two priorities in all our work in the field and in our polls.

Unfortunately, it is at the local level that the greatest barriers are found. For example, the first sixty-six counties that SVREP analyzed in Texas were all found to be gerrymandered against Chicanos at the County Commissioner level. This, of course, is beyond the realm of statistical probability and does not happen by accident. As many as 128 counties throughout the Southwest may be gerrymandered at the County Commissioner level against Chicanos. In addition, there are 42 school boards in Texas with 50% or more Chicano students and no Chicano elected official. Another 30 school boards with 50% to 91.5% Chicano students have only 1 Chicano school board member. The number of Chicano students must raise to an average of 89.1% before Chicanos begin having appreciable representation at the school board level. The reason for this is the at-large election scheme.

These structural barriers coupled with voting abuses documented by SVREP such as letting people vote who aren't registered to vote, taking the ballot out of the booth and to the homes of Anglo ranchers to vote in tight elections etc., etc., etc.; make it virtually impossible to win.

It used to be much worse.

In the last four years under the Voting Rights Act, Hispanics in the Southwest have made excellent gains in voter registration. From 1976 to 1980 the number of Hispanics registered to vote in the state of Texas increased from 488,000 to 798,000, a sixty-four (64%) percent increase. There has also been an increase in the number of elected officials. SVREP has documented a twenty-nine point five percent (29.5%) increase Hispanics elected to office

in the three years from 1976 to 1979. Dramatic increases in registration and turnout have been noted in a number of areas where DOJ has issued VRA letters of objection. Crockett County, Texas, for example, now has a registration rate of 95.2% among Chicanos, and 93.6% of the Chicanos registered turned out to vote in a recent county commissioner race that was made possible by equitable districting lines under section 5 of the VRA. Many other cities and counties such as Victoria, Sonora, Dallas, Frio County, Crockett County, Houston, and San Antonio have been similarly affected.

The process that is unfolding before us is the process whereby America integrates a people, an immigrant working class, into our democratic electoral process. We have a long way to go; however, the progress afforded us under the protection of the VRA gives us cause for optimism. I would say that my optimism is not just for the Chicano people's political future, but for the future of our country. Indeed, I feel very strongly that the struggles we have gone through and those struggles of previous immigrant groups have helped this country stay true to its basic ideals. And important among those ideals is that America is a just land of laws that practices what it preaches. That in fact a group from humble circumstances can strive to and actually elect their own representatives.

THE VOTING RIGHTS ACT: ITS EFFECT IN TEXAS

(By Rolando L. Rios, Director of Litigation)

I. INTRODUCTION

To remain valid, our democratic government must permit all substantial interest groups full and effective participation in the policy-making process. With this ideal in mind, the Southwest Voter Registration Education Project (SVREP) was created in 1975 for the purpose of increasing the political participation of minorities. Since then we have conducted over three hundred voter registration/education projects throughout the Southwest.[1]

Our grass roots work has made us acutely aware of the numerous devices used by local officials to dilute the voting strength of minorities. This paper will discuss the use of those devices in Texas and how the Voting Rights Act (VRA) is helping the minority community protect itself from the discriminatory devices.

II. DEVICES:

Chicanos constitute a large and growing interest group in the Southwest[2],

---

[1]SVREP conducts over 100 voter registration/education projects each year at the local level. We estimate over 450,000 persons have been registered since 1976 due to our projects. A list of the communities we worked in is available upon request.

[2]The following are 1980 census figures just released:

State	Total Population	Spanish Origin (% of Total)		Potential Voters*
Texas	14,228,384	2,985,643	(21.%)	1,492,822
California	23,668,562	4,543,770	(19.2%)	2,271,885
New Mexico	1,299,968	476,089	(36.6%)	238,045
Colorado	2,888,834	339,300	(11.8%)	169,650
Arizona	2,717,866	440,915	(16.2%)	220,458

*Approximations

yet they suffer substantial underrepresentation at all levels of government. More importantly, they have been excluded at the local level where their sheer numbers and concentration should assure them substantial political strength,[3]

To dismiss the dearth of local minority representation as being caused by the lack of voter interest is to simplify the issue. The gerrymandering of election districts, use of at-large election schemes, annexations and voter intimidation are devices commonly used to dilute the voting strength of Chicanos. These devices are effective and devastating in Texas where polarized voting[4] is pervasive and Chicanos live in concentrated areas.[5] The result is continued

---

[3]The following are the percentages of Chicano elected officials in 1978 in selected areas of Texas government:

Level of Government	Percent of Elected Officials
State*	11.05%
County (Commissioner & Judge)	5.98%
Municipal	4.90%
Local School Boards	5.09%

*The reason for the relatively high representation at the state level is that state legislative plans have been readjusted twice in the 1970's: once pursuant to a declaration of unconstitutionality by the Supreme Court and a second time pursuant to a letter of objection issued by the Department of Justice. Both times the legislatively proposed plans were found to violate the voting rights of minorities. See White v. Regester 412 U.S. 755 (1973), Graves v. Barnes 378 F. Supp 640 (1974) and objection letter issued by the Department of Justice on 1-23-76.

[4]The existence of polarized voting can be measured by considering a number of factors: First, our experience in analyzing numerous elections throughout the state demonstrates various degrees of polarized voting. Second, the Department of Justice has issued 86 letters of objection in Texas; the objections are scattered throughout Texas (See attached map A-1). Our experience with DOJ indicates that before an objection is issued, polarized voting must be found to justify its issuance.

[5]The concentration of Chicanos is suggested by a survey tool SVREP uses to measure the political behavior of Chicanos. In Texas there are 231 voting precincts that are 80% or more Chicano. These precincts contain over 278,000 registered Chicano voters. This total is 35% of all registered Chicanos in Texas (798,000). One in every three Chicano voters lives in a voting precinct that is 80% or more Chicano.

defeats for Chicano candidates, while perpetuating an alienating process that makes democracy meaningless.

A. Gerrymandering

We have found that in 98 Texas counties having a substantial Chicano population, commissioner precinct lines are drawn to dilute Mexican American voting strength. In these 98 counties 490 county officials are elected every four years for staggered terms; however, there are only seventeen Chicanos in office.[6] If apportioned properly, Chicanos should be able to elect approximately 114 county officials. In short, Chicanos are presently experiencing less than 12.0% of their potential power.

An example of how this device works is Lubbock County, Texas. In 1970 a Chicana ran an impressive campaign against the Anglo incumbent county commissioner who narrowly won the election. Immediately after the election, the incumbent led the county's reapportionment and excluded from his districts voting precincts in which he did poorly. Of course, these were Chicano precincts. Since the reapportionment was done before the VRA was in effect, no preclearance was required. The reapportionment has delayed the election of a Chicano to the county commissioners court for 10 years.

If the VRA is not in effect in 1981-82, there will be another reapportionment and another extended delay. Further, in 1981-82 most of the 254 counties in Texas will reapportion. Without the VRA to protect them, minorities will again be gerrymandered.

B. At-large Election Schemes

This device is probably the single most harmful device used against minorities. In Texas, most school boards are elected at-large.

[6]The list is available upon request.

83-679 O - 82 - 4 (pt.1)

Consequently, minority representation is almost non-existent. SVREP surveyed 163 school districts and discovered that the Chicano student population must reach a level of 89.1% before Chicanos are able to constitute a majority on the school board.[7] There are 42 school districts with over 50% Chicano population which have no Chicano on their school boards. Further, our survey shows a correlation between the number of minorities on the school board and the number of Chicano teachers hired; the higher the number of Chicanos on the school board, the higher the number of Chicano teachers hired.

A classic example of how the at-large system frustrates the Chicano population occurred recently in Dimmitt, Texas. The Dimmitt ISD has a little over 1,000 Chicano students, 700 Anglo and 69 Blacks. There are no minorities on the school board and no minority teachers.

A Chicana, who has two sons in school in the district, decided to run for the school board to provide input on policy decisions. She ran a vigorous campaign, increasing the voter registration and turnout of Chicanos by over 30%. However, on election day, she lost by 150 votes; she asked us what she did wrong.

Without trying to discourage her, we explained that her campaign was like playing poker when the cards are stacked against you. Because of the high degree of polarized voting in Dimmitt, Chicanos will never have representation on the Dimmitt ISD school board unless they become a majority of the registered population. This is unlikely since they are only 40% of the total population.

The at-large election scheme is having a devastating effect in Texas. It is alienating minorities who sincerely want to be part of the electoral process but are continually disappointed by a system designed

[7]The school districts surveyed include a majority of the entire Chicano student population for the state of Texas. The survey is available upon request.

specifically to exclude them. One of our clients in Victoria County told us he stopped voting in local elections ten years ago because Chicanos no longer ran for office. They no longer ran because they couldn't win in at-large elections. Such feelings of inefficacy are common.[8]

C. Annexations

Annexations work together with the at-large system to dilute the voting strength of Chicanos. In the City of Victoria (population over 50,000), Chicanos started to mobilize their political strength by increasing their 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% Anglo. When the city tried to preclear the annexations, DOJ issued a letter of objection. This forced the city to adopt a mixed plan (3-3-1). As of Saturday, April 4, there is a Chicano, for the first time ever, on the city council of Victoria. Without the VRA, representation of a Chicano on the city council would have been delayed indefinitely.

---

[8]A federal district court, in striking down an unconstitutional at-large election scheme, explained the alienation process as follows:

> The effect of blacks' lower participation, coupled with the fact that blacks also register in small proportions, creates an almost overwhelming handicap to a minority candidate or one who commits himself to the interest of minorities. Thus, the process spirals endlessly. History and powerlessness create apathy and unresponsive representatives: unresponsiveness breeds more apathy, apathy more powerlessness and unresponsiveness. Not only those who do not learn from history, but also those who are trapped by history, are condemned to repeat it. Graves v. Barnes, 378 F. Supp. 640 (W.D., Texas, 1974).

D. Voter Intimidation

This device is used to discourage the voter from going to the polls. Many Chicano voters are embarrassed at the polls because they cannot speak English or are unable to read. Election judges take advantage of this situation by creating a hostile environment. We have documentation of an election judge telling a bilingual clerk who was trying to assist a voter that if Chicanos cannot speak English, they should not be permitted to vote. (See also Attachment 2)

In McAllen, Texas, an incumbent mayor, feeling threatened by a Chicano challenger, took it upon himself to hire photographers to take pictures of people voting. Since he is a multimillionaire with a considerable labor force, many potential voters would not go to the polls for fear of losing their jobs.[9]

---

[9]This case is being investigated for possible litigation against the incumbent mayor for violation of federal and state statutes prohibiting voter intimidation.

III. THE JUDICIAL AVENUE

In Texas, minorities have historically resorted to the judicial process to obtain political access.[10] In this regard, SVREP started a litigation section in August of 1979 to work together with the Mexican American Legal Defense and Educational Fund (MALDEF) to combat laws and practices that deny minorities access to the political process. In one day, together with MALDEF, we filed 11 federal lawsuits against different county governments in Texas. Attached is a list of 36 recent federal lawsuits involving voting rights and certain aspects of the Voting Rights Act.* All but three of these lawsuits, involved Texas

---

[10]The following is a brief chronology of litigation directed at providing political access to minorities:

a. State statute excluding blacks from participation in the Democratic primary--declared unconstitutional, Nixon v. Herndon 273 U.S. 536 (1927).

b. State statute which authorized state political party leaders to exclude on the basis of race--declared unconstitutional, Nixon v. Condon 286 U.S. 73 (1932).

c. The practice of excluding from primary elections on the basis of race--declared unconstitutional, Smith v. Allwright, 321 U.S. 649 (1944).

d. "Pre-primaries" in Fort Bend County, Texas which excluded blacks found unconstitutional, Terry v. Adams 345 U.S. 461 (1953).

e. Poll tax requirement in state elections--declared unconstitutional U.S. v. Texas, 384 U.S. 155 (1966).

f. Texas annual voter registration statute-ruled unconstitutional because the burden fell heaviest on Chicanos and blacks, Beare v. Smith, 321 F. Supp 1100 (1971).

g. At-large state legislative districts in areas containing large percentages of minority population--declared unconstitutional, White v. Regester 412 U.S. 755 and Graves v. Barnes, 378 F. Supp 640 (W.D. Texas 1974).

h. In 1975 the Texas legislature passed a statute that would purge all registered voters in the state. This law was struck down by Section 5 of the VRA because of the impact it would have on minorities. See DOJ letter of objection dated 12-10-75.

*See Attachment 3

election laws. Further, in the 5 years the VRA has been in effect in Texas, DOJ has issued 86 letters of objection. This compares as follows with states that have been covered for 15 years: Georgia - 81, Mississippi - 56, Alabama - 45, and Louisiana - 50.

The VRA offers a semi-judicial avenue of protection for minorities. A brief look at some areas affected by the VRA suggests an increased participation by minorities--increased number of minorities elected and registered:

San Antonio, Texas: 64% minority population

In 1977, after a letter of objection from DOJ, San Antonio was forced to change from at-large to single member districts. Soon after, minorities held a majority of the seats on the city council; this had never happened before. The successful elections had a snowball effect; it increased the voter registration rate of minorities, culminating in April, 1981, when the first Chicano mayor was elected. In the April election, Chicano turnout rate was 43% compared to 39% for Anglos. Rarely do Chicanos outvote Anglos.

Houston, Texas: 32% minority

Here again, a VRA objection forced Houston to change from pure at-large to a mixed plan--9 single member, 5 at-large. Under the pure at-large plan only one Black had ever been elected to the city council. The mixed plan allowed three Blacks and one Chicano to get elected.

Texas Legislature:

In 1975 the Texas legislature gerrymandered three counties that had substantial numbers of minorities: Jefferson, Tarrant, and Nueces Counties. After a letter of objection, the lines were redrawn resulting in an increase from three to six minority legislators elected from those areas.

Victoria, Texas: 40% minority

In Victoria, until 1979 there had never been a minority elected

to any elective office at the city or county governments. In 1979 SVREP together with MALDEF, sued the county and in 1980 we helped secure a letter of objection against the city's attempted annexations. Today there is a minority in each of those governing bodies. Registration rates have increased by 20%.

Crockett County, Texas: 45% minority

After numerous lawsuits and a letter of objection, there are now two Chicanos on the County Commissioner Court. More importantly, the minority registration rate is over 90%--probably the highest in the state.

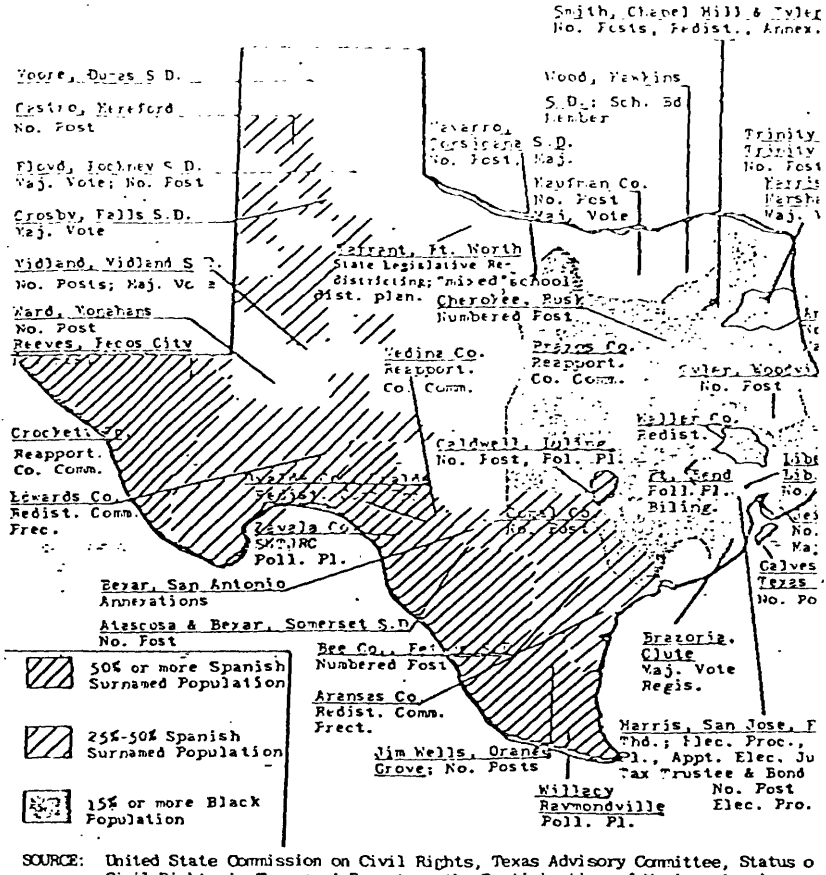
IV. CONCLUSION

The facts are all too clear; the at-large system together with the gerrymandering is denying access to the minority community. We have seen the very limited but important impact the VRA has had in Texas. Much more needs to be done. In 1981-82 most of the 254 Texas counties will be reapportioned; without the VRA to protect them, minorities will again be gerrymandered.

In the area of school districts, minorities need representation on school boards. The at-large systems must be changed. This need could be accomplished with appropriate amendments to the VRA.

Representation on local governing bodies places minorities on an equal footing with representatives of the Anglo community. It affords an opportunity for dialogue and a mutual understanding that is vital to our democracy.

GEOGRAPHIC DISPERSIONS OF SECTION 5
OBJECTIONS IN TEXAS 1975-JUNE, 1978



SOURCE: United State Commission on Civil Rights, Texas Advisory Committee, Status o Civil Rights in Texas: A Report on the Participation of Mexican-Americans, Blacks and Females in the Political Institutions and Processes in Texas 196 1978, by Dr. Charles L. Cotrell, Volume I (Washington, D.C.: Government Printing Office, 1980) p. 164.

INTRODUCTION

The Litigation Department of the Southwest Voter Registration Education Project (SVREP) was created in August, 1979 to help combat the legal barriers historically employed by public officials to limit the political participation of members of the minority community. Together with the Mexican American Legal Defense and Educational Fund (MALDEF), we have forced election structure changes in approximately forty political jurisdictions in the past year and a half. Twenty of these political jurisdictions have been sued for violating federal voting laws. All of the lawsuits resulted in victories for the plaintiffs, even though in some cases the exact remedy sought may not have been granted.

Throughout the litigation process and the 1980 elections, Chicanos in Texas inundated SVREP with complaints about illegal or unfair election practices. The abuses were so pervasive, and the appropriate state agencies so unconcerned, that SVREP decided to hold a formal inquiry to document these reported abuses. The inquiry was supported by the following organizations:

Southwest Voter Registration Education Project (SVREP)
Mexican American Republicans of Texas (MART)
Mexican American Legal Defense and Educational Fund (MALDEF)
Mexican American Legislative Caucus
Black Legislative Caucus
Women's Law Center
American Civil Liberties Union (ACLU)
National Association for the Advancement of Colored People (NAACP)
National Conference of Catholic Bishops' Southwest
Regional Office for Hispanic Affairs
League of United Latin American Citizens (LULAC)
Texas Rural Legal Aid

An addendum to this inquiry report includes two signed affidavits by Pearsall, Texas resident, Juan Pablo Navarro. The affidavits document alleged

ballot tampering in the May 3, 1980 Frio County party primary election. Navarro, an election day poll-watcher, caught sight of his ballot during final tabulation. Much to his surprise, his vote had been changed, and his ballot invalidated. Navarro was unable to testify at the October inquiry due to the charges of aggravated perjury brought against him because of the statements in his affaidavits.

The Frio County district attorney has offered to drop the charges contingent on Navarro's retraction of his statements. Navarro has refused this offer and will pursue the matter until he is vindicated. Navarro's harrassment is further testimony to the voting irregularities suffered by the minority citizens of Texas, and a clear example of outright vote stealing. (See A-1)

To facilitate analysis of the transcript we have indexed the testimony by subject matter and types of violations.

INDEX OF TESTIMONY

I. INDIVIDUALS CALLING FOR ACTION TO COMBAT VOTING IRREGULARITIES

A. HON. GEORGE STRAKE, Secretary of State, State of Texas. Secretary Strake provides an overview of the many problems his office has encountered concerning election irregularities that affect Mexican Americans. He admits there is "unwarranted delay and a reluctance to prosecute" on the part of local officials; he acknowledges the need for federal intervention. Transcript pages 7-30.

B. DOUGLAS CADDY, Director, Elections Division, Secretary of State's Office, State of Texas. Mr. Caddy favors a procedure whereby election code violations are automatically referred to federal authorities if no action is taken by the appropriate state agencies. He cites three specific examples where voting violations were referred to the Attorney General for the State of Texas and nothing was done. On these violations, Mr. Caddy states: "We are looking more and more, quite frankly, perhaps to encouraging federal involvement in pursuing these violations". Transcript pages 31-57.

D. LUIS SEGURA and JESSIE ROY BOTELLO, Practicing Attorneys. Mr. Segura and Mr. Botello were involved in extended litigation in Crockett County, Texas. The litigation involved the Federal Voting Rights Act of 1965, and resulted in the election of a Chicano to the County Commissioners Court and in a tremendous increase in the political participation of the minority community. Chicano voter registration rate increased to over 90%. Transcript pages 86-118.

E. BERNARDO EURESTE and RUDY ORTIZ. Mr. Eureste is a city councilman for the City of San Antonio, Texas and Mr. Ortiz is a former city councilman for San Antonio. Both gentlemen discuss their experiences with voting abuses in San Antonio and how the Voting Rights Act has had a positive effect on the minority community. Transcript pages 119-148.

F. MINNIE R. LEAL and MARY ELLEN REYNA, citizens of Atascosa County, Texas. Both witness have worked as clerks at precinct 20 in Atascosa County, Texas. They relate first-hand experiences on how Chicano voters are treated at the polls by Anglo election officials. One of the election judges is quoted as saying, "As far as I am concerned, if these people can not speak English they should not be permitted to vote." Transcript pages 166-187, see also A-8.

It is hoped this documentation can be used to support legislation directed at helping to remedy voting abuses that persist in Texas.

VOTING RIGHTS LITIGATION

1. Berume v. Dusenberry, No. 80-221 TUC RMB (U.S.D.C. District of Arizona)

2. Garza v. Gates, SA 79-CA-413
(U.S.D.C. Western District of Texas San Antonio Division)

3. Daniel v. Bailey County, Texas, No. 5-78-88
(U.S.D.C. Northern District of Texas, Lubbock Division)

4. Catano v. Castro County, Texas CA 2-79-267
(U.S.D.C. Northern District of Texas, Amarillo Division)

5. Casares v. Thompson, CA 5-79-127
(U.S.D.C. Northern District of Texas, Lubbock Division)

6. Ybarra v. Work, CA 5-79-126
U.S.D.C. Northern District of Texas, Lubbock Division)

7. Gomez v. Pratt, CA 5-79-128
(U.S.D.C. Northern District of Texas, Lubbock Division)

8. Gamez v. Deaf Smith County, Texas, CA 2-78-103
(U.S.D.C. Northern District of Texas, Amarillo Division)

9. Cowsert v. Fred, DR 79-CA-26
(U.S.D.C. Western District of Texas, Del Rio Division)

10. Solis v. Dunn, CA-99293
(237th District Court of Lubbock County, Texas)

11. Canales v. Jones, No. V-79-25
(U.S.D.C. Southern District of Texas, Victoria Division)
(U.S.C.A. 5th Cir. No. 80-1362)

12. Lamb v. Burks, CA-5-79-129
(U.S.D.C. Northern District of Texas, Lubbock Division)

13. Commissioners Court of Medina County, Texas v. United States of America and Antonio Garcia III, Defendant Intervenors, CA 80-0241
(U.S.D.C. for the District of Columbia)

14. Garcia v. Decker, No. SA 79-CA-414
(U.S.D.C. Western District of Texas, San Antonio Division)

15. Rocha v. Fagan, No V-79-CA-26
(U.S.D.C. Southern District of Texas, Victoria Division)
(U.S.C.A. 5th Cir. No. 80-1354)

16. Flores v. Jones, No. C-79-3850 WAI
(U.S.D.C. Northern District of California)

17. Rodriguez v. Hartman, No. C-79-149
(U.S.D.C. Southern District of Texas, Corpus Christi Division)

18. Mata v. White No. DR 79-CA-27
(U.S.D.C. Western District of Texas, Del Rios Division)

19. Silva v. Fitch, SA 76-CA-126
(U.S.D.C. Western District of Texas, San Antonio Division)

20. Aranda v. Van Sickle CA 74551 JWC
(U.S.D.C. Central District of California)

21. LULAC v. Corpus Christi Independent School District, CA 74-C-95
(U.S.D.C. Southern District of Texas, Corpus Christi Division)

22. Trinidad v. Koebig No. SA-79-CA-179
(U.S.D.C. Western District of Texas, San Antonio Division)

23. Perea v. Pigman No. P-77-CA-33
(U.S.D.C. Western District of Texas)

24. Escamilla v. Stavley, No. DR-78-CA-23
(U.S.D.C. Western District of Texas)

25. Arriola v. Harville, No. C-78-87
(U.S.D.C. Southern District of Texas)

26. Garcia v. Uvalde County No. DR-76-CA
(U.S.D.C. Western District of Texas)

27. Cano v. Chesser, No. A-79-CA-0032
(U.S.D.C. Western District of Texas)

28. Gomez v. Galloway, No. 79-C-146
(U.S.D.C. Southern District of Texas)

29. Ortiz v. Cockrell, No. SA 79-CA-323 (U.S.D.C. Western District of Texas, San Antonio Division)

30. Dallas v. U.S., No. 78-1666
(U.S.D.C. for the District of Columbia) (Intervention)

31. Lomeli v. Kennedy No. 80-681 PHX CAM
(U.S.D.C. District of Arizona)

32. Flores v. Jones No. C-79-3850 WAI
(U.S.D.C. Northern District of California)

33. Espinoza v. Wormack No. SA 80-CA-68
(U.S.D.C. Western District of Texas, San Antonio Division)

34. Gongora v. Vance, No. H-78-1716
(U.S.D.C. Southern District of Texas)

35. Hernandez v. Austin, No. A-76-CA-229
(U.S.D.C. Western District of Texas)

36. Ramos v. Koebig, No. SA-76-CA-155
(U.S.D.C. Western District of Texas, San Antonio)

Mr. EDWARDS. Thank you very much for your very eloquent testimony.

The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. That is the kind of plain talk this country needs.

In reference to the unpaved streets, you are not talking about some esoteric experience one goes through every election year, but the results of being able to cast your expression translates itself into jobs in the city, et cetera. It is very real, very important.

As the Voting Rights Act is now constructed, is it adequate, or do you have a suggestion as to what is needed to make it stronger to bring about a solution to the problem?

Mr. VELASQUEZ. The Voting Rights Act is so crucial the way it is now to the continued advancement of the Mexican Americans, the Indians, the blacks of the Southwest, that we would not dare propose you change it, not even to strengthen it. Our attorney will make some observations on that. The reason I say what I am saying is you have to realize how crucial it is. We are resource-poor. To be able to solve these matters on our own would be impossible.

Mr. RIOS. Congressman Washington, if we were to strengthen the act we would ask for an amendment to section 2 in such a way that the effects test would apply, similar to the one the Department of Justice uses. It is easier for the plaintiffs to meet their burden of proof. As it has been suggested so far, section 2 would be amended to bring the effects test to where it was before, which we see as a cumbersome chore, because the lawsuits are very extended and expensive and it takes a long time. We would want an amendment in section 2 which would give us an amendment in the effects test putting the burden on the plaintiffs to show impact. Then the burden would go to the defendants to rebut the impact.

Mr. WASHINGTON. That is in the Rodino bill. Have you any suggestions beyond that?

Mr. RIOS. No.

Mr. HYDE. That is also in my bill, is it not? The effects test in section 2. I state that it is, and it is an improvement, and I think we all agree to that. I believe my effects test is prospective in operation, and the Rodino effects test may be retroactive and create major problems insofar as proliferation of litigation.

Under what theories have you brought these lawsuits, the single language or the racial?

Mr. RIOS. Most have been brought because the counties have not apportioned for many years. Without the lawsuits, they would not be required to give the citizens a fair opportunity to elect their officials.

Mr. HYDE. I am trying to figure out what impact preclearance has on your activities.

Mr. RIOS. It has a tremendous impact, in that if we were to bring the lawsuits on a straight one person, one vote, they could gerrymander, and there would not be much we could do about it.

Mr. HYDE. You almost have to file a lawsuit to have the existing boundaries declared violative of one man, one vote; then when they propose the remedy, that gets precleared.

Mr. RIOS. We filed 11 suits in one day, Federal lawsuits. The word got out and there were a number of counties that contacted us and said, "Obviously, there is a deviation above 10 percent. There is no reason to have you sue us. We will go ahead and reapportion."

Mr. HYDE. You filed the lawsuits?

Mr. RIOS. Yes; we filed the first 10 or 11, and the word got out and we got reapportionment.

Mr. HYDE. Thank you.

Mr. EDWARDS. Mr. Lungren.

Mr. LUNGREN. I want to commend Mr. Velasquez. His testimony is very, very good.

On questions of violations of rights of the Hispanic community, it opened my eyes up. I was not aware of such widespread existence of abuse.

I am aware of the criticism in the State of California of the lack of representation. Obviously you cannot apply a percentage to it, a certain percentage of Hispanics, therefore they ought to have that representation. But I think the facts are that there is a lack of Hispanic representation in my home State. Just to prove it is not always the legislature that does it, our reapportionment took place as directed by the courts, the last time, but I would hope there are things we could do.

I would like to direct a question to your counsel with regard to preclearance, trying to follow up on what Mr. Hyde said.

As I understand it, the crux of your ability to act has been the filing of a lawsuit, as opposed to any preclearance requirement, because preclearance obviously suggests you have to have a change in the law and you are attacking the law as it existed at the time you filed the lawsuit?

Mr. RIOS. I am talking about one aspect of our effort.

In voter registration of Chicanos, section 5 caused changes in Houston and Dallas from straight at-large to either a combination of single or multilevel districts, which caused again an increase in the number of minorities registered to vote.

In Victoria, there was objection, and from there, in the history of Victoria, for the first time ever, a minority was elected.

In one part of our effort, section 5 has basically been the key in those instances I mentioned, and also in the lawsuit. Without section 5, we would not have been able to accomplish anything at all.

Mr. LUNGREN. Mr. Velasquez, I would like to ask a question on a somewhat sensitive subject, but I would like to get your feeling on it.

In California there really is a lot of controversy as to the requirement for minority language on the ballots. There is some concern about the expense, that there is very little use of them once they are printed. I happen to believe, obviously not as strongly as you, because you are part of it, but I do believe what you said about the Hispanic community, particularly in the Southwest, enriching our culture and educational experiences there. I think most people of good will feel that.

I look out for some areas of possible tension that do not necessarily have to be there and create tensions between groups that destroy that feeling of well-being and that acceptance, if you will, of

people that are somewhat different than they are, however they perceive them to be. I find this issue of language requirement is an issue that upsets a great number of people who, I think, in every other respect would welcome Hispanic participation in the political process.

My question to you is: How necessary, in your opinion, is the minority language requirement to the ability of the Hispanic community to fully participate in the electoral process?

With just a little addendum to that, you said you were convinced the members of the Hispanic community do want to be a part of the political process, are interested, and if you only give them a chance they would participate.

Some might say—and I will be the devil's advocate here—that they are asking for special means, that is, they are not willing to learn the English language, and that is a suggestion they do not take it seriously enough.

How do you respond to that?

Mr. VELASQUEZ. Congressman Lungren, I appreciate your remarks about a lot of people of good will being confused on this issue and a lot of people of good will who are obviously having a hard time talking about this issue. Let me point out a few things. The Federal Election Commission report on the application of the bilingual provision points out something very, very clear, that in those areas where the authorities conscientiously work with the local groups and local leadership, the use of bilingual ballots is cost-effective. And you know that report was replete with these kinds of examples, where not only do they say they are not going to comply with the act, but they say, hell no, I am not going to comply. In those areas, we have to get the State to print up cards for us because we could not get them locally.

Do you think in fact, in those areas, we can expect the bilingual provisions to be applied effectively? I think it goes two ways. Those who in fact want to comply with the law and are fair and decent about the thing will find the following: 40 precincts in Texas, 10 counties, half high increase, half low, 1,027 voters. This was November 4, 1980. We asked them: "Did you use bilingual material when you voted?" Thirty-nine percent said yes; 84 percent said no. However, that bilingual material on the ballot is helpful, that is a large sample, 1,827 said yes.

Some people are going to talk about the costs. We have paid for those ballots—we have paid for those ballots. Just think in San Antonio, one of the groups found, before we became strong in politics, found a series of streets that had not been paved in 40 years. The Federal Government right now is concluding a study on the amount of money spent on the Mexican side of town. If we used in 3 months the amount of money that should have been spent on the Mexican side of town and using part of that money to print up ballots and telling the officials they should be conscientious about applying the law, things would be different.

In San Antonio there is a study of 5 years ago on the first election after the Voting Rights Act came into effect and they had bilingual ballots. Mexicans want bilingual ballots; we have paid for it. I do not want to be hokey about it, but we have paid throughout history.

A doctor from UCLA has made a finding that the number of congressional honor winners among Mexican Americans is higher than for any other race. We paid for a simple thing. When we vote, we want our parents—my father has a problem with English, and many in my family do. We want our people to have the opportunity to vote. If we pay our taxes and do not get the streets paved and if our sons and relatives die in Vietnam, do one thing simple: print the ballots in Spanish.

Mr. LUNGREN. I am sympathetic with what you said. It is important when you have somebody who wants to vote to know what they are doing. That is why we have instruction in Spanish on how to drive in California.

I think the other part of this is that some people see this as a part of a process by which we will come to have in California and the Southwest portion of the country more than one dominant language, and they picture the Quebec situation, and I do not think anybody wants this.

There is a dichotomy in the mind of many people.

You expressed very well that you want your parents who have difficulty with the language to vote. Then you go on to say you want the immigrant population—but for the immigrant to become a citizen, they must have some proficiency in the language. I wish there were an easy answer to the question.

Mr. VELASQUEZ. What is happening to Mexican Americans is happening to all other immigrant groups.

I remember distinctly the person down the street, consistently he was the greatest Marine recruiter in the United States, overfilling his quota. I bet you when your ancestors came over, I will bet you, they were super Americans, because they realized what this country has to give. I do not think we appreciate, even when it is on the record, that we are going through another process. I think the reason we do not appreciate it is because we see them as cottonpickers. If there were cottonfields in New York, your ancestors would have been cottonpickers, not factory workers. We are going into an area not geared for immigrants. As a matter of fact, it is anti-immigrant. It is something that people of good will, like yourself, need to make up your mind about and go out and tell the people, as opposed to having them tell you something wrong. Maybe you ought to tell them what the facts are.

I think taking in account all these factors, if we do away with some of the provisions of the act, particularly preclearance, we will see the political consequences of this attitude. That is going to mean we will have to go to court every time, and for every case you have an appeal. Then you have an appeal to the appeal, and you will be tied up in knots long enough that you are not affected.

Mr. EDWARDS. The time of the gentleman has expired.

Mr. HYDE. Will the chairman yield?

Have the lawsuits changed the minds of many of those who might be affected?

Mr. VELASQUEZ. Even now, we have seen that. Some obvious cases we have won hands down. They are just madder than hell at the Mexicans. They just keep appealing. Medina, for example will have its election in 3 weeks. They were wrong, but they do not want to lose their case, but they try to drive us out.

Mr. HYDE. Mr. Chairman, is the attorney general for the State of Texas going to testify before our committee down in Austin? Has he been invited?

Ms. GONZALES. We have not invited everybody for all the hearings yet.

Mr. HYDE. I would like to respectfully recommend that he be invited to testify, then if you, Mr. Velasquez, would care to submit some questions that you would like us to ask him, I would be most anxious to get his side of this discussion, because I think it is vital.

Thank you, Mr. Chairman.

Mr. RIOS. We are going to submit a book of hearings we had at the Capitol. The secretary of State of Texas testified, his elections division director testified, and there is testimony here how they acknowledge and support our effort.

[COMMITTEE NOTE: The book of hearings is available in the Committee files.]

Mr. EDWARDS. It is your testimony that the Voting Rights Act works very well insofar as you are concerned, and you would like to see it extended in its present form.

Mr. VELASQUEZ. Without question.

Mr. EDWARDS. Since I come from California and California has been mentioned, Santa Clara County has the largest population of Mexican Americans in northern California; southern California is something different. The Voting Rights Act with regard to the bilingual ballots works very well in Santa Clara County. I have talked several times to the registrar. In California there was a concerted effort by some registrars to sabotage the Voting Rights Act. In one or two counties they certified it cost $100 per vote. So a lot of that was the fault of the Attorney General of the United States. He did not initially give any decent guidance for month after month, did not suggest the easy ways a registrar could comply with the act. Now of course registrars are starting to comply with the act and finding that it is totally cost-effective, but that does not in any way stop the complaints, because the complaints have deeper roots.

Do you agree you do have registrars in Texas who try to sabotage——

Mr. VELASQUEZ. Without question. I feel very strongly that there should be new people involved. Initially they were reacting badly. I would hope with the leadership you are able to give along with other leaders in this country, maybe we can ameliorate that attitude. There is a new element that has not participated for many, many years. Now there is fear as to what is going to happen, and I feel that is a negative reaction to the bilingual ballots.

Mr. EDWARDS. I believe I have learned that it is considered in compliance with the act if someone who would like to use the ballot in Spanish enters the voting place, and if the ballot is on the wall in Spanish, that that might be considered as compliance. Is that correct?

Mr. VELASQUEZ. There is a question about providing a ballot for everybody with Spanish surnames registered to vote. There is an evolving practice on what it means to provide bilingual ballots. In Texas they put it on the ballot. There is no cost. In California, they have other customs and laws and printouts sent out beforehand that brings in the cost question.

Mr. EDWARDS. Very few registrars send out inquiries which ask if there is a preference for the original language or another. The postcard says if you want further information, send it back.

Are there any further questions?

Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman.

Mr. Velasquez, your statement directs itself to the first of two issues, one that confronts the language provisions of the act and the second issue, whether those provisions should be extended now, in this Congress, the 97th Congress, or the 98th Congress, which will follow, since they do not expire until 1985. Would you concede that people of good will can differ as to whether they should be extended now, or would you suggest those who seek a compromise are really trying in a thinly veiled way to repeal the act altogether?

Mr. VELASQUEZ. I think it should pass together. Everybody is talking about these things at one time, and I think now is the time to do it, to pass the whole thing together.

Mr. BOYD. Do you not agree that Members of good conscience could nevertheless disagree on whether it should be passed now or in the future?

Mr. VELASQUEZ. Yes.

Mr. EDWARDS. Thank you, gentlemen, for your testimony.

Our next witness is Mr. Benjamin Hooks, Executive Director, National Association for the Advancement of Colored People. He is a most distinguished American leader.

Mr. Hooks, we welcome you. Without objection, your entire statement will be made a part of the record.

Will you please introduce your colleagues.

TESTIMONY OF BENJAMIN HOOKS, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ACCOMPANIED BY ALTHEA T. L. SIMMONS, DIRECTOR, WASHINGTON BUREAU; RALPH NEAS, EXECUTIVE DIRECTOR, LEADERSHIP COUNCIL; AND JOSEPH L. RAUH, JR., GENERAL COUNSEL, LEADERSHIP COUNSEL ON CIVIL RIGHTS

Mr. HOOKS. Thank you, Mr. Chairman. I will make this very brief.

I am Benjamin L. Hooks, executive director of the National Association for the Advancement of Colored People and chairman of the Leadership Conference on Civil Rights. The NAACP has more than 1,800 local branches, youth and college units, and operates in the 50 States and the District of Columbia.

Accompanying me are Althea T. L. Simmons, director of the NAACP's Washington Bureau, and Leadership Conference officials—Joseph L. Rauh, Jr., general counsel, and Ralph Neas, executive director of the Leadership Council on Civil Rights.

You have our prepared statement, which has been submitted for the record.

We support the extension of the Voting Rights Act as it is now written, and I just want to add perhaps one or two comments.

The Leadership Conference is an umbrella group of organizations that played perhaps a leading role in the passage of the first

Voting Rights Act of 1965. The NAACP is the Nation's largest, oldest, most successful civil rights organization. We have registered more voters of the black community than any other organization, under the provisions of the Voting Rights Act.

I have been there. I started in a law office in Memphis in 1949. I was a board member for r. any years with the Southern Christian Leadership Conference, and I am aware of the difficulties and the horrors of the 1950's, and I remember how important it was that we have this Voting Rights Act.

It is very comfortable here this morning, nice, clean, commodious room. It is a far call from the hot, crowded, tension-filled voting places of the South of the 1950's. Therefore, perhaps I sit here in a little different perspective.

I remember when hostility was so obvious you could almost cut it with a knife. I remember law enforcement officials determined that they would never have blacks to vote. I remember hearing questions asked, "How many bubbles in a bar of soap?" and "How far can a little dog run in the woods?"

I have seen people asked to interpret the constitution of Mississippi and Tennessee by registration officials who could not read the constitution themselves. I have been there, Mr. Chairman.

I think it is important to say we think the bill ought to be extended in its present form. Not only are we dealing with a rational, pragmatic situation, we are also dealing with a matter that is heavy in symbolism, and in the midst of all the conservative moving forward in this country, the hate, the violence, the resurgence of the Ku Klux Klan, it is important that Congress send this message to the black and brown citizens of this Nation, that at least this Congress is devoted to the concept that every person who wants to vote will not be impeded by artificial barriers.

With that, Mr. Chairman, I am prepared to answer any questions that might be forthcoming.

[The statement of Mr. Hooks follows:]

STATEMENT OF BENJAMIN L. HOOKS, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AND CHAIRMAN OF THE LEADERSHIP CONFERENCE ON CIVIL RIGHTS

Mr. Chairman and members of the Subcommittee, I am Benjamin L. Hooks, Executive Director of the National Association for the Advancement of Colored People and Chairman of the Leadership Conference on Civil Rights. The NAACP has more than 1800 local branches, youth and college units and operates in the 50 states and the District of Columbia. The Leadership Conference was founded in 1949 and now consists of 152 organizations. Accompanying me are Althea T. L. Simmons, Director of the NAACP's Washington Bureau and Leadership Conference officials Ralph Neas, Executive Director and Joseph L. Rauh, Jr., General Counsel.

We thank you, Mr. Chairman, for making these hearings possible and Judiciary Chairman, Peter Rodino for introducing legislation to extend the vitally-needed Voting Rights Act.

The NAACP and the Leadership Conference have been active proponents of the Voting Rights Act. We have testified before this Committee on the need for the Act each time it has been before the Congress. Today, we unequivocally reaffirm our time-honored position in support of the Voting Rights Act and its extension.

We are all too aware that there are those who question the need for this legislation and argue that it has served its purpose; that it is punitive toward certain sections of the country; that we ought to give the states an opportunity to show that they no longer have barriers to deny blacks and other minorities the right to cast a ballot or run and be elected to office; others propose making the coverage of the Act nationwide. Some propose deleting the language minority provisions. We urge the Subcommittee to carefully survey the effectiveness of the Act; to consider the

problems still being encountered and to support its extension for an additional 10 years.

There is not doubt in my mind that the Voting Rights Act is the single most effective piece of legislation drafted in the last two decades. As significant as this legislation is, its potential has not yet been realized. The National Coalition on Voter Participation reported that some 11 percent of the 160 million eligible voters are black. Blacks constitute 16.8 percent of the Southern electorate—more than is found in the other regions. Even though 60 percent of the almost 5,000 black elected officials are in the states covered by the Act, Alabama with a black voting age population of 609,000 (350,000 of whom are registered) has only black representatives. Only 5 black state legislators can be counted of the 160 in Florida. Twenty-one (21) black representatives and 2 senators serve in the Georgia State Legislature and only 7 of the 22 majority black counties in the State have black elected county officials.

Mississippi is, perhaps, a good example of the importance of the gains which the Voting Rights Act made possible. In 1975 there were 4 blacks in the State Legislature and today there are 17. The latter 13 owe their seats to protracted litigation which the Voting Rights Act made possible. I can tell you unequivocally, that but for the Voting Rights Act we would have very few of the 387 black elected officials in the state.

Although there have been gains in the enfranchisement of blacks in the covered jurisdictions, the promise of the Act has not yet been realized as witness the figures below:

	Black VAP		Blacks registered 1960-1980	
	1960	1980	1960	1980 (estimated)
Alabama	481,320	609,000	308,000	350,000
Florida	470,261	796,000	315,000	489,000
Georgia	612,910	807,000	390,000	450,000
Mississippi	422,256	515,000	285,000	330,000
North Carolina	550,929	796,000	302,000	440,000
South Carolina	371,873	573,000	213,000	320,000

We believe that the Voting Rights Act is essential in the 1980's so that it can provide the mechanism to do what then President Lyndon B. Johnson envisioned when he made his remarks at the signing of the Act on August 6, 1965: "This Act flows from a clear and simple wrong. Its only purpose is to right that wrong. Millions of Americans are denied the right to vote because of their color. This law will ensure them the right to vote. The wrong is one which no American in his heart can justify. The right is one which no American, true to our principles, can deny * * *."

PRACTICES WHICH MINIMIZE BLACK VOTER PARTICIPATION

NAACP units in Alabama, Florida, Georgia, Mississippi, North and South Carolina, Texas and Virginia report that, despite the legal protections presently afforded by the Act, problems of some magnitude are still encountered in full black voter participation. The most prevalently reported barriers include: failure of some jurisdictions to preclear election changes or procedures; change of single member districts to multi-member districts; permissiveness in the location of rotating books; limited use of deputy registrars; lack of availability of registrars outside the 9 a.m. to 5 p.m. working day; insufficient voting hours and facilities; inadequate publication of procedural rules for voting; subtle intimidation of black voters at the polls; certification of absentee ballots of non-residents; use of a voter re-identification procedure to purge voter rolls necessitating re-registration; annexation of white suburbs or subdivisions to previously majority black districts; majority vote runoff requirements in areas where there is no districting; lack of adequate notice re change in polling place; physical location of registrar's office in places not conducive to minority participation (in segregated clubs, close proximity to sheriff's office etc.); lack of black deputy registrars; racial gerrymandering of district lines; "open primaries" which require a majority vote to win office; racial bloc voting; prohibition of "single shot" voting; increased filing fee; and numbered post requirements with staggered terms.

Mr. Chairman, these practices and procedures persist in spite of the provisions of the Voting Rights Act. That is why we urge this Committee and the Congress to

take decisive action to provide a continuation of the legislative framework whereby blacks and language minorities will be able to enjoy the fundamental right of political participation. Students of history will recall that following the Reconstruction period, the infamous black codes came into existence, and later the white primary to exclude black voters from meaningful participation in the electoral process. We believe that, but for the fact that there is a Voting Rights Act with preclearance procedures, a number of innovative schemes and devices would be used to deny blacks the opportunity to become voters and to remove many of the names which now appear on the voting rolls.

Our fears are not unfounded as witnesses current action in the State of Alabama where a series of voter re-identification bills have been introduced (some have passed) in the state legislature. The bills introduced mainly by legislators in the so-called "black belt" counties, provides that the voter must re-identify in person in the "beat" in which he/she is registered or at the court house between the hours of 9:00 a.m. and 4:00 or 5:00 p.m. The bills drafted and passed for Perry, Wilcox, Sumter, Winston and Lowndes Counties require the board of registrars to visit each beat in the county for at least one day between those restricted hours. This restricted time frame will disadvantage many working people. In the above-mentioned counties, residents who work outside the confines of the county range from 12.2 percent in Sumter County to a high of 36.6 percent in Shelby County.

The restrictive clauses in the re-identification bills and the requirement that voters identify and provide date of birth, beat and box and the length of time the voter has resided in the beat or precinct is tantamount to purging the rolls and re-registration, which for all practical purposes will serve to dilute the black vote.

Those who have argued for termination or weakening of the Voting Rights Act have said that the Act has been so successful that its protections are no longer needed and that the Act singles out for "punishment" or separate treatment some areas of the country which might be doing no more than any other non-covered area is doing. We respond to that in this fashion. Our information suggests that we cannot speak precisely about the success of the Act since a large number of election changes in covered jurisdictions are not now being presented for the statutory preclearance. If you take at face value the assertion of the Justice Department that it has been actively reviewing the changes submitted to it, one must conclude that any expansion of the scope of the coverage of jurisdictions must perforce be accompanied by possibly a quadrupling of the size of the Department staff-legal, clerical, investigative and other support personnel. To do less would be viewed, correctly, as simply killing the Act by making enforcement impossible.

In the second instance, the 16 years since the passage of the Act make clear the deadly accuracy of the Congress which acted in 1965, based on reports of widespread denial of the right to vote and because of a firm belief that the law was needed. since the passage of the Act, we can add to the "war stories" to prove beyond a doubt, to even the fiercest critics, that blacks and other minorities have been and still are being denied or barred from exercising this most fundamental of all freedoms.

As the Executive Director of the largest civil rights organization with more than 1,800 units operating in communities—many of which are in the covered jurisdictions—I can tell this Committee that, while good progress is being made, we have not yet reached the voting rights millenium.

We must disagree with those who oppose or question the value of the Voting Rights Act or who suggest that a presumption of legality should lead to ending coverage of the Act to see if former lawbreakers have now reformed. To state the proposition is to reject it. Once, as here, violations of the fundamental democratic rights of suffrage have been shown, the burden is upon those who were lawbreakers to prove they have turned the critical corner. We contend that the easiest way for that proof to be given is to operate electoral systems which are immune from the kind of challenges which the Voting Act permits.

It is our contention that no jurisdiction which is free of the problems of voter exclusion will be bothered by the minor preclearance requirements imposed by this Act. We suggest that any covered jurisdiction which operates for the period between now and the changes effected by the 1990 census will have shown its eligibility for removal. Against a backdrop of generations of outright exclusion, showing the capacity to operate within the law for the generation of coverage from 1965 to 1990 is the least which should be required.

As for those who argue that the bilingual provisions are too costly, we ask them to tell us how much the right to vote is worth. To those who have been specifically or essentially denied, no price tag can be put on this precious right said by many to be the cornerstone for all other rights. Mr. Chairman and members of the Committee, we have never seen any reliable figures on how much the First Amendment

rights are worth, or how much the Fifth Amendment rights are worth, or how many dollars could buy the 11th Amendment rights of the States. At such time as price tags can be put on these other fundamental protections, we will be more sensitive to the need to place price tags on the right to vote. For the Hispanic adult who cannot read or speak English fluently, the right to vote has no meaning if it can't be used. Against this backdrop, the mere inconvenience or costs of printing pales into insignificance.

Since the 1975 extension of the Act when the bi-lingual provisions were enacted, the political process has been opened up to many who were previously excluded and we believe that this provision is essential to protect the rights of this group of citizens so that they can participate in all aspects of American society.

Finally, Mr. Chairman and members of the Subcommittee, The Leadership Conference on Civil Rights and the National Association for the Advancement of Colored People believe that the Congress never intended that an impossible burden of proving "intent" to discriminate be placed on persons denied the right of franchise. The *Bolden* decision has confused the issue of standard of proof therefore we urge the Congress to take the necessary action to amend Section 2 of the Act to restore the law as it stood before the decision in *Mobile* v. *Bolden*.

Thank you Mr. Chairman and members of the Committee for affording us this opportunity to appear before you on the extension of the Voting Rights Act.

Mr. EDWARDS. Thank you very much, Mr. Hooks.

Mr. Washington.

Mr. WASHINGTON. Thank you again, Mr. Hooks, for not only your submission of today, but your submission of a lifetime to causes such as the Voting Rights Act of 1965, as amended.

Let me ask you a question: Is there any evidence that the Klan is active in trying to frustrate the legitimate ambitions and desires of black voters in the South, West, or other parts of the country?

Mr. HOOKS. I do not have any specific knowledge that the Klan is engaged in that conduct, but the character of the Klan throughout its history, and I have some knowledge of it, because obviously, many years before my birth, but in my home State stands a statue of one of the great Klansmen of America. The very attitude and ideals and concepts of the Klan would be opposed to the participation of blacks in the voting process.

So, while I have no concrete evidence they are now engaged in overt action to prevent that, I am sure if they exist anywhere, that is a part of their goal.

Mr. WASHINGTON. Mr. Hyde has indicated on several occasions, Congressman Hyde, that after 17 years of this Voting Rights Act being in effect, that with some high degree of success it might well be time to cease or to pull back section 5 and deal with the courts in terms of trying to process any complaints.

Would you embellish for us, please, if you can, the situation which might well ensue if this came about?

Mr. HOOKS. In the first instance, Congressman Washington, I think the chairman has spoken on that area earlier today, that the Civil Rights Acts of 1957 and 1960 authorized the Attorney General to seek court action in voter cases. It was so complex, so burdensome, that it fell from its own weight.

I have been a practicing attorney and I was a former trial court judge, and I can tell you if we clog our courtrooms with anything else, we will completely stop the wheels of justice in many cities of our country.

In the State courts, it takes 4 years to come to trial. In Federal court, it takes anywhere from 6 months to 3 years to dispose of cases; in some Federal districts, more than that.

So, I would be opposed to the concept of the court situation, because I think we have tried it and failed, No. 1; and No. 2, because I think it is burdensome and overly encumbers the justice system, and because I think we have an overly cost-effective method in the present act and I would think we would want to keep that.

Mr. WASHINGTON. In other words, could you draw this analogy: The success of a traffic law is no reason to repeal it; it has a deterrent value, if nothing else. Would that be an apt analogy?

Mr. HOOKS. I would also say, while we hail the law, for in many parts of the South you could not vote, certainly you have to brag about its success, but we must understand that even today the 5,000 black officials in this Nation constitute less than 1 percent of all elected officials in the Nation. We must understand there is underrepresentation in nearly every State involved. In the State of South Carolina, we have not been able to get a single black in the State Senate because of some acute errors, and we are involved in a lawsuit for a long time. We plan to file a new lawsuit. It happens that South Carolina is the home of Senator Strom Thurmond, who is opposed to the provisions of this act.

So, even if we talk about successes, we must remember we still have a long, long way to go. If there is anything I have gained during the years I have lived, it is the tendency of humanity to go backwards, and I have no confidence, even with another hat I wear as a preacher, I sometimes have become convinced that it is the fear of hell rather than the hope of heaven which keeps a lot of people in the church. I would be fearful to say because we have made a little progress, hearts have been changed now and nothing will go back.

We have heard reference to the Hayes-Tilden compromise of 1877; that 12 years of excellent progress is enough, and there are people who felt it was no longer needed. They have been people of good will, but they allowed themselves to be hooked up with people of ill will. I would suppose that certainly there is room for some difference, but for those of us who have been down that road and understand how difficult it was, it would seem to me that the very success of the law should not be a reason to not reenact it; and also there is still a lot to be done if we are to have the type of success we envisioned in 1965, 16, 17 years ago, now.

Mr. WASHINGTON. Does the increase in the number of complaints or challenges over the past several years bear upon your point in, for example, the State of Texas and in Mississippi?

Mr. HOOKS. What has happened is, at the time the voting rights was passed, the march from Selma to Montgomery, the murders we heard about today, created the kind of national climate that laid the foundation for the passage of this law. That national climate also created the climate for the successful enforcement of the law. Martin King, on many occasions, used to lecture us that there was indeed a Christian conscience that could be reached if we elevate attention to the place where people have to deal with problems.

After passage of the law there was much emotion and attention involved to make the law become effective, because people sort of grudgingly, or nongrudgingly, gave into it.

The further we get away from it, the more those who did not want it in the first place find room to maneuver and point to the success or lack of overt obstruction as being a reason for no longer having to have it. Unfortunately, they are joined by people of good will who really do not have the firsthand knowledge of what it is like to be back there in those hostile, difficult conditions.

I can sit here in this room now and almost break out in a cold sweat as I think of the many instances where I was personally involved. No matter how people may talk about bravery, there is a fear that walks in with you and stays with you until you put about 50 miles between you and the scene where the conditions occurred. Then you sort of go back and say how brave you were when you were out there.

I would hate to see that repeated. I would hate to see it repeated, and I am very confident, since I was born and raised in the South, I have lived in the North now long enough to know that there is a very grave danger that if this law is weakened in any way it will embolden those who want to return to the bad old days under the guise of the good old days.

Mr. WASHINGTON. Fortunately or unfortunately, Mr. Hooks, it is upon your shoulders and those like yourself with ability in this field to convince these people of good will, in the Congress and out, that it would be hazardous to a great extent for the healthy politics of this country and particularly in the South to even remotely consider phasing out any part or diluting any phase of this act.

Mr. HOOKS. That is the position of the NAACP and the Leadership Conference on Civil Rights.

It seems to me this has been a cost-effective bill, with the least amount of resistance, and it occurs to me that we have talked about tentative success, but it also occurs to me when you talk about the cost-effectiveness, that is a fairly easy yoke for the States and counties to back. It has not been a burdensome-type thing. All it does is, once you get your house in order and you do right, nobody bothers you. It is only when you want to return to some form of wrongdoing, then there is some question about what they mean. So, it is a law that is very easily followed. It sort of baffles me why we have so much difficulty with it. It is not an oppressive, burdensome kind of law that puts you through all kinds of problems. It is laid out and States and counties that have changed their rules and are now functioning in accordance with the law have no problem. I just do not understand why there is so much outcry unless people do have in mind trying to back up.

Mr. WASHINGTON. Thank you, Mr. Hooks.

Mr. EDWARDS. I will yield to Mr. Hyde, but I have to go to a meeting downstairs. I thank you for excellent testimony here today.

Mr. WASHINGTON [presiding]. Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

I think we have exhausted the subject here earlier. I do appreciate the statement made by Mr. Hooks.

If it is your view, Mr. Hooks, concurrently with my good friend from Illinois, Mr. Washington, that to even remotely consider a compromise is beneath discussion, then I will not waste anybody's time to talk about it. I yield back my time.

Mr. WASHINGTON. Henry, you have changed.

Mr. HOOKS. I am glad we have convinced you, and I appreciate that very much.

Mr. WASHINGTON. Counsel.

Ms. DAVIS. Thank you, Mr. Chairman.

Mr. Hooks, there has been some suggestion that the Voting Rights Act as presently written does not take into account the changed circumstances that have occurred in the covered jurisdictions.

In response to that question, I wonder if you have given any consideration to amending the current act to deal with the bailout provisions, making it easier for covered jurisdictions to bail out of coverage; and have you given consideration as to whether declaratory judgment that a submitted change, a voting change is not discriminatory, needs to be brought in the district court in the District of Columbia, or might that be brought in any Federal district court?

Mr. HOOKS. The thing that puzzles me again is that we have a law that has worked very effectively. It has been hailed as a mighty law. It created a tremendous change in a region of the country where for 100 years there was outright, illegal activity preventing blacks from voting, and in a few short years, it brought a major change in this country, in the parts where it was applied as well as where the law did not apply. All those changes have been for the best, at a minimum cost in terms of money, machinery, in terms of anything you want. It baffles my imagination as to why we have to consider a change at all when something is working well. As Vernon said, "If it ain't broke, don't fix it."

I have not seen any changes that were anything but changes for change's sake. I do not understand it. It is our position that since it is working well, those of us who proposed it and were the sufferers and forbearers are not coming in at this time suggesting that there be changes. It would be best to extend it in its present form, that is our position, and obviously there would be those who want to change it, and I have to say—I have said it three or four times, I repeat myself—I do not understand why it should be tinkered with. It has been announced, as I recall, from the floor of the Congress, that the whole thing ought to be forgotten and not extended; that it served its purpose and it ought to be done and over with. With those kind of statements ringing in my ears, it is quite difficult to understand why those who do say they feel that way want to start tinkering with it. If I know anything about Congress during the years I have followed it, once they start tinkering with something, we do not know how far it will go.

We at the NAACP and Leadership Conference think it ought to be extended in its present form, and we do not think the suggested changes make the law any better, and may, in fact, make it worse. So we ask, why should it be changed?

Mr. HYDE. Will you yield to me for a moment, counsel? I would like to answer that question.

I do not think it is burdensome in terms of putting in the mail a suggested change in the law, but the term "racist" is a fighting term. It gets thrown around a lot, and I think a little bit too freely, but what this law does is label a handful of States as racists, and

we do not like to be. My State is not one, but they do not like to be called racists, and this law by applying a different standard to them, after 17 years, it still applies this label, and they do not like it, and I think that is the reason.

Yes, it has been a good law, has worked; yes, there has been a rational basis for it; these hearings will develop that. I think sovereign States of this country, after the experience of the civil rights movement and all, chafe at being called racist.

That is my answer.

Mr. HOOKS. I have been very careful not to use that word, and I use it less frequently now than I did in the past. I want to mention that very quickly. But at the same time the constitutional basis for the Voting Rights Act was based on the fact there had been violations. The *South Carolina* v. *Katzenbach* case said you could use a drastic remedy, if you want to call it that, because there have been drastic wrongs. I come from Tennessee, and can understand why some States do not want to be called racist. But the facts are in the review, they were more wrong than other States, and they were caught.

I was driving as a passenger in a car where my driver was going 65 miles an hour, while others were passing us. I know it is no defense to talk about others; they did not catch them. We got stopped.

I think what happened in the South was more than happenstance. It was brutal, it was intentional, it was mean spirited; it deprived citizens of their rights. I repeat myself when I say I have been in those situations as a young lawyer representing people, been nearly frightened out of my wits, and I do not want to take the chance of going through that again. And I tell you, it is my honest belief that there are people in those same counties and places—in Alabama we have introduced for the black belt counties bills which require what they call "voter reidentification." It is strange that they would introduce that only in what we call the black belt counties of Alabama, where voters have to go to their precincts and reidentify themselves, which is a subtle form of intimidation. This is not a figment of my imagination, but something that has been reported to me as going on in the State of Alabama, and that is in light of the Voting Rights Act and the requirements for preclearance.

In South Carolina, in those last 17 years we have not been able to get anyting done to get a black in the State senate with about 30 percent of the population being black.

This suggests to me that these States have not so completely reclaimed themselves that they no longer need the law, and this is something I reject.

The law in Nashville is in effect now, so to an extent it is now a national law. But where there were wrongs demonstrated and proven at a prior time, those States were put under a certain provision.

Congressman Washington has stated, and I must confess that I usually agree with him on everything, but one thing he stated this morning which I hope I do not have to agree with him on, he said that perhaps we need to have this law in perpetuity. I would hope

10 years from now when I come back, I will only be testifying for 10 more years, rather than in perpetuity.

Mr. HYDE. If I might make one informational comment: Yes; section 3(c) is national in scope and can operate anywhere. But it does not mandate preclearance. Preclearance is available as held in the *Pensacola* case, under 3(c), if a court wants to.

I am proposing as a compromise, under a pattern of practice of voting rights abuse, a mandatory preclearance of 4 years. I just want that information available because it does get lost sometimes in the shuffle.

Mr. HOOKS. Joseph Rauh, one of the most distinguished civil rights lawyers in this age, longtime board member of the NAACP, Americans for Democratic Action. Wherever there is injustice, his voice has been heard. Whenever there are wrongs to be righted, he has been there. And I think he has had considerable experience.

I would like him to say a word on that, or whatever you want to say, Mr. Rauh.

Mr. RAUH. I can limit it to answering the informational point which Congressman Hyde made.

In the first place, section 5 is national as well as section 3(c), Congressman Hyde. It applies to many places outside—we have a list which shows how widespread it is.

Mr. HYDE. It is not national, though. It applies to other jurisdictions outside the South. It does not apply to Minnesota, Nebraska——

Mr. RAUH. That is right. It does not apply to any place where there has never been the slightest need for it.

Mr. HYDE. Do I understand in Illinois there has never been a need for voter protection?

Mr. RAUH. Sure, because you have attorneys general who will not indict Richard Daley and his people. It has nothing to do with the law at all.

The law is simple. You do not have to change the law to get indictments in Cook County. You do not get any because the jury does not reach that far. What you are doing here is bringing in a corruption area. It has nothing to do with the situation.

But there are two other points I would like to make. The 17-year test is not a correct figure. The statute was not upheld for 4 years. It was in abeyance while it was being challenged. That was 1969. It is now 1981. We have had 12 years of this. I do not think that is an adequate test.

Mr. HYDE. It was 1 year; the *Katzenbach* case was in 1966.

Mr. RAUH. Section 5 was upheld in 1969, sir. There is no question about it, section 5 was upheld in 1969. The records of the Supreme Court will determine who is correct.

But basically the difference between Congressman Hyde and everybody this morning is whether you are going to court first. You want to go to court first for pattern and practice proof; then we get a preclearance.

Mr. HYDE. In addition to section 3(c)——

Mr. RAUH. Correct; but you do not get preclearance unless you prove a pattern or practice in court with appeals to the Supreme Court, and the whole history of the 15th amendment for 95 years—from 1870 to 1965—has been go to court. Every time we have had

to go to court—and I have been there many times—every time we have gone to court we have lost. We have won the case only to have a new thing done and then have to go back to court. It is like a revolving door. Every time we have gone through it and won the case it has turned around and gone the other way. I believe you are in good faith with the pattern and practice. I only say to you that you are antihistorical. You are forgetting that 95 years here of court actions have meant no black vote.

When I stood before the Democratic National Convention in 1964 and said to that convention, "You have got to do something about the seating of the Mississippi Freedom Democratic Party," I was able to state without contradiction that only 6 percent of the blacks in Mississippi were voting. What that meant was that for 94 years since the 15th amendment, court action had been a total failure. There is no indication court action will be any better now.

Mr. HYDE. I accept everything you said, except I would like to point out that preclearance is available under 3(c) and under my version of the compromise or the Rodino version, and it can be locked in for 4 years.

Mr. Rauh, one more little addendum on this preclearance—on this pattern and practice. My bill envisions establishing the pattern and practice retroactively, which cranks in the past 17 years as well as the intended law. Yes; it is a weakening—what we have; but it is offered as a compromise which might find some acceptability. If you cannot get dinner, you get a sandwich. We want dinner over here. You might get a glass of water from the other body, and that is the purpose of this legislation.

Mr. RAUH. Your own statement that it is a weakening seems to be perfectly fair. So I do not think at this moment we have an argument. We have a different feeling. I do not want a weakening; nor do any of the witnesses this morning want a weakening.

Mr. HYDE. We do have an argument over the fact I would like to be a little more historical in terms of giving some weight to the past 17 years to some of the jurisdictions now required to follow a different standard then the rest of the country.

Mr. RAUH. I cannot get you off that 17-year kick, can I?

Mr. HYDE. No.

Mr. HOOKS. When the gentleman says he is in favor of weakening it, it is obviously to get more votes. I just hope there are votes to pass it in its present condition, because it is a law which is cost-efficient, cost-effective, and we decided it a great temptation, but in light of the Reagan administration talking about less government, not more, we decided we would not ask all 50 States to be covered, because we want to do at least one thing Mr. Reagan is in favor of, and that is to have less government. We are willing to take our chances on what we have. If they do wrong in Minnesota or Illinois, if they get out of line, we will come see about them at that point.

But seriously, in my closing remarks, I would say that we have something that transcends what it is and becomes a great symbol of hope. There are many minority people who feel the Federal Government is closing the arms of compassion toward them. There are many minority people who feel that 50 years of progress is about to be undone.

Here is a clear signal in a situation that by all standards has worked well; even those who say it should be abolished say so because it has been a good law. We do not think there is any demonstrable proof that it is not needed now, and that its success should be one of the reasons for the extension of it.

I think we in the Leadership Conference would be first to testify how overjoyed we would be. But at this point in history, we think we need it and we very strongly urge the Members of Congress, House and Senate, to extend this bill in its present form.

Thank you very much, Mr. Chairman, for this time.

Mr. WASHINGTON. Thank you.

The subcommittee is adjourned.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Copies of the bills before the subcommittee follow:]

I

97TH CONGRESS
1ST SESSION

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.

IN THE HOUSE OF REPRESENTATIVES

APRIL 7, 1981

Mr. RODINO introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SEC. 101. Section 4(a) of the Voting Rights Act of 1965 is amended by—

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

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

TITLE II

SEC. 201. Section 2 of the Voting Rights Act of 1965 is amended by striking out "to deny or abridge" and inserting in lieu thereof "in a manner which results in a denial or abridgement of".

TITLE III

SEC. 301. Section 203(b) of the Voting Rights Act of 1965 is amended by striking out "August 6, 1985" and inserting in lieu thereof "August 6, 1992".

I

97TH CONGRESS
1ST SESSION

H. R. 3198

To amend the Voting Rights Act of 1965.

IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 1981

Mr. HYDE introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend the Voting Rights Act of 1965.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Voting Rights Amendments Act of 1981".

SEC. 2. Section 2 of the Voting Rights Act of 1965 is amended by striking out "to deny or abridge" and inserting in lieu thereof "for the purpose or with the effect of denying or abridging".

SEC. 3. Section 3(c) of the Voting Rights Act of 1965 is amended—

(1) by striking out "If" and inserting "In" in lieu thereof; and

(2) by striking out "or an aggrieved person under any statute" and all that follows through "during such period" and inserting in lieu thereof "under section 12(g), and only in such a proceeding, the court, in addition to such other relief as it shall grant, may order that, for a period of not more than four years after the order is made,".

SEC. 4. (a) Section 4(a) of the Voting Rights Act of 1965 is amended—

(1) by striking out the first sentence;

(2) in the second sentence—

(A) by striking out "on account of race or color, or" each place it appears; and

(B) by striking out "the third sentence of";

(3) in the sentence beginning "The court shall retain jurisdiction" by striking out "on account of race or color, or";

(4) by striking out the first sentence beginning "If the Attorney General determines that he has no reason to believe"; and

(5) in the second sentence beginning "If the Attorney General determines that he has no reason to believe"—

(A) by striking out "on account of race or color, or"; and

(B) by striking out "the second sentence of".

(b) Section 4(b) of the Voting Rights Act of 1965 is amended—

(1) by striking the first two sentences; and

(2) in the third sentence by striking out "in addition to any State or political subdivision" and all that follows through "the previous two sentences, the provisions of".

(c) Section 4(f)(4) of the Voting Rights Act of 1965 is amended by striking out "the second sentence of".

SEC. 5. Section 5 of the Voting Rights Act of 1965 is amended by striking out "Whenever a State" and all that follows through "based on determinations made under the third sentence of section 4(b)" and inserting in lieu thereof "Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a)".

SEC. 6. Section 12 of the Voting Rights Act of 1965 is amended by adding at the end the following:

"(g) Whenever the Attorney General has reasonable cause to believe that any person or governmental entity or group of persons or governmental entities is engaged in a widespread pattern or practice which has the purpose or effect of denying the full enjoyment of any of the rights

granted or protected by this Act, or that any group of persons has been denied any of the rights granted or protected by this Act and such denial raises an issue of general public interest, the Attorney General may bring a civil action in any appropriate United States district court by filing with that court a complaint setting forth the facts and requesting such relief, including relief under section 3(c) of this Act, as the Attorney General deems necessary to assure the full enjoyment of the rights granted or protected by this Act.

"(h) In any civil action instituted by an individual to secure rights granted or protected by this title, the Attorney General may intervene in such civil action if the Attorney General certifies that the case is of general public importance.".

I

97TH CONGRESS
1ST SESSION

H. R. 1407

To amend the Voting Rights Act of 1965 to limit certain aspects of its coverage for other than racial groups.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 28, 1981

Mr. MCCLOSKEY introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend the Voting Rights Act of 1965 to limit certain aspects of its coverage for other than racial groups.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Voting Rights Act Repealer Amendments Act of 1981".

SEC. 2. Section 4(a) of the Voting Rights Act is amended—

(1) by striking out "the first two sentences of" where it appears immediately after "determinations have been made under";

(2) by striking out the final sentence of the first paragraph;

(3) by striking out "an action under the first sentence of this subsection" and inserting in the third paragraph thereof "the action"; and

(4) by striking out the fourth paragraph thereof.

SEC. 3. Section 4(b) of the Voting Rights Act of 1965 is amended by striking out the final sentence of the first paragraph thereof.

SEC. 4. Section 4 of the Voting Rights Act of 1965 is amended by striking out subsection (f).

SEC. 5. Section 5 of the Voting Rights Act of 1965 is amended by striking out "or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the third sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting different from that in force or effect on November 1, 1972," where it appears after "November 1, 1968,".

SEC. 6. Sections 3 and 6 of the Voting Rights Act of 1965 are each amended by striking out "fourteenth or fifteenth amendment" each place it appears and inserting in lieu thereof the following: "fifteenth amendment".

SEC. 7. Sections 2, 3, the second paragraph of section 4(a), and sections 4(d), 5, 6, and 13 of the Voting Rights Act

of 1965 are each amended by striking out ", or in contravention of the guarantees set forth in section 4(f)(2)" each place it appears immediately after "on account of race or color".

SEC. 8. Section 14(c) of the Voting Rights Act of 1965 is amended by striking out paragraph (3).

SEC. 9. (a) The Voting Rights Act of 1965 is further amended by striking out section 203.

(b) Sections 204, 205, and 206 of the Voting Rights Act of 1965 are redesignated as 203, 204, and 205, respectively.

(c) Section 204 of the Voting Rights Act of 1965, as redesignated section 203 by subsection (b) of this section, is amended by striking out "or 203,".

(d) Section 205 of the Voting Rights Act of 1965, as redesignated section 204 by subsection (b) of this section, is amended by striking out ", 202, or 203" and inserting in lieu thereof the following: "or 202".

I

97TH CONGRESS
1ST SESSION

H. R. 2942

To amend the Voting Rights Act of 1965 to limit certain aspects of its coverage for other than racial groups.

IN THE HOUSE OF REPRESENTATIVES

MARCH 31, 1981

Mr. THOMAS (for himself, Mr. MCCLOSKEY, Mr. BADHAM, Mr. BAFALIS, Mr. BURGENER, Mr. BUTLER, Mr. COLLINS of Texas, Mr. FRENZEL, Mr. GINGRICH, Mr. HILER, Mrs. HOLT, Mr. KINDNESS, Mr. LAGOMARSINO, Mr. LUNGREN, Mr. MONTGOMERY, Mr. MOORHEAD, Mr. PETRI, Mr. RUDD, Mr. SHELBY, Mr. SHUMWAY, and Mr. WHITEHURST) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend the Voting Rights Act of 1965 to limit certain aspects of its coverage for other than racial groups.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Voting Rights Act Repealer Amendments Act of 1979".

SEC. 2. Section 4(a) of the Voting Rights Act is amended—

(1) by striking out "the first two sentences of" where it appears immediately after "determinations have been made under";

(2) by striking out the final sentence of the first paragraph;

(3) by striking out "an action under the first sentence of this subsection" and inserting in the third paragraph thereof "the action"; and

(4) by striking out the fourth paragraph thereof.

SEC. 3. Section 4(h) of the Voting Rights Act of 1965 is amended by striking out the final sentence of the first paragraph thereof.

SEC. 4. Section 4 of the Voting Rights Act of 1965 is amended by striking out subsection (f).

SEC. 5. Section 5 of the Voting Rights Act of 1965 is amended by striking out "or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the third sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting different from that in force or effect on November 1, 1972," where it appears after "November 1, 1968,".

SEC. 6. Sections 3 and 6 of the Voting Rights Act of 1965 are each amended by striking out "fourteenth or fif-

teenth amendment" each place it appears and inserting in lieu thereof the following: "fifteenth amendment".

SEC. 7. Sections 2, 3, the second paragraph of section 4(a), and sections 4(d), 5, 6, and 13 of the Voting Rights Act of 1965 are each amended by striking out ", or in contravention of the guarantees set forth in section 4(f)(2)" each place it appears immediately after "on account of race or color".

SEC. 8. Section 14(c) of the Voting Rights Act of 1965 is amended by striking out paragraph (3).

SEC. 9. (a) The Voting Rights Act of 1965 is further amended by striking out section 203.

(b) Sections 204, 205, and 206 of the Voting Rights Act of 1965 are redesignated as 203, 204, and 205, respectively.

(c) Section 204 of the Voting Rights Act of 1965, as redesignated section 203 by subsection (b) of this section, is amended by striking out "or 203,".

(d) Section 205 of the Voting Rights Act of 1965, as redesignated section 204 by subsection (b) of this section, is amended by striking out ", 202, or 203" and inserting in lieu thereof the following: "or 202".

97TH CONGRESS
1ST SESSION

H. R. 1731

To amend the Voting Rights Act of 1965 to limit certain aspects of its coverage for other than racial groups.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 1981

Mr. MCCLORY introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend the Voting Rights Act of 1965 to limit certain aspects of its coverage for other than racial groups.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Voting Rights Act Repealer Amendments Act of 1981".

SEC. 2. Section 4(a) of the Voting Rights Act is amended—

(1) by striking out "the first two sentences of" where it appears immediately after "determinations have been made under";

(2) by striking out the final sentence of the first paragraph;

(3) by striking out "an action under the first sentence of this subsection" and inserting in the third paragraph thereof "the action"; and

(4) by striking out the fourth paragraph thereof.

SEC. 3. Section 4(b) of the Voting Rights Act of 1965 is amended by striking out the final sentence of the first paragraph thereof.

SEC. 4. Section 4 of the Voting Rights Act of 1965 is amended by striking out subsection (f).

SEC. 5. Section 5 of the Voting Rights Act of 1965 is amended by striking out "or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the third sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting different from that in force or effect on November 1, 1972," where it appears after "November 1, 1968,".

SEC. 6. Sections 3 and 6 of the Voting Rights Act of 1965 are each amended by striking out "fourteenth or fifteenth amendment" each place it appears and inserting in lieu thereof the following: "fifteenth amendment".

SEC. 7. Sections 2, 3, the second paragraph of section 4(a), and sections 4(d), 5, 6, and 13 of the Voting Rights Act

of 1965 are each amended by striking out ", or in contravention of the guarantees set forth in section 4(f)(2)" each place it appears immediately after "on account of race or color".

SEC. 8. Section 14(c) of the Voting Rights Act of 1965 is amended by striking out paragraph (3).

SEC. 9. (a) The Voting Rights Act of 1965 is further amended by striking out section 203.

(b) Sections 204, 205, and 206 of the Voting Rights Act of 1965 are redesignated as 203, 204, and 205, respectively.

(c) Section 204 of the Voting Rights Act of 1965, as redesignated section 203 by subsection (b) of this section, is amended by striking out "or 203,".

(d) Section 205 of the Voting Rights Act of 1965, as redesignated section 204 by subsection (b) of this section, is amended by striking out ", 202, or 203" and inserting in lieu thereof the following: "or 202".

EXTENSION OF THE VOTING RIGHTS ACT

THURSDAY, MAY 7, 1981

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:40 a.m. in room 2141 of the Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Kastenmeier, Washington, Hyde, Sensenbrenner, and Lungren.

Staff present: Helen Gonzales and Ivy L. Davis, assistant counsel, and Thomas M. Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

We convene this morning to resume our hearings on legislation to extend and amend the Voting Rights Act of 1965. The Voting Rights Act contains both permanent and temporary or special provisions aimed at removing unconstitutional barriers to voting.

Since most of the special provisions of the act are due to expire in August 1982, this subcommittee plans to conduct a series of hearings on pending legislation addressing these provisions.

Yesterday the subcommittee heard from a distinguished group of witnesses who testified on the continuing need for the protections provided by the act.

While all acknowledged the significant gains made under the act, they also noted a steady rate of section 5 objections by the Justice Department over the years which emphasize that the potential for losing ground still exists.

This morning we are going to hear from an equally distinguished group of witnesses.

Before I introduce our first witness, does any member of the subcommittee desire to be heard?

Mr. HYDE. Mr. Chairman.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. I ask unanimous consent that the subcommittee permit coverage of this hearing, in whole or in part, by television broadcasts, radio broadcasts, or still photography, in accordance with committee rule V.

Mr. EDWARDS. Is there objection?

Mr. SENSENBRENNER. Reserving the right to object.

Mr. EDWARDS. The gentleman reserves the right to object.

Mr. SENSENBRENNER. And I will not object. I notice that there are no photographers of any kind here at this point, but I would remind the chairman of the committee that one of the provisions of

committee rule V is that cameras are to remain in a stationary position and not move around the room.

During the course of the hearing yesterday, I noticed that some photographers were crawling around the floor like a bunch of ants, which is distracting to the witnesses, to the committee members, and the audience. And I would hope that any photographers who do take advantage of committee rule V before this subcommittee in the future would stay still, as the rule requires. And I withdraw my reservation and objection.

Mr. EDWARDS. I thank the gentleman, and assure the gentleman from Wisconsin that the rules will be complied with.

The first witness today is a friend of the committee's for many years.

And, Dr. Abernathy, Chairman Rodino asked me to give you his best regards and regrets he has another committee assignment this morning and can't be here to personally great you.

Dr. Ralph Abernathy is pastor of the West Hunter Street Baptist Church in Atlanta, Ga.

Dr. Abernathy, we welcome you this morning.

Will you please introduce your colleagues. And you may proceed.

TESTIMONY OF REV. RALPH ABERNATHY, PASTOR, WEST HUNTER STREET BAPTIST CHURCH, ATLANTA, GA.; ACCOMPANIED BY JAMES E. PETERSON, BARBARA PHILLIPS, AND SIMON WALKER

Dr. ABERNATHY. Thank you very kindly, Mr. Chairman.

Seated to my immediate left is my executive assistant, Mr. James Peterson.

And seated to my far right is one of my colleagues and staff persons, Mr. Simon Walker.

And seated to my immediate right is one of our very fine staff persons, Barbara Phillips.

I would like, Mr. Chairman, to present a copy of a prepared statement for the record. And then I would like to proceed to give some opening statements.

Mr. EDWARDS. Dr. Abernathy, without objection, your prepared statement will be made part of the record, and you may proceed.

[The complete statement follows:]

TESTIMONY OF THE REVEREND DR. RALPH DAVID ABERNATHY
ON PROPOSED AMENDMENTS TO THE VOTING RIGHTS ACT
OF 1965 PRESENTED TO THE SUBCOMMITTEE ON
CIVIL AND CONSTITUTIONAL RIGHTS OF THE COMMITTEE
ON THE JUDICIARY OF THE U.S.
HOUSE OF REPRESENTATIVES
MAY 7, 1981

Mr. Chairman and members of the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, I am pleased to appear before you this morning to express to you the importance and significance of maintaining the Voting Rights Act of 1965, and its applicable amendments.

Let me begin by sharing with you some personal experiences that occurred and impacted greatly on my life and the life of my parents and immediate family and is probably responsible for my being here today more than any other fact. First of all, my paternal grandfather, now the late Mr. George Abernathy, was born a slave. He was the "property" of his white owner and slavemaster, a Mr. Abernathy, until the age of twelve. President Abraham Lincoln signed the Emancipation Proclamation Act and freed him and three million other Black slaves. My grandfather lived long enough to tell me the story of slavery as well as passed on to me lessons of the reconstruction period when Blacks had the right to vote and Black men and women occupied political positions of power and authority in the U.S. House of Representatives, U.S. Senate and State and local municipalities.

But, I remember so well my grandfather's chronology of how this vote was taken from Black Americans; when taxes were placed upon them and how they were robbed of America's most democratic right, that is, the right to vote; to choose public elected officials and the right to participate in the political process. My grandfather died hoping and dreaming, praying and longing for the return of the day when Blacks could participate freely in the election process. My father, an industrious and hard working man, and my mother, a charming and beautiful and ingenious woman, lived their short yet fruitful lives never having the simple right to vote; never having the right to determine who would make the laws to govern the fertile soil of my native home, Alabama. This land is made richer today because my parents sleep in it and more beautiful by their hopes, dreams and aspirations though unfulfilled, yet they dwell in the land and permeate the air. Their dying wish to me, a sixteen year old lad, was that I would vote and be a part of the political process of America. I must fight to retain that right and pledge not only to them, but to more than thirty persons who died in our Voting Rights Crusade. I ask you not to fail Jimmy Lee Jackson, Viola Liuzzo, James Reed, Andrew Goodman, Michael Schwerner, James Chaney, Martin Luther King, Jr., Jonathan Daniels and others who died for this Voting Rights Bill.

So the question is what message do you believe will be received by Blacks and other minorities if, in addition to being thrown off the welfare rolls, we are now placed again at the mercy of the demonstrated ill will of State governments on so fundamental a right as voting?

Over the past several weeks in my travels across the country, I have had a first-hand opportunity to meet with and hear the views of individuals, groups, community organizations, religious leaders and concerned citizens on the issue of the Voting Rights Act and its respective amendments and proposed restrictions. Realizing that the mood of the nation lies in a slumbering and conservative state there still remains a strong affinity and support among Americans for the high principles of civil, constitutional and voting rights. These rights must be upheld and continued on a steady course in order to ensure voting equality. As some of you may be aware, the formation of the Voting Rights Act came into being a long time before a number of you launched your political careers and were elected to Congress. Countless individuals sacrificed their families and homes to march many many miles in the hot sweltering sun from Selma to Montgomery, and even gave their lives so that Black Americans, in particular, and other minorities in general, could gain and exercise their lawful and constitutional right to vote.

History has shown us the darkness that can ensue on the lives of individuals who are confronted with roadblocks which prevent them from exercising their lawful right to vote. We have witnessed the oral qualification tests, introduction of literacy tests, poll-taxes, threats of violence and job security and other psychological weapons designed to prevent and prohibit the voting rights of Black Americans. Some of you may argue that the trends and attitudes have changed in the southern states and other parts of America and, therefore, the charge of voting denial and abridgement no longer exist and are simply perceived illusions. The danger of embracing this position is that one does not take into account the potential deviousness of human nature and the likelihood of reverting to the out-moded, political ways of governing. Given the short time that this Act has been in effect, it has been a tremendous instrument in increasing the active voting participation of Black Americans' in the political arena as well as in our judicial jury selection process. The Voting Rights Act of 1965 was an answer to the protracted struggle against racism and unfair standards of justice. If there is a need to adjust and amend the Voting Rights Act, then it should be to strengthen not weaken it.

I say to you, members of the House Judiciary Committee, that the time has come for the 97th Congress to move beyond

a crisis Congress, responding to the most vociferous outcry for the return of old laws and life-styles, to a conscientious Congress which is responsive to the civil, human and constitutional rights of all Americans. The repeal or downgrading of the Act will provoke a large constituency which depends upon your best moral judgment to enact laws that will protect their constitutional rights and political interests. To abdicate this responsibility is to yield to the mischief of conservatism and to set a crisis stage for social unrest.

As one who pioneered the Civil Rights Amendment of the 1960's, along with my closest and dearest friend, Dr. Martin Luther King, Jr., which led to the creation of the Voting Rights Act of 1965, through non-violent, direct action in the Selma to Montgomery march, I can honestly testify that the psychological effect of not having the right to vote was as devastating as the legal practice of discrimination and segregation. This dehumanizing practice relegated Black Americans to a position of second-class citizenship forcing them to accept many unjust laws. To a major degree, the Voting Rights Act changes this act of civil rights denial and continues to give hope, inspiration and political freedom to scores of Black Americans and other minorities. A repeal of this important Act will risk a psychological

set-back for those voters accustomed to having federal laws protect and guarantee that there will not be a denial or abridgement of their civil and constitutional rights.

Upon hearing rumors that some of my legislative friends were contemplating weakening and possibly repealing the Voting Rights Act, my mind immediately reflected on the 20 million Black South Africans whom even today cannot exercise their right to vote because the racist apartheid government there continues to institute legal barriers and assiduously refuses to accept their Black brethren as equal and worthy human beings. At present, there is no direct parallel between the policies of South Africa and America. However, we cannot afford the luxury of allowing the woes of segregation and separatism to creep upon us as we make laws based on purely political vengeance. Nevertheless, race is a central issue in America's politics and public decision making as has been shown in many of the Southern states including South Carolina, Alabama and Georgia, where schemes have been employed to circumvent the pre-clearance procedure of Section 5 of the Voting Rights Act.

It is imperative that the Department of Justice be fully involved in the litigation and administration of the Voting Rights Act. We cannot index a cost benefit analysis as a justification for the removal and reduction of the

Justice Department's role. The Voting Rights Act must be extended beyond the realm of a political football that is thrown around when each new Administration comes to power. A seven to ten-year extension appears most appropriate. We must also have an unquestionably strong procedure for enforcing the Voting Rights Act which equals or exceeds the clause in the existing Section 2.

So, I say to you today, that the right to vote without local interference cannot occur without the existence and strengthening of the Voting Rights Act. The Act has added tremendous hope to the disenfranchised over the past 16 years and has had an impact on the increased election of Black elected officials throughout the nation. This is one issue in which it is imperative that Congressional legislators rely upon moral judgment to reach their final decision.

Dr. ABERNATHY. Thank you very kindly.

I appreciate the opportunity of being here today because we live in a very critical period of the life of our Nation. America is made beautiful today by the fact that we have so many, many people who make it up, people of various colors, creeds, religious beliefs, and even nonbelievers.

There is no doubt about it—it is the greatest Nation on the face of this Earth, and every person who is a part of it must know and realize that we are a part of the greatest Nation on the face of this Earth. Yet there are many, many problems that still exist within our land and within our country that are unsolved, and we must give ourselves, our energy, our time, and our resources, just as our forefathers and our Founding Fathers did, in order to solve these problems, in order that all people living within the boundaries of the United States of America and citizens of America can enjoy the blessings of this great land.

I never will forget the words of a late Senator for whom I had great admiration and respect, Senator Hubert Humphrey, who said to me, "Dr. Abernathy, always remember that our most basic American right is the right to register and to vote."

It just so happens that my paternal grandfather, Mr. George Abernathy, was born a slave. He was born in South Carolina and was taken to the auction block at Linden, Ala., a small town in the black belt of Alabama, nestled on the Tombigbee River, just as it nears the Warrior River.

My grandfather, unable to read and unable to write, lived to get to the age of 12 before President Abraham Lincoln signed that great Emancipation Proclamation and freed my grandfather and 3 million slaves in this country. He lived a very long, fruitful, and a very useful life. And of course, he lived long enough to tell me not only the story of slavery, but to talk to me about reconstruction and that particular period in which blacks were represented in the halls of the Congress of the United States in the House of Representatives and in the U.S. Senate and in the State legislatures, as well as our county and city and local governments. And he had longed for the day when blacks again would be able to recapture the things that had been taken away from them, especially the right to choose our public elected officials.

Well, unfortunately, he didn't live to see that day, but my father and my mother, whose bodies rest beneath the great soil of Alabama, making that soil more beautiful and making that first State alphabetically the most beautiful State in the Union with their dreams and their aspirations, though unfilled, yet booming and blossoming in the Alabama air. They instilled within me the desire to work for and to fight for the rights of all people to register and to vote.

I remember so very well that my father, who made his living from the soil, who worked in the fields, and who cleared new ground, and amassed a plantation of 500 acres of land, which he owned, for himself and for his family, was denied the right to vote.

Of course, money was a problem for him, but he did not have a problem in paying the poll taxes. Yet, he could not register, and he could not vote.

My mother went down home to live with our eternal God, not having gained that right to vote either.

And finally, while a student at Alabama State University in Montgomery, Ala., I decided that I was going to organize a group of students, and we would go down and register, or attempt to register.

Of course, I was successful in getting a dozen or more students to go with me and to that Montgomery County Courthouse. And I never will forget that fall afternoon in 1948 when the registrar, some 75 or 80 years of age, turned down each person because they had not passed satisfactorily the literacy test.

And of course, being as methodical as I am in all of my undertakings and dealings, I filled out every line and every page and answered every question.

And of course, exercising my southern hospitality and courtesy, which had been instilled within me by my mother and my father, she was moved by my "Yes, ma'ams" and "No, ma'ams."

And then she said to me, "Abernathy, you have answered these questions accurately on this form, but the law gives me the power to ask one additional question—a verbal question. And you have to answer that question."

And of course, I said, "Yes, ma'am."

And of course, she said, "I want you to recite for me the 15th amendment to the Constitution of the United States."

And of course, I stood, having been in the Armed Forces, and brought my body erect, to attention, and I saluted, and I said, "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

And then I brought my hand down, and she said, "Uh-huh, you better had known it." And she said, "You better had known it." And she said, "You have passed."

Ever since then, I have been voting.

In 1955, Martin Luther King, Jr., and I joined together in Montgomery, Ala., the cradle of the Confederacy, and it was there that we decided that we were going to launch a nonviolent movement to bring about change within our Nation and to bring about change for black people and for poor people within our society. We carried on countless numbers of campaigns, which I will not burden you, Mr. Chairman and members of this committee, with, because history records all of these.

But one of the most significant campaigns was a campaign to vote, to do away with the literacy test and to do away with the oral examination, and to win, for black people and poor people, this right.

And of course, Mr. Chairman, we launched our movement in Dallas County, Ala. And I can tell you that 35 persons gave their lives—died by our side—in order that we might win the right to vote, because that literacy test was a type of test that could be passed only by a lawyer, and an astute lawyer at that. And a common, ordinary, taxpaying, country-living citizen could not possibly pass that test.

Mr. Chairman and distinguished members of this august body, I want you to know Jimmy Lee Jackson, a young man who had not

finished high school, who sought to protect and take the blows from the state troopers in order that they would not be inflicted upon on his 85-year-old grandmother by throwing his body across her and receiving those blows, was shot down and killed in cold blood.

Viola Luizzo, a white woman, came from Detroit, Mich., and gave her life, as she sought to give assistance, on that Selma to Montgomery march, to black individuals who were trying to win the right to vote and to call the attention of the Nation to this terrible and awful problem.

Jonathan Daniels gave his life at Hayneville, Ala.; Rev. James Reed, a Unitarian minister from Boston, gave his life, with the hope that we would win the voting rights bill. And the list goes on and on—in the 16th Street Baptist Church at Birmingham, Ala., and countless numbers of others who died, just for the right to vote.

And I never will forget how pleased and how happy we were when President Lyndon Baines Johnson, before the joint session of the House of Representatives and the Senate, closed the very moving speech, calling for the Voting Rights Act of 1965, with a national anthem of our movement, with justice and equality, "We Shall Overcome."

And your former colleagues, maybe some of you were Members of the House at that particular time—but your former colleagues had enough courage in 1965 to write this bill into law and to make it law.

And because it was made law, this voting rights bill, the shackles which has bound the black people and poor people and all minorities across the years, were loosened, they were not total broken, but they were loosened. And because of that, we now have the right and can vote without great difficulties. In some cases there are difficult situations, but we can vote, and we are very pleased about it.

I have come here today, in all sincerity and all humility, to call for you, Mr. Chairman and distinguished members of this subcommittee, hoping that my very dear friend, Congressman Rodino, could have been present here to hear my words himself, because I can speak much better than I can write.

But I wanted him to hear and I wanted him to know, and I want each of you to know that the eyes of this Nation are focused upon Washington today. They are looking to you for bold, creative leadership. They are depending upon you.

There is no way that any of us can sit in those chairs, where you sit at this particular moment—history and destiny and the people have placed you there, and I call upon you, with all of the nonviolent power at my command, to give us an extension of 10 years of this voting rights bill if you can. And if you can see it, and if you will, and if you will take the courage and realize that "Once to every man and nation," said John Greenleaf Whittier, "comes the moment to decide in the strife of truth with falsehood for the good or the evil side, and it is the brave man who chooses, while the coward stands aside, and make fresh that faith which they deny."

If you will do it, unborn generations will rise up. They will say that there lived, during this particular era in 1981, in the Congress

of the United States, Congressman Edwards and Congressman Washington and Congressman Hyde, who were not concerned about the temperature within the Nation, who decided that they were not going to be thermometers that would register a temperature, but they would be thermostats that would control the temperature within our nation.

People, brothers and sisters, my honorable Congressmen, are out there on the streets hungry today, so many of them caught up in frustrations, and they do not know what is going to happen.

I guess this is natural with the change of every administration. I guess people has questions in their minds. But with the proposed cutbacks on social programs that they have learned to depend upon and with the blood of innocent individuals crying from the graves and cemeteries of the land, it is my hope and it is my prayer, on this national day of prayer, that we will have enough courage to speak the truth, and the leaders of our Nation will speak that truth, and men and women will live by that truth.

Time is running out; time is winding down. So I say to you today that the right to vote, without local interference, cannot occur without the existence and the strengthening of the Voting Rights Act, an act that has added tremendous hope to the disenfranchised over the past 16 years, and that has had an impact on the increased election of black elected officials throughout the nation. This is one issue in which it is imperative that congressional legislators rely upon moral judgment to reach their final decision.

And it is my prayer and it is my hope that you will give backing and your full support and full recommendation will come out of this subcommittee—bipartisan subcommittee, not just Republicans, not just Democrats, but fellow Americans who are concerned about the welfare of all people who make up this great land of ours.

Mr. Chairman, I have an outstanding and very competent and able staff, who are not preachers, as I am, and they are most skilled—more skilled in dealing with acts and figures and documents. They can answer any question that is resting on your mind and on your hearts, and I do want them to share with me and answer your questions, being with me.

And I want to thank you, Congressman Edwards and the members of the distinguished panel, for giving me the opportunity of appearing before this committee and making this opening statement.

Mr. EDWARDS. Dr. Abernathy, it is indeed a privilege to hear your most moving testimony. We thank you very much for being here today.

The gentleman from Wisconsin, Mr. Kastenmeier.

Mr. KASTENMEIER. Thank you, Mr. Chairman. I, too, would like to greet Dr. Abernathy, for what I regard as very important hearings with the chairman.

We have been through some of the episodes in the past that legislatively gave rise to the 1965 act. I remember the 1960 act. I served on this subcommittee during the consideration of the 1964 act and I remember we also passed a 1957 act, all dealing with voting rights. The point is, it was very difficult to achieve.

I remember I raised the bill on the floor in 1960, which offered an easier method administratively to get people registered. It was

defeated ultimately. In committee we adopted my amendment, which extended voting rights to State as well as Federal elections, because it was so important that black citizens in the South have access to vote for sheriffs and for Governors and for mayors and for local councilmen, as well as for Congressmen and the President, obviously. But that was defeated in 1964.

Even the third time we attempted to improve the Voting Rights Act, it failed and so it finally took the fourth time, in 1965, before we passed an effective and a decent act that was basically the act before us now, and I think it was so hard to achieve it. I hope you will not let it slide from us in terms of its effectiveness.

I have only one question, Dr. Abernathy. I think that of all the distinguished and prominent black leaders, by virtue of your support for them, you may be as close to the President as anybody. I wonder if you have had an opportunity to talk to the White House and the President about opposing any weakening amendments to this bill? If you could enlist his support I think it would be very important for us here in Congress.

Dr. ABERNATHY. Well, I have not had an opportunity to speak with the President directly concerning this matter. I have spoken with the White House and I have been asked to submit and pass on to them a copy of my testimony here today, as well as to present a memorandum on the Voting Rights Act as I see it, and the need for a 10-year extension. And that I will do.

The President, as you know, is a very, very kind, a very good man, and I don't have any doubt that he will not listen to what I have to say about it. And there is nothing I can say differently than what I have said in the statement and what I say here before you to this particular committee, and hopefully we will have his support.

Mr. KASTENMEIER. Thank you, Doctor.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Kastenmeier, and I certainly agree with my colleague from Wisconsin. It really is essential that we have support from the White House. We have always enjoyed bipartisan support and our colleagues on the Republican side here on this committee are most helpful. President Eisenhower, President Ford, President Nixon, Republican presidents have stood up in their support. It's an American problem. It is not a Democratic problem or a Republican problem. So anything you can do would certainly be appreciated.

The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

I, too, appreciate very much the moving statement made by Dr. Abernathy, one of a series we have heard, and I am sure we will hear more. This is going to be a very educational experience for all of us, and for the country, and I want to assure Dr. Abernathy and his staff that my approach on this is one of trying to find out what the facts are over the past 17 years and what the right thing to do is. Everybody wants to do the right thing and try to find out what is right and what creates the problems. But these hearings are going to be very fruitful and productive and you have made a contribution towards that, and I thank you and I have no further questions.

Mr. EDWARDS. The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. Thank you, Mr. Chairman.

There is no question in my mind, Dr. Abernathy, that you as much as anyone in this country, and more than just about anyone in the country, are responsible for the 1965 Voting Rights Act, and I certainly want to thank you for probably the thousandth time for your contributions. Frankly, I wasn't here in 1965, but I don't have any doubts that I am here today because of the work that you did to bring about acts like this, which not only revolutionized a good part of the South but also brought about the election of now approximately 6,000 black people to office in this country—which is less than 1 percent, but a heck of a jump beyond what it was prior to this act.

I have no doubt that this act and your work have helped to bring about an awakening in my country and in my district and created and accelerated a continuum which eventually in my district sort of broke the shackles of the old, rough, tough, ruthless Democratic machine and brought about an election of independents like myself and Gus Savage. So there is a connection between your work and my being here today, so I wanted to take this opportunity to thank you for that.

Just one general question. Do you see the necessity for making any changes, other than clarifying section 2 of the act? Do you see the necessity to make any changes in the act of 1965?

Dr. ABERNATHY. Thank you very kindly, Congressman Washington. Believe me when I tell you that it is indeed a pleasure to be able to refer to you properly for the first time as Congressman Washington.

Mr. WASHINGTON. Thank you.

Dr. ABERNATHY. The last time I saw you you were Congressman-elect Washington.

Mr. WASHINGTON. And before that I was State senator.

Dr. ABERNATHY. That's right.

Mr. HYDE. And before that, a Member of the House of Representatives.

Mr. WASHINGTON. And during that time I was a colleague of the great Representative Henry Hyde.

[Laughter.]

Mr. HYDE. I learned at his feet, I can assure you.

Mr. WASHINGTON. You are very kind.

Dr. ABERNATHY. Thank you.

The only change that I can possibly see for the Voting Rights Act, other than extending it for an additional 10 years, you have already described it, and that has to do with section 2 which will make it much easier nationwide for individuals who have been discriminated in voting. I think section 5 should remain just as it is and should be extended for another 10 years.

Other than that, I think everybody will be happy. You will be surprised to know what it will do for the morale of the people in this country of ours.

Mr. WASHINGTON. Thank you. I yield.

Mr. EDWARDS. The gentleman from California, Mr. Lungren.

Mr. LUNGREN. Thank you, Mr. Chairman. Sometimes I wind up on the panel with Mr. Hyde and Mr. Washington and I wonder if I should enter into this Illinois political lovefest here.

Mr. HYDE. We'll make you an honorary citizen.

Mr. LUNGREN. I'll try.

Dr. Abernathy, I think some of your comments were directed to me and some other members of the panel when you suggested some of us were too young to have been here in the Congress when the original act was enacted. But let me just say that, though young we may be, I think many of us have admired you from afar and in some ways you were a political example and a leader to us.

That being said, I would like to just make some comments about some of your printed testimony here, where there is almost a suggestion that conservatism and a concern for civil rights may be at opposite ends. And I would like to assure you, from some of us who identify ourselves as conservatives, that that is not the case. I think for a long period of time perhaps the term conservative has been used in an inexact manner to suggest that civil rights are of no concern of conservatives, and I hope we can wash that from the political thought process.

I certainly well respect what you have to say and your background in this area. There is a great deal of import attached to your comments.

I would like to ask this, however. Your testimony is that we should extend the Voting Rights Act as is, for 10 years. And I just have to ask the basic question, someone suggested we ought to change in some ways the triggering mechanism, suggesting that the Voting Rights Act worked very well for 17 years. There's been a change in political practices, and that as a result, perhaps there is not the need now for the augmented preclearance.

Could you give me your expression as to what indications we should look at if we do enact this for another 10 years down the line, as to whether the preclearance should still stand? In other words, would it be a situation where after the Justice Department has reviewed every one of these possible changes and have found none that they find to be subject to an objection—or is there no objective test that we can take, and we merely actually need the passage of more time before we should be willing to make a change?

Dr. ABERNATHY. Congressman, if you don't mind, I will ask Mr. James Peterson, my administrative assistant, if he would answer that question.

Mr. PETERSON. Thank you. Thank you, Dr. Abernathy.

My response to your question is this. Because, in fact, the Voting Rights Act of 1965 has proven to be successful, that, in fact, tells us that it is a good act. And the question becomes, if it's good, why change it?

Second, I don't think that we ought to use any statistical measurance to determine 10 years from now that it's good. I think that the basic measurement ought to be the right to vote—the civil and constitutional right—and not a numerical system for determining that.

Mr. LUNGREN. I guess what I am trying to say is, presumably when this was enacted with a period of time in which it would end,

there was a judgment made in the previous Congress that it should not exist in perpetuity. I don't know the reason for that, but that's what is presented to me now. And because I am coming to it fresh, I would like to establish in my own mind why it should continue in perpetuity or a 10-year period, or make some changes now. And I guess what I am asking is: what do we use to measure the ability of people to register to vote, if not some statistics?

First, if the bill was remedial—that is, to take care of the pattern and practice of discrimination, do you continue it in perpetuity, when you believe, if you do believe, that that pattern or practice has been eradicated?

Dr. ABERNATHY. Well, Mr. Congressman, number one, painful as it may be, just let me say that the problem has not been eradicated. At this moment I agree wholeheartedly with you that conservatives are not individuals that have no concern for civil rights. I think that—well, according to my children, my teenage children, I am conservative because I don't want them coming in at 2 and 3 in the morning, and yet they say parties don't start until 1, you know. But in many ways, I guess I am a conservative. But at least I know where my wife is concerned about trying to live within our income.

But there is a rise of racism in this country today. There is a rise of not only the Ku Klux Klan but the Klan mentality, and I think it sweeps across the country and it is very, very disturbing. I understand from my colleagues that the vast majority of the complaints addressed to the Attorney General's Office and to the Justice Department have come about in more recent years, which means that things are not getting better.

Since 1965, the vast majority of those complaints have come into the Attorney General's Office and to the Justice Department, so I think that we need to continue the bill in its present form for the next 10 years, and we ought not go nationwide with it. But we ought to keep it covering part or all of the 22 States that it presently affects, and we need to do it in order to protect the voting rights of our constituents, of our people—of all people.

Mr. EDWARDS. Dr. Abernathy and colleagues, we thank you all very much for your testimony.

The subcommittee will recess at this time because there is a vote in the chamber of the House of Representatives, and we will return in 10 minutes. But again, our thanks for your very valued testimony.

Dr. ABERNATHY. Thank you, Mr. Edwards.

[Recess.]

Mr. EDWARDS. The subcommittee will come to order.

As our next witness we are honored to have with us the Honorable Polly Baca Barragan, State senator from Colorado and vice-chair of the Democratic National Committee.

If you will introduce yourself and your colleague.

TESTIMONY OF THE HON. POLLY BACA BARRAGAN, STATE SENATOR, COLORADO, AND VICE-CHAIR, DEMOCRATIC NATIONAL COMMITTEE, ACCOMPANIED BY ANTONIA HERNANDEZ, COUNSEL

Ms. BARRAGAN. Mr. Chairman, I would like to introduce Antonia Hernandez, who is acting as my legal counsel during these hearings in case of some legal questions.

Mr. EDWARDS. Without objection, all of your statement, including the attachments, will be made a part of the record.

You may proceed.

[The complete statement follows.]

STATEMENT OF POLLY BACA BARRAGON

Mr. Chairman, members of the Subcommittee on Civil and Constitutional Rights, I am Colorado State Senator Polly Baca Barragan. I am also a Vice-Chair of the Democratic National Committee. I am appearing before you today in support of the extension of the Voting Rights Act, and continued implementation of bilingual elections where they are necessary. In 1975 community leaders from the Southwest came before Congress and presented evidence of racially discriminatory voting so severe that the Section 5 pre-clearance provision was imposed in Texas and other parts of the Southwest. Part of the exclusion experienced by Hispanics and American Indians in the Southwest and the West was a direct result of a language barrier that, until the adoption of bilingual elections in 1975, kept Mexican Americans and Indians completly removed from the political process. A number of bills have been introduced in the 97th Congress that would eliminate all provisions which protect language minority votes, that is, both bilingual elections and Section 5 pre-clearance.

Testimony by experts in these areas will be presented to the committee later in these hearings that will show undeniably that elimination of the 1975 amendments to the VRA would put a sudden stop to the fragile progress we have achieved in the last six years. For Hispanics and blacks alike, the elimination or dilution of the pre-clearance provision would return us to the days of costly and prolonged litigation. More significant, it would return us to a time when the right to cast a vote was reserved only for certain members of a democracy.

2

I would like to talk now about these two provisions and what they have meant for my community. I would also like to address the issues I know are of concern to members of this committee with respect to the cost and necessity for bilingual election materials.

In 1975, Mr. Modesto Rodriguez, a community activist from Pearsall, Texas, a small town in Frio County located in Southwest Texas about 60 miles southwest of San Antonio, testified before this subcommittee. Mr. Rodriguez spoke at length about economic reprisal to keep Mexican Americans in his town from participating in politics. Frio County has a Mexican American population about 69.1%. Mr. Rodriguez cited the case of a Mr. Alvarez who was attempting to educate and organize the people in Pearsall and was fired by his Anglo employer after having worked for him for sixteen years. Another example he cited was that of Hector Nieto whose father worked for the school system. When Hector, the son, decided to file as a candidate for the school board, the superintendent of the school system called him and said that if he ran his father would be fired. In another case, the son of a Mexican American who had the distributing rights for a certain beer in several counties around Frio was harrassed for having donated some money to the local Chicano political-organization. The Anglo businessman instituted a boycott against the beer the father was selling, resulting in severe financial losses for him.

The pre-clearance provision of the Voting Rights Act was enacted in 1975 and required the pre-clearance of election changes

3

retroactive to November 1972. This has had an extremely positive effect on political participation of Chicanos in Frio County. But there remains a great deal of resistance to Chicano political participation there. It is for this reason that federal intervention is necessary there and throughout Texas.

As required by the Voting Rights Act, Frio County submitted its 1973 redistricting plan for county commissioner precincts to the Department of Justice. DOJ objected to the redistricting plan because, among other reasons, it overconcentrated the Chicano population. The letter of objection was issued by DOJ in April 1976. In outright violation of the letter of objection, the county intended to use the discriminatory redistricting plan in its upcoming elections. In order to enforce the letter of objection and prevent the use of this discriminatory plan, the Mexican American Legal Defense and Educational Fund had to file a lawsuit (Silva v. Fitch, Civil Action No. SA 76-CA-126 U.S.DC. West District Texas). The litigation was successful and a redistricting plan that did not discriminate against Mexican Americans was finally adopted. As a result of the 1980 general elections, there are now two Chicanos on the County Commissioner's Court representing a county which is 69% Chicano. This would not have been possible without the pre-clearance provision of the VRA.

Yet Frio County remains a hostile ground for Mexican American voters. I would like to summarize and submit for the record an affidavit from a Frio County citizen from May 1980. Mr. Juan Pablo Navarro relates in his affidavit that he voted with an absentee ballot in the May 3, 1980 party primary. A Chicano, Adolpho Alvarez, was a candidate for the City Commissioner primary. Mr. Navarro did not

like any of the candidates running for one of the offices and so he wrote in his own name. His original plans to be out of town on the day of the primary changed, and he was asked to be a poll watcher on that day. He observed the counting of the votes from the absentee ballot box and recognized his own ballot because he had written in his own name and he also recognized his handwriting. What Mr. Navarro observed was that his votes for the candidates had been changed. He also noticed that many other ballots had been tampered with and, not coincidentally, it was those ballots which affected the race of the Chicano candidate, Mr. Adolpho Alvarez.

I understand that this type of voting fraud and abuse is not a type covered by the Voting Rights Act, but rather by state election laws. I mention it here to give you an idea of the activities that some election officials will stoop to in Texas to keep a Mexican American from winning an election. When election officials are barred from this type of blatant exclusion of Mexican Americans, they go to more subtle kinds of discrimination, such as gerrymandering, at-large elections, violations of the one-person, one-vote principle. It is to prevent these types of abuses that Section 5 pre-clearance is necessary.

The letter of objection issued in Frio County is one of the approximately 85 letters of objection issued to the state of Texas since 1975. These letters contained a total of 130 election laws that the DOJ determined had the purpose or would have the effect of discriminating against minority voters. These discriminatory changes occurred throughout the state, in urban and rural areas, in the north and in the south.

Some members of Congress have pointed to the relatively small number of objections compared to the number of submissions. Yet let-

5

ters of objections cannot be measured in terms only of their numbers. Each letter of objection affects the voting rights of thousands and thousands of people. The first letter of objection issued to Texas in December of 1975 prevented the adoption of a statewide purge of voters that would have set back minority registration efforts five years.

Witnesses later in these hearing will speak at greater length about the letters of objection from the state of Texas. But I would like to remind you here that each of the bills that have been introduced with the intention of eliminating bilingual elections also would eliminate Section 5 pre-clearance for Texas and the Southwest.

I would like now to turn to the subject of bilingual elections and particularly the cost issues that seem to receive more attention than the issue of U.S. citizens exercising their right to vote.

Most, if not all, of the hostility to bilingual elections based on cost has come from California. Unfortunately, the numbers often quoted by opponents of bilingual elections have been distorted, skewed, and otherwise misleading. I would like to clarify briefly some of these misrepresentations. But before doing so I would like to remind members of the committee that elections in California are unique in that vast amounts of printed material are distributed by mail to all voters before each election. The cost of elections in California is high and obviously the cost of the extra printing that is required by the bilingual provisions will cost money.

The total cost of the 1980 general election in Los Angeles County was $7 million. Of that, $135,000 or 1.2% was spent on implementing the bilingual provisions and there were over 45,000 requests for bilingual materials. In 1978 in Orange County, California, bilingual compliance represented only 3.4% of the total cost of the elections.

6

In Santa Clara County in 1978, bilingual compliance represented only 1.5% of the total cost of the election.

Many counties in California have streamlined their bilingual election programs so that they have a list of voters who need bilingual materials and only materials for these people are produced. Printing only the amount of materials that are necessary greatly reduces the cost. This method of distributing bilingual materials only to those who need them is known as "targetting." The alternative and much more costly and inefficient way is "blanketing," where bilingual materials are distributed throughout a county. Obviously, this method increases the cost tremendously --- and unnecessarily.

There is a wide range of options available to local registrars to implement bilingual election requirements. I am submitting for the record a statement by the Los Angeles County Registrar, Mr. Leonard Panish, which describes the very successful and cost-effective program he has developed with the help of local community organizations. I would ask you to note that the cost for bilingual compliance in L.A. has decreased in every election since 1976.

San Diego County has developed another way to cut down on the cost of printing ballots by printing all ballots in English and by printing a much smaller number of facsimile ballots in Spanish, which are posted inside each voting booth.

In my own state of Colorado, hostility to bilingual elections has not been as pronounced and has not centered on the cost issue. In fact, in Denver, the additional costs for providing bilingual election materials have not even been separated from the other costs by the Voter Registrar. The Registrar, Mr. Dan Noffsinger, remarked in a recent phone call that indeed, "the costs were not prohibitive." He estimated that the larger ballot including both English and Spanish

7

increased the cost by one-third. The voting in Denver is with levers so that there is no way of determing whether the voter read the English or the Spanish ballot.

To the more philosophical issue of whether or not bilingual election materials promote a separate culture, I submit to you that they do just the opposite. The bilingual provisions address the specific need of many U.S. citizens who do not speak English. Whether U.S. citizens should be fluent in English is, for the moment not the issue. The issue is that, for whatever reasons, there are vast numbers of citizens who do not speak English and who have a right to voting assistance as surely as a black who does not read English. Bilingual election materials make the right a reality for these citizens. The bilingual provisions are temporary provisions. The Rodino bill, HR 3112, would have them expire in 1992. I support that bill and submit to you that bilingual elections will be necessary as long as there are U.S. citizens who are not fluent in English, largely because of the failures of our education system.

I am also submitting for the record an article from the "New York Times" from May 5th about the many languages that are used in our county today.

Hispanics and other language minority citizens have had the protections of the VRA for only six years. Long before the work of the Voting Rights Act is completed, many members of Congress would rather see these vitally important provisions eliminated entirely. I urge you to devote your efforts to extend them rather than to eliminate them

Thank you.

STATE OF TEXAS I

COUNTY OF FRIO I

AFFIDAVIT

Before me, on this day personally appeared Juan Pablo Navarro who after being by me first duly sworn, deposes and says as follows:

1. That I am a citizen of the City of Pearsall, Texas, residing at 1314 N. Huajillo. I have lived in Pearsall for 22 years where I am a registered voter and have voted since I was 18 years old.

2. That in the May 3, 1980 party primary elections I voted absentee because I intended to be out of town on May 3, 1980.

3. In filling out my absentee ballot I properly marked an "x" by the candidates of my choice. For County Commissioner, I voted for Adolpho Alvarez, a personal friend of mine and the candidate of my choice.

4. In the race for County Democratic Party Chairperson I did not like any candidate so I wrote in my own name, Juan Pablo Navarro. I properly folded my ballot and placed it in the absentee ballot box at the County Courthouse.

5. Shortly before election day, my plans changed requiring that I be in Pearsall on May 3, 1980.

6. Mr. Adolpho Alvarez, a candidate for County Commissioner, asked me to be poll watcher for the May 3 elections.

7. I agreed and on election day reported to the polling place in the Frio County Courthouse.

8. I decided to observe the counting of the votes from the absentee ballot box.

9. As the clerk was reading off the votes from each ballot, I noticed my ballot. I recognized it because it was the only ballot that had a write-in note for Juan Pablo Navarro. Also, I recognized my handwriting.

10. As the votes on my ballot were read, the votes for county officials, were invalidated. Someone had marked over my marks and added new marks for the other candidates thereby invalidating my votes.

11. I was shocked, I could not believe my eyes but it was obvious someone had tampered with my ballot.

12. I immediately voiced an objection and explained to the Judge that this was my ballot and that I had not voted that way.

13. At this point I noticed that many other ballots had been tampered with. From the way the marks for county officials appeared it was clear someone had tampered with the ballots.

14. I began challenging a number of ballots and asked they be set aside. The following are the numbers on the ballots that I challenged:

#'s	2178	2273	2291	013	012
	2143	2265	2240	1423	4595
	2136	4514	2276	1412	
	2139	2293	2170	104	
	2254	2292	2172	114	

15. Further, I noticed that most of the ballots tampered with were ballots that affected the races of the Mexican American candidates. Specifically, it appeared to me that Mr. Adolpho Alvarez, candidate for county commissioner, was seriously affected by the invalidated ballots.

16. It is my belief that there existed a conspiracy by the county officials to tamper with the absentee ballots so that Mr. Adolpho Alvarez would not get elected. Further, I believe that in the other county elections, there was a conspiracy to tamper with the absentee ballots so that Mexican Americans would not get elected.

I swear the above is a true and accurate description of what occurred on May 3, 1980.

Juan Pablo Navarro

Juan Pablo Navarro

SWORN TO AND SUBSCRIBED before me by the said Juan Pablo Navarro on this the 22nd day of May 1980.

Raymond Garza
Notary Public in and for Frio County, Texas

My Commission Expires: 9-14-81

REGISTRAR-RECORDER COUNTY OF LOS ANGELES
9557 FERGUSON DRIVE — P.O. BOX 30460, LOS ANGELES, CALIFORNIA 90030 / (213) 725-6060

LEONARD PANISH
REGISTRAR-RECORDER

CHARLES WEISSBURD
CHIEF DEPUTY

March 20, 1981

Ms. Liz Benedict
MALDEF
1411 K Street, N.W.
Washington, D.C. 20005

Dear Ms. Benedict:

Attached is the information you requested pertaining to the implementation of the bilingual provisions of the Voting Rights Act in Los Angeles County.

Please let me know if you have any further questions.

Very truly yours,

Leonard Panish

LEONARD PANISH
Registrar-Recorder

ga
Attachment

IMPLEMENTATION OF THE BILINGUAL PROVISIONS OF THE VOTING RIGHTS ACT IN LOS ANGELES COUNTY

Background

Los Angeles County, over the years, has provided the fullest opportunity for all citizens to become registered voters, to participate in all phases of the electoral process and to vote. As federal and state legislation have established new requirements, the Department of Registrar-Recorder has developed the programs necessary to implement the new mandates.

Los Angeles County began intensive planning for implementation of the bilingual provisions of the Voting Rights Act immediately upon passage of the 1975 amendments. One of the first actions taken was to establish an Advisory Committee consisting of Spanish language community representatives to accomplish the following objectives:

(a) To inform the Hispanic community of the Voting Rights Act requirements for bilingual elections.

(b) To receive input from Spanish language communities regarding methods of compliance with the VRA.

(c) To stimulate voter registration of persons of Spanish speaking heritage.

(d) To assist in recruitment of bilingual deputy registrars and precinct officers.

The County had surveyed the language capability of its precinct officials as early as 1973, and the first plan for administration of the bilingual Primary and General Elections during 1976 was submitted to the Board of Supervisors, and accepted, in December 1975. The interim guidelines published by the Department of Justice stated that a system which effectively targets language minority group voters and identifies them for receipt of minority language materials would be acceptable if the system were "guaranteed" to reach persons who would desire such materials.

For that reason, the 1976 Primary election was "blanketed", that is, every registered voter received all election related materials in both English and Spanish. One feature of that election was a targeting plan whereby each voter was asked at the polling place to express a preference for English only or Spanish bilingual materials for future elections. This resulted in a computerized list of 60,000 voters who expressed a preference for Spanish language materials. All new voters are given the same opportunity to express a langugage preference by checking the appropriate box on the affidavit of registration. Additions to and subtraction from the list can be made by the voter indicating his or her preference in writing.

Bilingual Materials

In Los Angeles County the sample and official ballots are printed bilingually. Because of the large number of ballot formats in this county, it has been determined that this method is more cost effective than printing two separate language versions. The other election materials mailed to the voters are printed in English and in Spanish. Quantities of the Spanish version are printed to be mailed to those voters who have previously requested them and are so identified in the voter master file. For the 1980 General Election, 45,716 voters requested Spanish materials.

Oral Assistance

The Registrar-Recorder has, from the outset, considered bilingual oral assistance at the polls to be of the highest priority. TV, radio, newspaper and poster campaigns were conducted, therefore, to recruit as many bilingual polling place officers, as possible.

During the 1980 General Election, 1889 election precincts had one or more Spanish speaking election official who could provide assistance at the polls. Two thousand four hundred and seventy-five Spanish speaking election officials were recruited for this election.

Cost

The additional cost of complying with the Voting Rights Act for the 1976 Primary was $854,000. As explained previously, that election had been blanketed with bilingual materials to ensure compliance with the law and to permit formulation of a cost effective plan for future elections. For the 1976 General Election, the cost decreased to $355,000. By the 1980 General Election, the cost had further decreased to $135,200 (Exhibit I attached). This is partly a reflection of the fact that the 1980 elections did not require the same volume of printing. Other reasons for the reduced costs are systems' improvements which greatly reduced the number of personnel needed for Spanish language translation and proofreading and the targeting plan.

Attachment
3/20/81

NEW YORK TIMES. MAY 5, 1981. Page One

Everyday Use of Foreign Languages Rising in U.S.

By GLADWIN HILL

In the United States, where English has long been the language of government and everyday affairs, the use of foreign tongues is becoming more and more common.

When floods struck Arizona in 1979, Gov. Bruce Babbitt broadcast public warnings in both English and Spanish. In Louisiana, drivers' license tests can now be taken in Vietnamese. The Manhattan telephone directory contains three pages of information and instructions in Spanish. In San Francisco, there are ballots printed in Chinese.

School classes taught in languages other than English now exist nationwide, with taxpayers helping to underwrite classroom instruction in 70 languages. Chicago offers public school classes in 17 languages — six more than New York City, the historical "melting pot."

In many states, ballots and other voting materials, Social Security and other Federal forms, and state examinations for professional accreditations — along with store signs and fast-food menus — are printed in foreign languages.

Checks by The New York Times in a dozen states indicate that it has been a convergence of several forces that altered the linguistic landscape. Recent immigration of millions of Latin Americans and Asians have played a large part, along with a rapid population growth in the established Hispanic population.

The commercial realm has had a strong influence as well, especially with international travel and the multibillion-dollar market represented by groups whose first language is not English.

In the perspective of Ronnie Lopez, executive assistant to Governor Babbitt: "Now that Mexico has this new-found wealth, now that we know how many millions Mexican tourists spend up here and now that there's a demand for better international relations, people are starting to comprehend why it's important to be bilingual."

Sixty years ago, Louisiana, despite its large French-lineage population, banned the use of French in school classrooms and even on school grounds. In 1968, the law was taken off the books. Today, the state employs about 300 French-speaking teachers, most imported from France, Belgium and Quebec. And in Albany, La., historically a Hungarian settlement, children are taught in Hungarian up through the fourth grade.

Pockets of non-English-speaking people have been common in America since Colonial days. People in those pockets retained their native language, along with ethnic foods, customs and celebrations, but they formed second-language islets in a great sea of English. Today, for millions, English is the second language.

English Comes Second for Millions

About 28 million people in the United States, one person in eight, according to the Department of Education, "have mother tongues other than English or live in households in which languages other than English are spoken." Spanish is the primary language for at least 10 million of these people; Italian and German each account for three million, and French and Asian languages each account for two million. The rest speak everything from Arabic to Yiddish.

Not surprisingly, foreign languages have gained an increasing foothold in the nation's culture.

Spanish-language radio and television stations proliferate, along with outlets in other languages. A flourishing radio station in Flagstaff, Ariz., broadcasts entirely in Navajo, an American Indian language considered so abstruse it was used in World War II as a code.

Airlines, hotels and stores now employ linguists and use foreign-language signs and price tags. In central Los Angeles, miles of businesses have their principal signs lettered in Korean — in contrast to the English-language signs that predominate even in that city's Chinatown and Little Tokyo neighborhoods.

Unhappy With Telephone System

Mexican-American groups in California have talked of starting their own telephone system because of dissatisfaction with the Pacific Telephone and Telegraph Company's limited Spanish-language services.

Pivotal in the evolvement of multilingualism in the United States have been the Voting Rights Act of 1965 and a 1974 Supreme Court decision in the case of Lau v. Nichols.

The Voting Rights Act, tailored in part with an eye on the Southwest's large Spanish-speaking population, said in effect that sizable minorities in a given area who cannot speak English should be given voting materials written in their languages.

The Supreme Court decision, involving Chinese residents of San Francisco, said that teaching children in a language they could not understand failed to give them the "equal educational opportunity" to which they were entitled. After that ruling, most states with sizable minorities enacted laws instituting bilingual classes.

Federal educational officials have compiled statistics indicating that pupils who do not speak English and are placed in English-only classes become less proficient in their studies. They also have higher absenteeism, dropout and juvenile delinquency rates than pupils who receive instruction for the first few grades in their primary language.

The Reagan Administration's budget proposals for aid to the states for bilingual education for this fiscal year and the next are about 30 percent below what President Carter had proposed. According to Federal calculations, this would mean a reduction in the number of pupils in such programs to 222,000 from the 334,000 projected by the Carter Administration in 1981 and a reduction to 234,000 from the projected 362,000 in 1982.

But because bilingual education is legally primarily a state responsibility and because state financing arrangements vary widely, the impacts of any Reagan cuts could also vary widely.

In New Jersey, for instance, where 33,000 of the state's 1.3 million public school students are enrolled in bilingual classes, state and local governments are providing $24.7 million this year, against only $2.3 million in Federal funds. But in New York City, which has 80,000 pupils in bilingual classes, $18 million comes from Federal sources and only $1.6 million from the state.

Dade County Voters React

The rising prominence of foreign languages has resulted in tension in some areas. Last year, Dade County, Fla., residents, upset at the growing number and influence of Cuban and other Latin American refugees pouring into that area, approved a measure to prohibit "the expenditure of county funds for the purpose of utilizing any other language than English, or promoting any other culture than that of the United States."

The ordinance did not apply to bilingual schooling or other Federally supported programs. It was mainly a backlash against a 1973 measure, aimed at promoting Latin American trade and tourism, that declared Dade "a bilingual county" and established a Latin American Affairs Bureau.

Such vehement opposition to a dual language system has not been equaled in other localities. But bilingual education continues to be the focus of intense debate, with conflicting views among even non-English-speaking minorities.

In sections of New Mexico, some Hispanic Americans view bilingual education as ethnically demeaning and say they would rather have their children attend conventional classes.

Following a similar line of thought, Mayor Ron Rodrigues of Tolleson, Ariz., whose parents came from Mexico, opposes bilingual instruction. "I had to learn English outside my home, and I don't think it harmed me at all," he says. "I think I benefited from the experience."

Senator S. I. Hayakawa, Republican of California, has said he would introduce a constitutional amendment establishing English as the nation's sole official language. The Senator, who is of Japanese extraction and a naturalized citizen, said that unless such an amendment was adopted, Hispanic Americans would demand by the year 2000 that Spanish be made a "second official language."

There is little evidence that the rise of bilingual activities has had much impact on people whose first language is English. In areas of the nation that deal regularly with Mexico and other Latin-American countries, however, Spanish is spreading among "Anglos" by a sort of osmosis, as a practical tool.

Mr. Lopez thinks that in another 20 years, Spanish-speaking people will be in a majority in the Western Hemisphere, and fluency in Spanish for many people whose primary language is English will be "good business."

Ms. BARRAGAN. If I may, Mr. Chairman, I would like to read the statement into the record.

Mr. Chairman, members of the Subcommittee on Civil and Constitutional Rights, I am Colorado State Senator Polly Baca Barragan.

I am appearing before you today in support of the extension of the Voting Rights Act and continued implementation of bilingual elections where they are necessary.

In 1975, community leaders from the Southwest came before Congress and presented evidence of racially discriminatory voting so severe that the section 5 preclearance provision was imposed in Texas and other parts of the Southwest.

Part of the exclusion experienced by Hispanics and American Indians in the Southwest and the West was a direct result of a language barrier that, until the adoption of bilingual elections in 1975, kept Mexican Americans and Indians completely removed from the political process.

A number of bills have been introduced in the 97th Congress that would eliminate all provisions which protect language minority voters—that is, both bilingual elections and section 5 preclearance.

Testimony by experts in these areas will be presented to the committee later in these hearings that will show undeniably that elimination of the 1975 amendments to the VRA would put a sudden stop to the fragile progress we have achieved in the last 6 years.

For Hispanics and blacks alike, the elimination or dilution of the preclearance provision would return us to the days of costly and prolonged litigation. More significant, it would return us to a time when the right to cast a vote was reserved only for certain members of our democracy.

I would like to talk now about these two provisions and what they have meant for my community. I would also like to address the issues I know are of concern to members of this committee with respect to the cost and necessity for bilingual election materials.

In 1975, Mr. Modesto Rodriguez, a community activist from Pearsall, Tex., a small town in Frio County, located in southwest Texas, about 60 miles southwest of San Antonio, testified before this subcommittee.

Mr. Rodriguez spoke at length about economic reprisal to keep Mexican Americans in his town from participating in politics. Frio County has a Mexican American population, about 69.1 percent. Mr. Rodriguez cited the case of a Mr. Alvarez who was attempting to educate and organize the people in Pearsall and was fired by his Angloemployer after having worked for him for 16 years.

Another example he cited was that of Hector Nieto, whose father worked for the school system. When Hector, the son, decided to file as a candidate for the school board, the superintendent of the school system called him and said that if he ran his father would be fired.

In another case, the son of a Mexican American who had the distributing rights for a certain beer in several counties around Frio was harassed for having donated some money to the local

Chicano political organization. The Anglo businessmen instituted a boycott against the beer the father was selling, resulting in severe financial losses for him.

The preclearance provision of the Voting Rights Act was enacted in 1975 and required the preclearance of election changes retroactive to November 1972. This has had an extremely positive effect on political participation of Chicanos in Frio County. But there remains a great deal of resistance to Chicano political participation there. It is for this reason that Federal intervention is necessary there and throughout Texas.

As required by the Voting Rights Act, Frio County submitted its 1973 redistricting plan for county commissioner precincts to the Department of Justice. DOJ objected to the effect the redistricting would have on the Chicano population. The letter of objection was issued by DOJ in April 1976.

In outright violation of the letter of objection, the county intended to use the discriminatory redistricting plan in its upcoming elections. In order to enforce the letter of objection and prevent the use of this discriminatory plan, the Mexican American Legal Defense and Education Fund had to file a lawsuit, which was *Silva* v. *Fitch*.

The litigation was successful and a redistricting plan that did not discriminate against Mexican Americans was finally adopted.

As a result of the 1980 general elections, there are now two Chicanos on the county commissioner's court representing a county which is 69 percent Chicano. This would not have been possible without the preclearance provision of the VRA.

Yet Frio County remains a hostile ground for Mexican American voters. I would like to summarize and submit for the record an affidavit from a Frio County citizen from May 1980. That statement is attached to my testimony.

Mr. Juan Pablo Navarro relates in his affidavit that he voted with an absentee ballot in the May 3, 1980 party primary. A Chicano, Adolpho Alvarez, was a candidate for the city commissioner primary. Mr. Navarro did not like any of the candidates running for one of the offices, and so he wrote in his own name. His original plans to be out of town on the day of the primary were changed, and he was asked to be a poll watcher on that day. He observed the counting of the votes from the absentee ballot box and recognized his own ballot, because he had written in his own name and he also recognized his handwriting.

What Mr. Navarro observed was that his votes for the candidates on his ballot had been changed. He also noticed that many other ballots had been tampered with and, not coincidentally, it was those ballots which affected the race of the Chicano candidate, Mr. Adolpho Alvarez.

I understand that this type of voting fraud and abuse is not a type covered by the Voting Rights Act, but rather by State election laws. I mention it here to give you an idea of the activities that some election officials will stoop to in Texas to keep a Mexican American from winning an election.

When election officials are barred from this type of blatant exclusion of Mexican Americans, they go to more subtle kinds of discrimination, such as gerrymandering, at-large elections, viola-

tions of the one-person, one-vote principle. It is to prevent these types of abuses that section 5 preclearance is necessary.

The letter of objection issued in Frio County is one of the approximately 85 letters of objection issued to the State of Texas since 1975. These letters contained a total of 130 election laws that the Department of Justice determined had the purpose or would have the effect of discrimination against minority voters. These discriminatory changes occurred throughout the State, in urban and rural areas, in the north and in the south.

Some members of Congress have pointed to the relatively small number of objections compared to the number of submissions. Yet letters of objections cannot be measured in terms only of their numbers. Each letter of objection affects the voting rights of thousands and thousands of people.

The first letter of objection issued to Texas in December of 1975 prevented the adoption of a statewide purge of voters that would have set back minority registration efforts 5 years.

Witnesses later in these hearings will speak at greater length about the letters of objection from the State of Texas. But I would like to remind you here that each of the bills that has been introduced with the intention of eliminating bilingual elections also would eliminate section 5 preclearance for Texas and the other parts of the Southwest.

I would like now to turn to the subject of bilingual elections and particularly the issue of cost that seem to receive more attention than the issue of U.S. citizens exercising their right to vote.

Most, if not all, of the hostility to bilingual elections based on cost has come from California. Unfortunately, the numbers often quoted by opponents of bilingual elections have been distorted, skewed, and otherwise misleading.

I would like to clarify briefly some of these misrepresentations. But before doing so, I would like to remind members of the committee that elections in California are unique in that vast amounts of printed material are distributed by mail to all voters before each election. The cost of elections in California is high and obviously the cost of the extra printing that is required by the bilingual provisions will cost money.

The total cost of the 1980 general election in Los Angeles County was $7 million. Of that, $135,000, or 1.2 percent, was spent on implementing the bilingual provisions. And there were over 45,000 requests of bilingual materials.

In 1978, in Orange County, Calif., bilingual compliance represented only 3.4 percent of the total cost of the elections. In Santa Clara County, in 1978, bilingual compliance represented only 1.5 percent of the total cost of the election.

Many counties in California have streamlined their bilingual election programs so that they have a list of voters who need bilingual materials and only materials for these people are produced. Printing only the amount of materials that are necessary greatly reduces the cost. This method of distributing bilingual materials only to those who need them is known as "targeting." The alternative and much more costly and inefficient way is "blanketing," where bilingual materials are distributed throughout a

county. Obviously, this method increases the cost tremendously, and unnecessarily.

There is a wide range of options available to local registrars to implement bilingual election requirements. I am submitting for the record a statement, which is attached to my testimony, by the Los Angeles County registrar, Mr. Leonard Panish, which describes the very successful and cost-effective program he has developed with the help of local community organizations. I would ask you to note that the cost for bilingual compliance in L.A. has decreased in every election since 1976.

San Diego County has developed another way to cut down on the cost of printing ballots by printing all ballots in English and by printing a much smaller number of facsimile ballots in Spanish, which are posted inside each voting booth.

In my own State of Colorado, hostility to bilingual elections has not been as pronounced and has not centered on the cost issue. In fact, in Denver, the additional costs for providing bilingual election materials have not even been separated from the other costs by the voter registrar. The registrar, Mr. Dan Noffsinger, remarked in a recent phone call that, indeed, "the costs were not prohibitive." He estimated that the larger ballot, including both English and Spanish, increased the cost by one-third. The voting in Denver, by the way, is with levers and in my own county is by keypunch card, so that there is no way of determining whether the voter read the English or the Spanish ballot.

To the more philosophical issue of whether or not bilingual election materials promote a separate culture, I submit to you that they do just the opposite. The bilingual provisions address the specific need of many U.S. citizens who to not speak English.

Whether U.S. citizens should be fluent in English is, for the moment, not the issue. The issue is that, for whatever reasons, there are vast numbers of citizens who do not speak English and who have a right to voting assistance as surely as a black who does not read English.

The descendants of some of the early pioneers who settled in Santa Fe, N. Mex., in 1619 are among those who today still are not fluent in English.

My grandfather, as a matter of fact, was born in Colorado in 1878, the son of one of the members of the Colorado Legislature. And yet when he died, 4 years ago, he still couldn't speak English. And that was a gentleman who came from an outstanding family of my State, after whom the county in our State was named. And yet on his death bed, he still spoke only Spanish.

Bilingual election materials make the right to vote a reality for these citizens, but unfortunately they were not implemented early enough for my grandfather.

The bilingual provisions are temporary provisions. The Rodino bill, H.R. 3112, would have them expire in 1992. I support that bill and submit to you that bilingual elections will be necessary as long as there are U.S. citizens who are not fluent in English, largely because of the failures of our education system.

I am also submitting for the record an article from "The New York Times," from May 5, about the many languages that are used in our country today.

Hispanics and other language minority citizens have had the protections of the VRA for only 6 years. Long before the work of the Voting Rights Act is completed, many Members of Congress would rather see these vitally important provisions eliminated entirely. I urge you to devote your efforts to extend them rather than to eliminate them.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Senator.

Before we get into the formal questioning, the conference that you observed over my left shoulder had to do with page 5 of your testimony, in the second paragraph.

Ms. BARRAGAN. I'm glad they were reading the testimony.

Mr. HYDE. Mr. Chairman, would you yield?

Mr. EDWARDS. Yes.

Mr. HYDE. It was rude of us, not to listen, but we have read your statement and we were discussing a few answers to it.

Ms. BARRAGAN. I'm pleased.

Mr. HYDE. And I, for one, have come to the conclusion that Lyndon Johnson saw to it that Texas was out, frankly—and I notice counsel shaking her head affirmatively—in 1965, and they got it in in 1975. It's very confusing, but I think we have grasped it through the help of counsel.

Thank you.

Ms. BARRAGAN. Well, I am pleased that happened, that your questions were answered.

I'd be glad to answer any other questions you might have.

Mr. EDWARDS. You are stating that by eliminating the bilingual section, that would also eliminate section 5, preclearance, for Texas and the Southwest?

Ms. BARRAGAN. Yes. And those areas that now fall under that category.

Mr. EDWARDS. Thank you.

Mr. Kastenmeier.

Mr. KASTENMEIER. No questions.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. Elimination of Texas and the Southwest from preclearance if the minority language bill passes, would only be insofar as Hispanics in Texas are concerned, but not blacks; is that correct?

Ms. BARRAGAN. It would be insofar as language minorities are concerned.

Mr. HYDE. But not racial minorities?

Ms. BARRAGAN. In terms of the elimination of the bilingual provisions.

Mr. HYDE. We're only talking about Texas now?

Ms. BARRAGAN. Pardon me?

Mr. HYDE. I say we're only talking about Texas?

Ms. BARRAGAN. Texas, Arizona, and the other areas of the Southwest that fall under the preclearance provisions of the Voting Rights Act; yes.

Mr. HYDE. So the preclearance would still be there, vis-a-vis the racial minorities, but not the single-language minority, under the McClory bill; would we agree on that up here?

Ms. BARRAGAN. Yes.

Mr. HYDE. All right. Thank you.

Thank you, Senator.

Mr. EDWARDS. Mr. Washington.

Mr. WASHINGTON. Thank you, Senator, for your testimony.

Back to page 5. I'm particularly intrigued with your discussion of the cost and the fact that you emphasize the cost for California is relatively minor when taking into consideration the whole panorama of costs.

Specifically, I gather, from what you say, that California, more than most States, has spent a good deal of money just on postage and paper which is mailed.

Ms. BARRAGAN. On elections generally.

Mr. WASHINGTON. On elections generally.

Down the history of that, what was involved in it? Is it that California has been more farsighted in terms of trying to educate the citizens as to the issues, or——

Ms. BARRAGAN. I suspect that it's a result of the California Legislature attempting to inform its citizens and to, you know, feeling a great responsibility on informing and educating citizens prior to elections and, as a consequence, have decided that it is worth the cost to send out materials of this nature.

Mr. WASHINGTON. What is the Latin percentage of the population?

Ms. BARRAGAN. In California?

Mr. WASHINGTON. Yes.

Ms. BARRAGAN. It's upward of 3 million.

Mr. WASHINGTON. What is the percent of the population?

Ms. BARRAGAN. I believe that's close to 20 percent of the population in California. It might even be over 20 percent, maybe 21 percent.

Mr. WASHINGTON. What about Los Angeles County?

Ms. BARRAGAN. Los Angeles has over a million in the city and county of Los Angeles. It's 27.6 percent of the population in Los Angeles, and there isn't a single—not one city councilperson of Hispanic descent with over a million people residing in that city and county.

Mr. WASHINGTON. I was looking at the cost figures, and you say in Los Angeles the population is 27.6 percent?

Ms. BARRAGAN. Yes.

Mr. WASHINGTON. And the proportion of the cost for bilingual voter assistance was about 1.2 percent?

Ms. BARRAGAN. Pardon me? I'm sorry. I didn't hear that.

Mr. WASHINGTON. I'm trying to compare the cost percentage-wise.

Ms. BARRAGAN. Yes, sir. It's 1.2 percent of the costs to reach the 27.6 percent of the population.

Mr. WASHINGTON. Which is obviously inordinately low.

Ms. BARRAGAN. Yes, I think it's incredibly cost effective.

Mr. WASHINGTON. Why all the screaming about costs, in light of these comparisons?

Ms. BARRAGAN. I'm sorry, I'm not hearing you well.

Mr. WASHINGTON. Why all the screaming about costs relative to mailing out or circulating bilingual——

Ms. BARRAGAN. Congressman, I am glad that you asked that question, because I honestly don't have the answer. You know, when we did this research and found the cost as compared to the percentage of the cost generally and the fact that it's possibly one of the most cost-efficient means of reaching a large number of voters, I suspect that perhaps those who are complaining about costs have not really looked at the figures in relationship to the total cost and in relationship to the numbers of people that are addressed by this particular provision.

Mr. WASHINGTON. So the nominal cost is a more convenient reason than cost fairness?

Ms. BARRAGAN. Oh, yes; because these are taxpayers, you know. We're talking about U.S. citizens who are paying taxes who have not in the past been able to participate in the political process because of—for whatever reason—their influence was not such that it would allow them to participate wholly because of the single language being utilized.

Mr. WASHINGTON. Well, let me just ask this. In light of these figures, I would just state anyone who took the position that an inordinate amount of money was being spent in Los Angeles County to circulate bilingual information had some inarticulate premise which we haven't heard. Would you put it that way?

Ms. BARRAGAN. That would be a very nice way of putting it, Congressman.

Mr. WASHINGTON. Thank you.

Ms. BARRAGAN. May I answer any other questions?

Mr. EDWARDS. Yes.

Senator, what would be the effect in Texas if Texas were removed from coverage, both preclearance——

Ms. BARRAGAN. Congressman, I think the effect would be devastating. What you would have would be a complete removal from this process of an incredible large number of citizens that transcend the centuries in this particular country. In Texas, it is unique that the citizens of Texas are probably as old as the State is itself and as young as yesterday, meaning that there is not only a population that was there when the State became a part of the United States, but a population that is crossing the border daily and deciding they want to become citizens of the United States, they want to participate in this country and, more importantly, they want to contribute to this country. And this country is indebted for the great contributions made by a variety of different people who have chosen to be U.S. citizens and are committed to making a contribution to this country. And those citizens, in particular, would be denied the right to fully participate in the political processes of our country, which are so important and basic to our whole philosophy in a democracy.

So, I think the result would be absolutely devastating. It would mean that there would be no way local citizens who felt that their rights were being denied could pursue the process of correcting that discriminatory conduct.

Mr. EDWARDS. What would be the effect if my good friend Congressman Hyde's bill or amendment were enacted? Wouldn't it require, I guess, a finding of pattern or practice and then either

the individual or the Attorney General would file action and gain preclearance or whatever—is that correct?

Mr. HYDE. That's correct.

First of all, section 3(c) remains in the act in perpetuity. So under 3(c), isolated acts of voting rights abuse are now subject to court remedy and equitable action, preclearance, whatever. That's always there.

But in lieu of automatic preclearance, I propose court action, where the burden must be sustained by the movant, and that can be a private party or the Attorney General, showing a pattern or practice, meaning more than one occurrence. But the environment in which you can establish that is retroactive, as well as concurrent.

So, I'm trying to make that easy with an effect test, not an intent test. And when that is established, then preclearance is automatically mandated for 4 years. Granted, it's a less stringent test than we have now, but it is much more stringent than no preclearance at all. And it's an attempt to reach a middle ground that might be salable in the other body. And it would be nationwide. It would cover my State; it would cover Colorado; and my favorite is Nebraska and Minnesota.

Ms. BARRAGAN. Congressman, in all due respect, I disagree with your bill. And may I explain that and elaborate on it?

I would also like my counsel to elaborate on that. She will when I finish.

And I find some problems I hoped you would consider on two counts:

No. 1, quite honestly, the Voting Rights Act is nationwide right now in the sense that it applies throughout the country. And what is not nationwide is the triggering mechanism; you know, it is triggered only by those cases or in those areas where it is obvious by the fact that there was an English-only election and less than 50 percent voting turnout and more than a 5 percent language minority in a previous election. It is obvious that there has been a problem. There is an obvious problem that exists in that area, and I think that the manner in which the Voting Rights Act is presently written zeros in on those areas where there is a problem.

You know, we like to say, in the State legislature back in Colorado, "If it ain't broke, don't fix it." If the problem doesn't exist in other parts of the country, don't try to fix it in other parts of the country or in other counties. And I think the taxpayers would prefer that you zero in on those areas where there's a problem, because of the cost.

You know, the beauty of our system is that we can identify, and the beauty of the current Voting Rights Act is that you can identify those areas where there is a problem, and you don't abuse taxpayers in the cost by using their money where a problem doesn't exist, and you zero in on the problem. The cost is, I think, a serious consideration.

Mr. HYDE. I just want to respond to the statement that "If it ain't broke, don't fix it." That's a very good rule.

The reason that I'm suggesting an alternative to the existing rule is that it expires next year, and if nothing happens, it's gone. There are those in this building and in the other chamber who

would like to see it expire. There is an onus attached to having a different standard apply between a sovereign State and another sovereign State, and the requirement that you get permission to change your election laws is burdensome, not psychologically burdensome, but legally burdensome, emotionally burdensome, perhaps not physically burdensome.

But my position—and that's what these hearings are going to—and I assure you I am not locked into saying that something that has to change. Maybe after these hearings I'll feel that 10 years is important and we should establish that. But in the meantime, I'm trying to assume that some good has happened over the past 17 years in these States, that good faith efforts have been made to rectify the previous record, which is indeed indefensible, and these efforts require some recognition, that they not be put in a second-class status to other jurisdictions.

And I want to hopefully in these hearings develop this evidence to see where these situations still persist, or maybe not in the same degree or numbers, but still are bad. That has to be considered, too. But I would like to see all our States, all our counties, all our jurisdictions stand equally in this country; and where a wrong occurs, that there be a remedy for that wrong and that it's swift and certain and conclusive.

Ms. BARRAGAN. Congressman, I could not agree with you more, but may I elaborate just a little bit in terms of the problems that I see?

No. 1, I think perhaps the overriding right in our country is that of the individual and the right of the individual to vote, guaranteed by the 15th amendment. That same right is something that every U.S. citizen should have, regardless of where he lives.

Now, I am very sensitive to local control, and I am a State legislator, and I like to see problems solved at the local level. We deal with it daily in the legislature. But there comes a time when if, in fact, an individual's rights at the local level are not being protected by local government, then there is a need for the Federal Government to enter in those particular cases and show that his particular rights as an individual are being carried out and guaranteed.

I think that's important to understand when we address the Voting Rights Act, because what we are talking about, although we have had 16 years of the act in general, there has only been 6 years addressed for language minority citizens.

So what we're talking about are individual rights of these people—citizens or taxpayers who are a language minority and have not been able to participate fully in the political process as a result of the fact that they are not fluent in the dominant language.

Let me give you an illustration of how that——

Mr. HYDE. May I ask, with the indulgence of the chairman, my bill has nothing to do with single-language minorities. These provisions remain intact.

My philosophy is that we have 5 years or 4 more years to go, and we ought to get that experience under our belt and then address it in the next Congress. But for the present, I want to continue in place the single-language minority provisions that are in the act.

So I'm only talking about the racial minority provisions and preclearance, with regard to them, which will expire next year.

I just wanted to say that so we understand each other.

Ms. BARRAGAN. Certainly, I understand.

But I guess what I was referring to is we're hopeful that the bilingual provisions of the Voting Rights Act will be integrated into this year's act and will be extended for 10 years, along with that.

And let me state why we want that to happen. Understanding that the provisions do not go out of effect for another 4 years, it is very important for the folks I represent back home, when I'm talking about the Voting Rights Act, for me to be able to explain it, easily, to them. I think you must all bear that problem, as you know, to explain what we're doing to our constitutents. It is easier to explain the Voting Rights Act is in for a certain period of time and its all in together, than to say, well, parts of it expire in 1982 and another part expires in 1985. And folks get a little bit confused by all of that.

So, you know, I just want—you know, even 10 years wouldn't be enough.

Let me suggest something. Even in this august congressional body, which is so important to our country and is a body that represents the greatest country in the world, there are only five members of Hispanic origin who are voting members. We have one who is not. That represents less than 1 percent of the Members of Congress, of a population that is more 14 million, close to 15 million, and about 7 percent population, and there has never been a Member of Congress in the history of this country who was a woman of Hispanic heritage.

And just to show you how bad off we are and why it is so important that all of these provisions be integrated, because they really relate to each other—you can't separate one from the other—you can't separate the bilingual provisions from the preclearance provisions, because they are intricately combined.

I am the only woman of Mexican descent currently serving in a State senate in the entire United States. There is a Puerto Rican woman in New York, and there aren't any more. And that's in large part because we just haven't had the time to make the Voting Rights Act work. It can work for us, just like it has worked in the past for others, but we just haven't had the time.

So, I guess what I'm doing here to day is asking for more time, asking for another 10 years, and the whole package integrated together.

We need the time.

Thank you.

Mr. EDWARDS. Well, Senator Barragan, you have been most helpful, most inspirational, and we thank you very much.

Ms. BARRAGAN. May I ask my legal counsel to make one point before we leave, Mr. Chairman?

Mr. EDWARDS. Yes.

Ms. BARRAGAN. Because I had said she would testify. She has a point.

Ms. HERNANDEZ. I have one point that should be made in Congressman Hyde's bill that I think adversely affects Hispanic com-

munities, which is that it would require court action. And one thing that must be kept in mind is, for instance, in Texas there have been over 80 objections representing over 130 individual election changes. That would require that many lawsuits, and to put the burden on the victim after the fact, knowing the limited legal resources that the Hispanic and Mexican-American community would have, would be enormous.

So that the process be used by the Justice Department is a very effective, efficient process that works. If the burden were put on the Hispanic or Mexican-American community it would be an economic burden where we don't have the resources, and that is a major concern.

Mr. HYDE. May I respond, Mr. Chairman?

Mr. EDWARDS. Yes.

Mr. HYDE. I can only say that the pattern or practice, and that could take 2, not 80 occurrences. One court action could mandate preclearance for 4 years. What you have there is court action, granted. The burden of proof is with the complaining party. But you have attorney's fees that can be awarded and you have the attorney general who can intervene in a case like that, if he wants, or if he doesn't want you can still go forward. But you have enhanced and confirmed the court process which I, as a lawyer, prefer to the administrative process which is quick, and when they are with you they are great, but sometimes justice is curtailed in the interest of expediency and efficiency, not necessarily in this field, but I just prefer to go to court, especially if it's made easy and the attorney's fees can be paid, and all you need to go is once and establish a pattern of practice and you've got 4 years of preclearance.

So I grant you it is not what you have now. It's not as quick and efficient, but it is an ultimate burden for one good lawyer, and I am sure you are.

Ms. HERNANDEZ. Thank you, Mr. Congressman. I would like to make a couple of comments as to your statement. One is that you cannot undermine the deterrent effect that the preclearance provision has. That's one.

Two, I work for the Mexican-American Legal Defense Fund which is, I believe, the largest legal organization—nonprofit organization—devoted solely to representing the rights of the Mexican-American and Hispanic community. Our resources are nothing compared to the need. We have an office in Texas that has been involved in almost every lawsuit brought in Texas under the section 5 preclearance and where the municipalities have failed to comply with the law. We can't even do that.

Even though I also prefer the courts, as a lawyer, I am realistic enough to know the resources available in my community—the legal resources available to my community, and they just don't exist. And that is a concern.

If I am forced to choose between a law that gives me all these rights that I cannot exercise and an administrative procedure that assures some compliance—and it's been good compliance—which has been effective in the present legislation, I can assure you which I would choose.

Thank you.

Ms. BARRAGAN. I want to correct a misstatement I made to Congressman Washington on the Hispanic population percentage in Los Angeles. It is closer to 30 percent Hispanic, rather than 45 percent, in terms of citizens. So I wanted to correct that for the record, and I apologize for the misstatement.

Mr. EDWARDS. Thank you very much. You have been very helpful.

Our next witnesses constitute a religious panel presentation. Mr. Pablo Sedillo, who is director of Hispanic Affairs of the U.S. Catholic Conference of Bishops; Rabbi David Saperstein of the Union of American Hebrew Congregations, Washington, D.C.; and Dr. George Telford, vice president of the National Council of Churches, Washington, D.C. I believe Mr. Sedillo is first.

TESTIMONY OF PABLO SEDILLO, DIRECTOR, HISPANIC AFFAIRS, U.S. CATHOLIC CONFERENCE OF BISHOPS; DAVID SAPERSTEIN, UNION OF AMERICAN HEBREW CONGREGATIONS; AND GEORGE TELFORD, VICE PRESIDENT, NATIONAL COUNCIL OF CHURCHES, WASHINGTON, D.C.

Mr. SEDILLO. Mr. Chairman and members of the committee, I am Pablo Sedillo, director of the Office of Hispanic Affairs at the United States Catholic Conference. I speak today for the United States Catholic Conference, the national action arm of the Roman Catholic Bishops. I am grateful for this opportunity to express to you our strong support for legislation to extend the Federal Voting Rights Act.

The social teaching of the Catholic Church includes an important component that deals with the subject of political responsibility. The church has repeatedly emphasized the importance of voting and the need to work for the common good through active and widespread participation in the political process. In a 1979 statement entitled "Political Responsibility: Choices for the 1980's," the administrative board of the Catholic Bishops said the following:

> Increasingly our problems are social in nature, demanding solutions that are likewise social. To fashion these solutions in a just and humane way requires the active and creative participation of all. It requires a renewed faith in the ability of the human community to cooperate in governmental structures that work for the common good. It requires, above all, a willingness to attack the root causes of the powerlessness and alienation that threaten our democracy.

Papal teaching has likewise addressed this subject. In his encyclical statement entitled "Pacem in Terris," Pope John XXIII spoke eloquently on the rights of all human persons, including the right to take part in public affairs. Pope John stressed that

> There should be juridico-political structures providing all citizens . . . without any discrimination, the practical possibility of freely and actively taking part in the establishment of the public affairs * * * and in the election of political leaders.

Since 1965 the Voting Rights Act has enabled millions of blacks, Hispanics and language minority citizens to achieve their precious and fundamental right to vote, a right that had been systematically denied to them for too long. For many the Voting Rights Act has resulted in participation for the first time in the political process. Gains have been made in voter registration, in voting, and in the election of minorities to government offices. These achievements will be sacrificed unless Congress acts to renew this important legislation. The extension of the Voting Rights Act is crucial, there-

fore, if our minority citizens are to receive equal treatment in the electoral process.

I would like to speak more directly about the effect of the Voting Rights Act on the Hispanic community. Many Spanish-speaking eligible voters in the past were not able to exercise their voting franchise because they were not conversant in the English language. Voting information produced exclusively in English was used as a device, similar to a literacy test, to prevent minority participation. My own family in the State of New Mexico go back to 1680 and have been in that State for that length of time.

Now, I can't think of anybody being more American than a native American. In spite of that, we are extremely patriotic of this country and there are many, many thousands of our people that are American citizens but still do not speak or understand the English language.

In 1975 Congress recognized the existence of extensive discrimination against Hispanic and other language-minority citizens by extending the provisions of section 5 of the Voting Rights Act and by adopting section 203. The retention of these provisions in their present form is essential.

Section 5 of the act consists of a preclearance provision which is intended to prevent jurisdictions from going back on previous voting rights gains. It applies to jurisdictions that have historically disregarded voting rights. This preclearance provision requires that all changes in election laws of certain jurisdictions must be approved by the U.S. District Court in Washington to guarantee that these changes will not discriminate against minority voters or must be found to be unobjectionable by the Attorney General of the United States.

Preclearance has not only prevented jurisdictions from implementing changes which would discriminate against minorities, but it is generally believed to have had a deterrent effect on scores of other jurisdictions which contemplated last-minute shifts in polling places or hours of registration, or diluting or nullifying minority participation in other ways.

Section 5 of the law is particularly important in view of the new methods of discrimination in voting that have developed. The literacy test of past years has been replaced by more sophisticated and subtle discriminatory practices. These include racial gerrymandering, at-large schemes, and annexations. For the Hispanic community in the Southwest, this preclearance provision has applied only for the last 5 years. During this time the Department of Justice has issued 85 letters of objection in response to proposed changes in electoral laws submitted by Texas jurisdictions. In the absence of section 5, jurisdictions would be free to implement these discriminatory changes.

No other State covered by section 5 has been issued as many letters of objection in so short a time as has Texas. Permit me to cite a few examples of the effectiveness of the Voting Rights Act in protecting the rights of Chicano voters in Texas.

The city of Victoria had submitted an annexation plan to the Department of Justice for preclearance. The Department of Justice objected to the city's plan because it would have diluted the voting strength of Chicanos. Having been forced to drop annexation, Vic-

toria adopted a mixed plan. As a result, there is now Chicano representation on the city council.

San Antonio was forced to change from at-large to single-member districts, after a letter of objection from the Department of Justice. This change led to increased minority representation on the city council, and most recently the election of San Antonio's first Chicano mayor.

Following a Department of Justice letter of objection, the Texas legislature had to redraw lines in three counties, Jefferson, Tarrant, and Nueces, which had been gerrymandered to reduce minority strength. In almost 100 other counties commissioner precinct lines have the effect of diluting Chicano voting strength. Because these lines were drawn prior to 1975, no preclearance was required.

Redistricting will be occurring throughout the country as adjustments are made in conformity with the 1980 census. The history of past abuses dramatically illustrates the need for a continuation of the Voting Rights Act protections. There is already evidence that reapportionment will be postponed in some places in hopes that section 5 will be nullified or diluted by Congress. The sheer numbers of letters of objection issued by the Department of Justice illustrates that all is not well. Voting rights discrimination continues to be a serious problem.

There are those who argue that section 5 should have nationwide application because the provision presently singles out certain regions unfairly. I fear that those who advocate national coverage are many of the same advocates who are seeking to dismantle the Voting Rights Act. Section 5 applies to those jurisdictions that have historically disregarded voting rights. It applies to nearly half the states, including Alaska and New York, Texas, and Mississippi.

I believe that a nationwide application is not necessary; it would only divert attention from real problems. Furthermore, it would be an extremely costly and administratively impossible proposition. Nationwide coverage has been raised in the past by opponents of the Voting Rights Act and rejected. Their arguments are not more credible today than before.

Section 203 of the Voting Rights Act requires bilingual registration and election materials in places with large non-English speaking populations. We strongly oppose legislation which has been introduced to repeal these bilingual requirements.

Citizens of the United States who are eligible to vote but who cannot speak English should not be penalized. Their problem, to a large extent, is a function of being denied equal educational opportunities. The Voting Rights Act has been instrumental in reversing wholesale discrimination and as a result, Hispanic participation in the electoral process has increased dramatically. In Texas alone registration is up by 64 percent. If the bilingual provisions are repealed, this progress will be reversed and fundamental voting rights will go unprotected.

Mr. Chairman and members of the committee, in summary I would emphasize that we are not yet a transformed society where justice for all has been achieved. Minorities continue to need safeguards against voting abuses and irregularities. Extension of the Voting Rights Act is, therefore, very important. Indeed, it is the most important civil rights legislation facing this Congress. The

Voting Rights Act has fostered dramatic gains in the past; yet, much is still to be accomplished. Therefore, the United States Catholic Conference strongly urges your support for the Rodino bill, H.R. 3112.

Thank you for the opportunity to express our views.

[The statement of Pablo Sedillo follows:]

STATEMENT OF PABLO SEDILLO, DIRECTOR OF THE SECRETARIAT FOR HISPANIC AFFAIRS, ON BEHALF OF THE UNITED STATES CATHOLIC CONFERENCE

RENEWAL OF THE VOTING RIGHTS ACT

Mr. Chairman and members of the Committee, I am Pablo Sedillo, Director of the Office of Hispanic Affairs at the United Staes Catholic Conference. I speak today for the United States Catholic Conference, the national action arm of the Roman Catholic Bishops. I am grateful for this opportunity to express to you our strong support for legislation to extend the Federal Voting Rights Act.

The social teaching of the Catholic Church includes an important component that deals with the subject of political responsibility. The Church has repeatedly emphasized the importance of voting and the need to work for the common good through active and widespread participation in the political process. In a 1979 statement entitled, "Political Responsibility: Choices for the 1980's," the Administrative Board of the Catholic bishops said the following: "Increasingly, our problems are social in nature, demanding solutions that are likewise social. To fashion these solutions in a just and humane way requires the active and creative participation of all. It requires a renewed faith in the ability of the human community to cooperate in governmental structures that work for the common good. It requires, above all, a willingness to attack the root causes of the powerlessness and alienation that threaten our democracy."

Papal teaching has likewise addressed this subject. In his encyclical statement entitled, "Pacem in Terris," Pope John XXIII spoke eloquently on the rights of all human persons, including the right to take part in public affairs. Pope John stressed that—"There should be juridico-political structures providing all citizens . . . without any discrimination, the practical possibility of freely and actively taking part in the establishment of the . . . foundations of the political community, in the direction of public affairs, . . . and in the election of political leaders."

Since 1965 the Voting Rights Act has enabled millions of Blacks, Hispanics and languague minority citizens to achieve their precious and fundamental right to vote—a right that had been systematically denied to them for too long. For many the Voting Rights Act has resulted in participation for the first time in the political process. Gains have been made in voter registration, in voting, and in the election of minorities to government offices. These achievements will be sacrificed unless Congress acts to renew this important legislation. The extension of the Voting Rights Act is crucial, therefore, if our minority citizens are to receive equal treatment in the electoral process.

I would like to speak more directly about the effect of the Voting Rights Act on the Hispanic community. Many Spanish-speaking eligible voters in the past were not able to exercise their voting franchise because they were not conversant in the English language. Voting information produced exclusively in English was used as a device, similar to a literacy test, to prevent minority participation. In 1975 Congress recognized the existence of extensive discrimination against Hispanic and other language-minority citizens by extending the provisions of Section 5 of the Voting Rights Act and by adopting Section 203. The retention of these provisions in their present form is essential.

Section 5 of the Act consists of a preclearance provision which is intended to prevent jurisdictions from going back on previous voting rights gains. It applies to jurisdictions that have historically disregarded voting rights. This preclearance provision requires that all changes in election laws of certain jursidictions must be approved by the U.S. District Court in Washington to guarantee that these changes will not discriminate against minority voters, or must be found to be unobjectionable by the Attorney General of the United States. Preclearance has not only prevented jurisdictions from implementing changes which would discriminate against minorities, but it is generally believed to have had a deterrent effect on scores of other jurisdictions which contemplated last-minute shifts in polling places or hours of registration, or diluting or nullifying minority participation in other ways.

Section 5 of the law is particularly important in view of the new methods of discrimination in voting that have developed. The literacy test of past years has been replaced by more sophisticated and subtle discriminatory practices. These include racial gerrymandering, at-large schemes, and annexations. For the Hispanic community in the Southwest this preclearance provision has applied only for the last five years. During this time the Department of Justice has issued eighty-five letters of objection in response to proposed changes in electoral laws submitted by Texas jurisdictions. In the absence of Section 5, jurisdictions would be free to implement these discriminatory changes.

No other state covered by Section 5 has been issued as many letters of objection in so short a time as has Texas. Permit me to cite a few examples of the effectiveness of the Voting Rights Act in protecting the rights of Chicano voters in Texas.

The city of Victoria had submitted an annexation plan to the Department of Justice for preclearance. The Department of Justice objected to the city's plan because it would have diluted the voting strength of Chicanos. Having been forced to drop annexation, Victoria adopted a mixed plan. As a result, there is now Chicano representation on the city council.

San Antonio had hoped to implement at-large districts. The Department of Justice's letter of objection forced them to change to single member districts. San Antonio has recently elected its first Chicano mayor.

Following a Department of Justice letter of objection, the Texas legislature had to redraw lines in three counties (Jefferson, Tarrant and Nueces) which had been gerrymandered to reduce minority strength.

In almost 100 other counties, commissioner precinct lines have the effect of diluting Chicano voting strength. Because these lines were drawn prior to 1975, no preclearance was required.

Redistricting will be occurring throughout the country as adjustments are made in conformity with the 1980 census. The history of past abuses dramatically illustrates the need for a continuation of the Voting Rights Act protections. There is already evidence that reapportionment will be postponed in some places in hopes that Section 5 will be nullified or diluted by Congress. The sheer numbers of letters of objection issued by the Department of Justice illustrates that all is not well. Voting rights discrimination continues to be a serious problem.

There are those who argue that Section 5 should have nationwide application because the provision presently singles out certain regions unfairly. I fear that those who advocate nationwide coverage are many of the same advocates who are seeking to dismantle the Voting Rights Act. Section 5 applies to those jurisdictions that have historically disregarded voting rights. It applies to nearly half the states, including Alaska and New York, Texas and Mississippi.

I believe that a nationwide application is not necessary; it would only divert attention from real problems. Furthermore, it would be an extremely costly and administratively impossible proposition. Nationwide coverage has been raised in the past by opponents of the Voting Rights Act and rejected. Their arguments are no more credible today than before.

Section 203 of the Voting Rights Act requires bilingual registration and election materials in places with large non-English speaking populations. We strongly oppose legislation which has been introduced to repeal these bilingual requirements.

Citizens of the United States who are eligible to vote but who cannot speak English should not be penalized. There problem, to a large extent, is a function of being denied equal educational opportunities. The Voting Rights Act has been instrumental in reversing wholesale discrimination, and as a result, Hispanic participation in the electoral process has increased dramatically. In Texas alone, registration is up by 64 percent. If the bilingual provisions are repealed, this progress will be reversed and fundamental voting rights will go unprotected.

In summary, I would emphasize that we are not yet a transformed society where justice for all has been achieved. Minorities continue to need safeguards against voting abuses and irregularities. Extension of the voting Rights Act is, therefore, very important. Indeed, it is the most important civil rights legislation facing this Congress. The Voting Rights Act has fostered dramatic gains in the past; yet, much is still to be accomplished. Therefore, the United States Catholic Conference strongly urges your support for the Rodino bill, H.R. 3112.

Thank you for the opportunity to express our views.

Mr. EDWARDS. Thank you very much, Mr. Sedillo, and it is an excellent statement and very helpful. I understand you have a time problem since you have an airplane to catch. If we can have the indulgence of the other two witnesses for a moment, we would take time to ask for a couple of questions.

Mr. Hyde?

Mr. HYDE. Thank you, Mr. Chairman.

I would just like to comment on page 3, at the bottom of the first paragraph, you say, "In the absence of section 5, jurisdictions will be free to implement these discriminatory changes," and you've got racial gerrymandering schemes, annexations, et cetera.

It is my view, and I may be incorrect, section 3(c) of the act stays in, a permanent section of the act, not going to be changed by anybody. And section 3(c) would provide a remedy, including order of preclearance for these discriminatory changes.

Second, the bill that I am proposing, and just throwing out on the table as a suggestion, is focused—if a pattern or practice could be shown, then the mandatory preclearance for four years could be ordered, and the fact that any 85 letters of objection were issued—certainly you would just have to show a couple of those to show a pattern of practice.

That is simply a comment that I think your statement may be a little strong in that these jurisdictions would be free to implement them. Not without climbing over 3(c). There may be a pattern or practice.

But be that as it may, what you say on page 4 is very true. But I don't know anybody in this chamber who advocates applying preclearance nationwide, because that surely would strangle the bill to death and make it unworkable. And not only that, it would remove any constitutional basis for preclearance which had to be zeroed in on a rational basis for the extraordinary burden and which was the history of voting rights abuses in these various locales.

To apply it nationwide would destroy that rational basis and, I think, render it unconstitutional. So, I don't think anybody is seriously proposing that. I certainly don't, and nobody on the subcommittee. But certainly what you say, if that were done, it would destroy the act.

But thank you, Mr. Chairman, I have no further questions.

Mr. SEDILLO. Thank you.

Mr. EDWARDS. Mr. Sedillo, you emphasize that we are not yet advanced to a society where justice for all can be achieved. We will hear from a number of Members of Congress and indeed some witnesses as to the effect that these areas of our country that formerly discriminated in voting have learned their lesson, they are transformed. What makes you think that they are not yet a transformed society?

Mr. SEDILLO. I don't think we have gone far enough, Congressman. Certainly, I will not deny that we have made great gains over the last 15 or 20 years. As I travel throughout the Southwest and throughout this country, there still is a great deal of—if I may say so, Congressman—of institutional racism, and we need to deal with that situation.

I just think that the way things are going in some of the larger communities where we find a large number of Hispanics, in terms of the gerrymandering, I think it is a blatant way of excluding our community from enjoying the constitutional rights of being part of the political process and being full, first-class citizens. But I still believe there is much to be done, Congressman.

Mr. EDWARDS. The previous witness, the Senator from Colorado, certainly testified to that effect also, Mr. Sedillo. I believe your testimony is about the first I have read to the effect that the election of San Antonio's first Chicano mayor is largely the result of the Voting Rights Act. Why do you suppose that the newspapers and media of the country didn't mention that?

Mr. SEDILLO. I think they were concentrating on making him the first Chicano mayor of a major city in the United States. Of course, we have an Hispanic mayor in Miami, who is Puerto Rican. I think only the New York Times focused on that. But, certainly, because the Southwest voter registration project is in San Antonio, because they were a coalition of Mexican Americans that got together to assure that we were going to be full participants in the political process, I think that made a difference.

And it is a very sad note to state that he is the first Mexican American to be mayor of a major city. We don't have one in Albuquerque, we don't have one in Los Angeles, in Fresno, and I could just go on and on; a litany of the cities where there are large communities of Mexican Americans and Puerto Ricans, and still we are excluded from holding those positions. And I think the Voting Rights Act is certainly going to be helpful.

Mr. EDWARDS. Thank you.

Mr. HYDE. Would the gentleman yield?

Mr. EDWARDS. Yes.

Mr. HYDE. This mayor of San Antonio is immensely well qualified. He has tremendous educational background and experience, and it is certainly conceivable that he received support for this office beyond the Chicano community and he was elected not so much because he was Chicano but because he was the best candidate. I find that may have been part of it, anyway, and I would like some credit to go to the people who voted for him because he was the best candidate, and not simply because of his ethnicity. Is that not so?

Mr. SEDILLO. You are absolutely correct, Congressman. There are many hundreds and thousands of Chicanos that have equal qualifications, so I wouldn't want to just state it was because he was a Chicano. But let me state it would not have been possible for him to have won his previous position on the city council which was previously elected at large. He ran after the council was changed to include in a single member districts, which may, of course, have given him the opportunity to demonstrate his ability at the city council level, which became credible and appealed to not only the Chicano community but others. And I think that as a Hispanic, Congressman, I do not want to leave this committee with the impression that because we are Chicanos, that we ought to be elected into office.

I think as Americans we have the abilities and capabilities of any other group in this country. I think that you probably have experienced some discrimination, being a Catholic, Congressman. I, being a Roman Catholic and a Hispanic, I submit double. But I think those are things we need to overcome, and not just because we are labelled as such that we do not have the abilities.

Mr. EDWARDS. No further questions, and I hope you can still catch your airplane. Thank you.

83-679 O - 82 - 10 (pt.1)

Mr. SEDILLO. Yes, I will. I want to thank both panelists here for their indulgence, and the committee for allowing me to testify first. I do have to catch a plane to St. Louis. Thank you.

Mr. EDWARDS. Rabbi David Saperstein, it's a pleasure to see you.

Rabbi SAPERSTEIN. It's always a pleasure to be back here. I have said many times to this committee: not only I, but many of us who work in Washington, regard it as one of the most efficient and one of the brightest of all the panels here at the Congress. You have been a bastion and a bullwark of the civil liberties and civil rights in this country, and therefore an invitation to testify before you is an honor that is greatly appreciated. And I am delighted to be back with you.

I am going to summarize my testimony. I know that you have had the opportunity to look at it, and I think I need to not read it.

Mr. EDWARDS. Yes. We have read your testimony, and it will be made a part of the record. And you may proceed.

[The complete statement follows:]

STATEMENT OF RABBI DAVID SAPERSTEIN, ON BEHALF OF THE UNION OF AMERCIAN HEBREW CONGREGATIONS AND THE CENTRAL CONFERENCE OF AMERICAN RABBIS

Mr. Chairman. My name is Rabbi David Saperstein. I would like to thank you for this opportunity to share with this committee the concerns of the Union of American Hebrew Congregations and the Central Conference of American Rabbis on the Voting Rights Act Amendments of 1981. The two agencies which I represent together comprise the Reform Jewish movement, consisting of over one million Reform Jews and over 1000 Reform rabbis throughout the United States. We have long been deeply involved with the struggle for equal rights for all citizens. "We are humbled by the knowledge that if democracy cannot end discrimination, discrimination may end democracy. We pledge ourselves, as individual Americans and as inheritors of the dream of one brotherhood under God, to be as zealous for the dignity and rights of our neighbors as we would have them be of ours." (UAHC Biennial Convention, 1963). In support of this position we have long supported the Voting Rights Act.

Judaism and the Jewish people have been bound up with an age old commitment to equal rights and equal opportunities for all people. Our religion first gave to the world the idea of the parenthood of God and the brotherhood and sisterhood of all humankind. Our ancestors taught the world that every person is a child of God. Jews taught in the Midrash, interpretations of the Biblical stories, that when God created humankind God did so by creating a single person, a person created from the clay of all colors and all parts of the earth so that no person could ever say that "my people are better than yours." Democracy is based on the Jewish idea that every human being must be treated as the child of God and given equal dignity and equal opportunities no matter one's color, race or sex. The belief in freedom of choice, the idea that we are responsible for our own fates and for the fate of our society was a fundamental contribution of Judaism to Western civilization. This belief in the inherent freedom of choice of all people is the root of the democratic commitment to voting rights for all people.

Last week we celebrated the holiday of Passover which reminds us that we were once slaves in Egypt and which commands us that we must remember that experience and must "understand the heart of the stranger." Tragically, the badge of slavery has not yet been eliminated for those who were once systematically victimized by this nation. In many ways there are minority communities in this country which are still regarded as "the stranger" because of racial or ethnic features, who would be deprived of fundamental rights by local communities if the nation as a whole did not guarantee equality of rights for all its citizens.

The Voting Rights Act of 1965 was established specifically to protect the sacred right to vote of a large segment of the American population—the black community. The Union of American Hebrew Congregations and the Central Conference of American Rabbis support the extension of the Voting Rights Act for another ten years; support the retention of the preclearance procedures under section 5, procedures targeted to meet the problems raised in areas of the country which once had discriminately literacy tests; support the retention of the 1975 provision for bilingual election provisions throughout the new ten year extension; and support a

change in section 2 to return the standard of proof under section 2 to what it was before *Mobile* v. *Bolden*.

The Congress must ask itself two threshold questions. The first is whether the struggle for voting rights has been won. Over the fifteen years of the Act, the Justice Department, under the preclearance provisions of Section 5, has prohibited some 800 changes recommended by local communities or states—changes which would have maintained discriminatory voting mechanisms and procedures. These changes included gerrymandering in the form of redistricting, annexations, at-large voting mechanisms, multi-member districts, and similar attempts to dilute the concentration of black votes. While these 800 rejections are only a small percentage of the total number of voting changes made in this country, together these cases, considered in addition to those which came through the court system, represent the undeniable fact that attempts to restrict the voting rights of blacks and other minorities continue to this day. Furthermore, we must presume that there are numerous jurisdictions which are deterred from attempting to implement restrictive provisions because of the watchful eye of the federal government.

The second question which the Congress must ask is whether the Voting Rights Act provides the most effective and the fairest means of achieving the goal of voting rights for all Americans. I believe that it does—this Act has functioned with remarkable efficiency and fairness. If Section 2 is amended as suggested, the Act will continue to function as a fundamental guarantee of the right of any voter to sue in federal court if his or her right to vote is abridged or denied on account of race. The preclearance procedures provide a simple, fast, fair and effective means of preventing those areas of the country which have had a history of discrimination in voting rights from backsliding from the major advances this Act has achieved.

There are three major concerns raised by this legislation on which we wish to comment. The first is the necessity of maintaining the preclearance procedures as they currently exist under Section 5. The procedure of the preclearance provisions is efficient and speedy. The clearly stated rules create consistent standards for the Justice Department to follow. The availability of the court to test any decision considered unfair provides a check on the actions of the Justice Department. As long as large segments of our society have had or are still in danger of having their fundamental right to vote deprived, the federal government must be the final guarantor of that important right.

There is a proposal which has been brought forward to make the provisions of the preclearance mechanism applicable "nation-wide." We oppose that proposal. The current budgetary situation makes this proposal a clearcut attempt to dilute the impact of the Act and to undercut the effectiveness of the Justice Department's work. It bears repetition that the Voting Rights Act is applicable nationwide. Some of its provisions are applicable to each American citizen. Other provisions are aimed at those jurisdictions—anywhere in the country—which have engaged in systematic and systemic deprivation of the right to vote. In those areas of the country where such systemic deprivation had taken place on the basis of race—sometimes for 100 years—specific provisions were set up to create a speedy and fair means of ensuring that there could be no backsliding. If the problem of such systemic discrimination had been found in every jurisdiction in the country, this remedy could have been set up to apply to every jurisdiction. Thankfully, the problem was not found in every jurisdiction—indeed not in most—and this remedy was set up to cure a particular problem in those areas where the problem existed. The constitutionality of this mechanism was recognized by the Supreme Court in *South Carolina* v. *Katzenbach*. It is legal and it is effective. And I know that I need not remind this committee that a federal court may impose the preclearance requirement on any other jurisdiction where there has been a finding of such discrimination.

The second concern on which we wish to express our opinion is our commitment to the notion that the right to vote must not be restricted on the basis of language. There are millions of Americans who without bilingual provisions would be deprived of that right to vote. They are effectively excluded from the electoral process simply because they cannot understand what the ballot says and what the voting instructions are. This is particularly unfair since the burden of language limitation often falls on those segments of the society which already are deprived of adequate access to the economic, political and social mainstream of American life. They must not now be deprived of their most powerful tool to redress their grievances—the vote. While there have been significant improvements in the access of such individuals to the vote recent studies indicate that there are still many areas of the country where the impact of these provisions have not yet been felt. It is our position that these provisions should be extended so that they run concurrently with the rest of the Act.

Finally, we support a position that seeks to change the standard for proving discrimination from that imposed by the Supreme Court in *Mobile* v. *Bolden* to the standard which existed prior to that case. In 1973, in *White* v. *Regester*, the Supreme Court upheld the position that numerous factors, including direct and indirect evidence, could be introduced to establish the existence of voting discrimination. In *Bolden*, the Court maintained that only direct evidence of specific intent to discriminate is adequate. This is a difficult standard requiring that plaintiffs prove a subjective state of mind. Such a standard not only contradicts the intent of the legislation but undermines the ability of the Justice Department to enforce it.

This issue is sometimes confusingly referred to as a conflict between an intent standard of evidence and a result standard of evidence. There is no constitutional right that guarantees a particular result, e.g., that the member of a particular group must be elected. But there is a constitutional right to change an electoral system which makes it impossible for a member of that group to be elected. And often "results" provide an objective standard which can be used to indicate the existence of a discriminatory system.

Our democratic process is based on the belief that each of this nation's citizens has the right and the responsibility to vote. Our system of government is enriched by the full participation of all of its citizens in the electoral process. We undermine the strength of this nation and make a mockery of our pretensions for fairness and democracy when we undercut the strength of legislation which has successfully and fairly reduced voting discrimination in our country. Such legislation will not be needed indefinitely, but we urge the Congress to extend for ten years this legislation to help guide the country through the redistricting which follows the census completed last year and the next census in 1990.

Rabbi SAPERSTEIN. Thank you.

Democracy is based in no small part on the Jewish values and ideas that every human being should be treated as a child of God, and given equal dignity and equal opportunity, no matter what that person's color, race, or sex. The belief in freedom of choice, the idea that we are responsible for our own fates and for the nature of our society is a fundamental contribution of Judaism to Western civilization. This belief in the innate freedom of choice of all people is the root of the democratic commitment to voting rights for all people.

Last week, we in the Jewish community completed the festival of Passover, which reminds us that we were once slaves, commands us that we must remember that experience and must understand the heart of the stranger. Tragically, the badge of slavery has not yet been eliminated for those who were once systematically victimized by our own nation. In many ways, there are minority communities in this country which are still regarded as "the stranger" because of racial or ethnic features, who would be deprived of fundamental rights by local communities if the nation as a whole did not guarantee equality of rights for all its citizens.

The Voting Rights Act of 1965 was established specifically to protect the sacred right to vote of a large segment of the American population—the black community—and expanded in 1975 to include the language minorities in this country.

The Union of American Hebrew Congregations and the Central Conference of American Rabbis today supports the extension of the Voting Rights Act for another 10 years, supports the retention of the preclearance procedures under section 5, support the retention of the 1975 provision for bilingual election provisions throughout the new 10-year extension of the act; and support a change in section 2 to return the standard of proof under section 2 to what it was before *Mobile* v. *Bolden*.

I need not delineate the support for the bilingual sections. It is stated in the testimony and was stated eloquently by other people this morning.

Similarly, under section 2, I think the testimony stands for itself—other than to add to the testimony that the standard under Bolden was somewhat of an aberration in our justice system. In criminal justice systems, specific intent crimes are almost always proved by circumstantial evidence, by results, and I think that should be a consistent pattern throughout our judicial system. It's the pattern and the standard of proof we would like to see utilized for civil rights acts such as the Voting Rights Act as well.

To place an undue burden, an unworkable subjective standard, in this area, would be manifestly unfair.

I do want to take a few moments just to add to our comments about the preclearance. In response to the questions that have been placed by Mr. Hyde, particularly, and by other members of the committee, I must say very honestly, Mr. Hyde, if it were a choice between what you are suggesting and no bill at all, I personally would support quite clearly what you are suggesting. That is the question as you have set it out. I don't believe that is the question we face.

I believe that the preclearance procedures we have are passable in Congress. I believe that they are preferable, and until something changes to make me think differently, I would hope that you and others would support them as the first possibility, and a preferable possibility. If it cannot be, then we can look at other compromises. But I believe that the statements you have made this morning indicate quite clearly your commitment to the Voting Rights Act and its continuation, and I hope we will do it in the strongest possible fashion.

I don't think it's accurate to say that people under the preclearance procedure need permission to change. They can change in any way they want. The only standard is that before those changes go into effect in those areas of the country that have had both systematic and systemic forms of discrimination that there is a procedure to guarantee that the changes will not be discriminatory. I think that is very fast, fair, efficient and an effective way of dealing with the problem.

Let me give you in personal terms what I mean by that systemic discrimination. Soon after the Voting Rights Act was passed by this Congress—I was a teenager at the time—my parents—my father is also a rabbi—took 3 months of their lives to go down to Alabama, to try and implement into reality the work done here in the Congress by registering voters. They worked in an area that was one of the most backward areas in terms of racial justice in the country. They headed up a project to go out and work with blacks and register them to vote.

After about 3 months there, my father was called home for a funeral and was not able to help out a team that went out to Lowndes County in Alabama. It was headed instead by a young Episcopalian seminary student by the name of Jon Daniels.

When they arrived in town, the authorities in the town arrested them on trumped-up charges of disturbing the peace. They threw them into jail, held them for 24 hours, strip-searched them on the

way in, strip-searched them three times during the time they were held, and strip-searched them on the way out of jail as well. They were not fed, they were not given water. When they left, they walked across the street to the only restaurant in town that would serve both blacks and whites, and as they walked up the steps to that restaurant, an off-duty volunteer sheriff walked out in front and told them to leave.

Jonathan stepped forward to explain why they were seeking food and the man took out a shotgun and killed him. He was later acquitted.

I returned this year to that area of the country on a speaking tour and had an opportunity to speak with blacks there. Unanimously they believed that if it was not for the watchful eye of the Federal Government and the techniques like the preclearance mechanism that kept the Justice Department involved with the changes that would be made, that there would be very swift retrogression to the kind of systemic and systematic discrimination that there had once been.

And regardless of what you're hearing, ask yourself: If we were starting with a clean slate today, which procedure would be the most effective? I believe it would be the preclearance procedure for the reasons referred to and testified to this morning. Furthermore, there would be a message sent out if we backed off those standards now, to those blacks and to the people who would victimize them, to those who look to the standards of justice in this country, that goes far beyond words. And I believe on that basis it is incumbent upon us to guarantee that the preclearance procedures stay as they are, and I hope that all of us will work for that as our first choice.

Our democratic process is based on the belief that each of the Nation's citizens has the right and the responsibility to vote. Our system of government in each of those communities throughout the country is enriched by the full participation of all of its citizens. We undermine the strength of this Nation and make a mockery of our pretensions for fairness and democracy when we undercut the strength of legislation which has successfully and fairly reduced voting discrimination in our country.

I do not believe that such legislation will be needed indefinitely, for I have great hope and faith in this country. But we do urge the Congress to extend for 10 years this legislation, to change the standards of proof under section 2 at least through to the redistricting which follows this census and the census in 1990.

Thank you very much.

Mr. EDWARDS. Thank you, Rabbi Saperstein.

We will withhold our questions until we have the pleasure of hearing from the Reverend George Telford, vice president, National Council of Churches.

Dr. Telford, you may proceed.

Dr. TELFORD. Thank you very much, Mr. Chairman, and members of the committee.

I am from the State of Georgia. I am a southerner by birth, and a minister of the Presbyterian Church in the United States, which is a rather regional church. I have served congregations of God's people in Auburn, Ala., in Charlesville, Va., and in Tallahassee, Fla. And while I speak here today on behalf of the National Coun-

cil of the Churches of Christ in the United States, I am firmly confident that what I have to say has the firm support of members of our church and of the congregations that I have served across the South.

Sometimes persons speaking in the name of religious communities seem to be speaking for some constituency other than the grassroots of the congregations of those churches. I assure you, Mr. Chairman and members of the committee, that the churches I know in the deep south, and I have served Alabama three times—have found the Voting Rights Act one of the most effective pieces of legislation, not simply to produce a measure of justice to members of the minority community, but as an effective piece of legislation that has contributed to the health and wholeness of the community at large.

I take this personal privilege to add these notes because I am now the father of two teenage children in a Southern city and I have experienced at firsthand what it has meant to those children to be part of a political process in which their peers are also effectively represented.

As I have indicated, I am a minister of the Presbyterian Church in the United States and vice president of the National Council of Churches. I am here on behalf of the National Council of Churches of Christ, which represents 32 Protestant and Orthodox denominations and 42 million people. I do not undertake to speak for all the 32 constituent member denominations, but for the policymaking body, the governing board, which is made up of representatives of our member denominations chosen by them in their own way and in proportion to their respective membership, including many persons who reside in the areas most affected by the Voting Rights Act.

The National Council has always been committed to the struggle for justice and human and civil rights. As religious people we have historically felt that it was our moral duty and Christian responsibility to be concerned about the plight of minorities in this country. We are not newcomers to the issue before this committee today. Throughout the years our position on voter rights has been clear. As early as 1952, 2 years after we were formed, we spoke out against racial discrimination and segregation in all sectors of society.

In February 1961 in a resolution on the right to vote, we affirmed our position on the right of every citizen of this country to vote. I would like to read that resolution to you, for it speaks to the reason we are here this morning.

"It is a clear teaching of the Christian faith that human rights, far from being granted by human authorities, are inherent in man as fashioned in the image of his creator and should be thus honored by society. The Christian faith also affirms the belief that men have a corresponding responsibility to exercise these rights. The responsible society affords all men the opportunity to do so.

"As Christians in the United States, we believe that local, state and national governments deriving their just powers from the consent of the governed, are responsible to God and to the people to maintain the freedom of all men under their respective jurisdic-

tions to exercise these rights with due regard for the rights of others and for public order.

"The right to vote is guaranteed by the basic law of the land. Whatever qualifications are made by state law, the Fifteenth Amendment to the Constitution of the United States specifically provides that 'the right of citizens of the United States to vote shall not be denied or abridged by the United States or any state on account of race, color, or previous condition of servitude.'

"Yet it is a fact that thousands of citizens are denied the opportunity to exercise the right to vote because of race or color. In many communities Negroes are denied the opportunity to register or, having been registered, have had their names removed from the registration rolls, or dies not voting because of their fear of bodily harm, the loss of jobs or other economic pressures. It is noteworthy that courts have declared unconstitutional state laws designed to deny the opportunity to register and vote on the basis of race and color.

"The denial of the right to vote contradicts the professed ideals and undermines the democratic heritage upon which this nation is founded. It is a violation of justice that prevents the exercise of responsible citizenship which is necessary to the creation of the good society."

In July 1963 the National Council of the Churches of Christ in the U.S.A. gave joint testimony with the National Catholic Welfare Conference and the Synagogue Council of America, on the voting rights issue before the Committee on Judiciary of the House of Representatives. In that testimony we stated:

> It is a fact that on the basis of color and race hundreds of thousands of citizens are denied the opportunity to register and to exercise the right to vote. Therefore, we welcome and support legislation which will provide realistic guarantees for all citizens regardless of race or color, the full opportunity to register and to exercise the right to vote.

In June 1965 the National Council adopted a policy Statement on "Equal Representation is a Right of Citizenship." In this policy statement we reaffirmed our support of the right to vote, and further stated:

> * * * that many of the causes of civil rights and liberties we have long supported are at stake in the question of equal representation and we now affirm our Christian conviction that one of the fundamental rights of citizenship is the right of every citizen to representation substantially equal to that of other citizens, regardless of where he lives or what may be his wealth or learning.
>
> We do not find in the nature of men as children of God any distinction of such kind that one man should cast a vote worth more than others. Neither race nor religious adherence, neither property nor education, neither rural residence nor urban, nor appeal to states rights, entitles one man or group of men to a disproportionate share in the basic franchise by which their civic affairs are governed. The structures of government erected upon this base may vary in design and operation according to the development of the techniques of political science, but the right of every person to his full yea or nay in periodic elections is more than a technical question.
>
> If the right to vote is denied, or if the vote itself is diluted, then to that extent the membership of the voter in civil society is diminished and his political personhood is impaired. He becomes less of a "man" than his fellows and loses to them some portion of his right to help determine his civic destiny. This is a moral question and ultimately a theological one, concerning which the National Council of the Churches of Christ in the U.S.A. may not remain silent.

We come before this committee today for three reasons. First of all, we believe that the Voting Rights Act is one of the most

successful pieces of civil rights legislation in this history of this Nation.

In those States and counties, especially in the South and West, affected by sections 4 and 5, we have seen progress in minority voter registration in the election of minority officials and in the protection of minority voting rights. It is our feeling that the Voting Rights Act is crucial to minority political participation.

Many of our congregations, as I have indicated, are located in the areas affected by sections 4 and 5 of this act and we have seen minorities in those areas exercise their right to vote with dignity and pride. We have seen minorities become enthusiastic about Government when they see that they are not excluded from representation because of the color of their skin. We have seen minorities applaud the fact that the number of minority elected officials has increased tremendously over the past 16 years. Recently, minorities have seen themselves represented in local, State and Federal government as a result of the Voting Rights Act and they relish the fact that our system of government finally works for them.

Furthermore, as I have indicated, it has been a measure of health and wholeness of the whole political community, and not only minorities but those in the majority of the community have seen the same procedure, developed their own sense of dignity and pride in their communities.

Statistical data clearly supports this. According to statistics recently released by the Voter Education Project of Atlanta, "607 blacks are holding elected offices in 11 Southern States representing an increase of nearly 19 percent in the 1980 elections." The Census Bureau figures for 1976 shows that black voter registration increased 60.7 percent in Mississippi, 35.1 percent in Alabama, 31.9 percent in Louisiana, 21.8 percent in South Carolina, 15 percent in Virginia, and 12.3 percent in Georgia from 1964 to 1976.

Data on Hispanic voter registration shows much greater participation by this group, especially in the States of Texas, California, and Colorado, since the mandate of bilingual education.

For probably the first time in our history, men and women regardless of color or race have the full opportunity to register and exercise their right to vote. But let us not assume that the progress made over the past 16 years under the Voting Rights Act has vetoed over 300 years of disenfranchisement for minorities in this great Nation. It has not.

Although the Voting Rights Act has been instrumental in eliminating poll taxes and intimidation of minorities, more subtle efforts still exist to dilute the minority vote. According to "The State of Civil Rights: 1979" issued by the Commission on Civil Rights, the Justice Department continues to initiate litigation to protect the voting rights of minorities. Such manipulation of the electoral process is often discriminatory in nature. Among the practices which hamper effective participation by minorities are at-large local elections, redrawing district lines, annexation, and moving polling places.

Our position is very clear on this issue. "If the right to vote is denied or if that vote itself is diluted, then to that extent the

membership of the voter in civil society is diminished and his political personhood is impaired."

Few would deny that discrimination still exists in this society. The Voting Rights Act has done much and is still doing much to ensure equality for minorities as they exercise their right to vote. We firmly believe that it is paramount that an extension of this act be granted through 1992 in order that this legislation will apply to reapportionment after the 1980 census.

Second, we are here because we are concerned that opponents of this legislation say the special enforcement provisions of the Voting Rights Act are no longer justified because the act has been so effective. The act has been successful. More blacks are registered to vote than at any time in history. Sections 4 and 5 have been expanded to cover Hispanics, Native Americans, Asian Americans, and Alaskan Natives. Bilingual elections have been mandated in many States and counties and the Hispanic vote has seen a tremendous increase. Yes, this act has been effective. But so effective that it's no longer needed? What an absurdity.

Discrimination at the polls still continues. As absurd as it may seem, this act is under attack because of its success. It is ironic that the success of this law is a factor that now makes it vulnerable.

At the heart of the Voting Rights Act is the provision for preclearance. If the preclearance provision were eliminated or expanded to all States, the effectiveness of the law would be seriously affected unless additional funds were added to insure that enforcement activities in areas presently covered by the law are not diminished. Without effective preclearance, further dilution of the minority vote would occur.

It is our belief that not enough time has elapsed to test the full impact of the Voting Rights Act and insure full voter participation for minorities. A few years of success cannot eradicate hundreds of years of discrimination.

Those who argue that preclearance discriminates against one region must be reminded of the continued efforts of many states covered by the preclearance provision to dilute the minority vote. It is only just that those States which have historically had the worst records of discrimination against minorities continue to share the major burden of eliminating those past and present discriminatory practices.

Third, we are here today because we believe that our democratic government is by the people and for the people. Our concern for the maintenance and enhancement of human rights and liberties and our concern for the ever fuller attainment of a just and open society are epitomized by our determination to protect the right to vote. The urgency of giving all adult members of our society equal access to the ballot must be realized by all Americans. It is in the interest of all Americans, and particularly the duty of their elected representatives in Congress, to protect the quality of the ballot.

Let me close by restating several paragraphs from our policy statement on "Equal Represenation as a Right of Citizenship."

The story of this Nation is in part the story of the extension of franchise to all adult citizens. The founders of our Nation failed to apply fully their daring insight that all men are created equal. They failed to give women the right to vote, and for the purpose of allocating representatives to the States, counted Negro slaves as

three-fifth persons and even then denied them the right to cast these votes themselves.

Ever since that time we have been striving as a nation toward a goal which could not then be, and has not yet been fully attained. For over a century we have suffered as a nation the continuing consequences of undervaluing the personhood of some of our fellow men. Recently we have begun to perform a national penance for this injustice every citizen's full belonging to the civic commonwealth of God's children. If our democracy is to function properly, those who are eligible to vote should be encouraged to exercise their franchise and to prepare themselves to vote intelligently on candidates and issues.

We believe that equal representation is every person's fundamental right and a necessary adjunct to full political personhood.

As these proceedings continue, the eyes of the nations of the world will be upon this committee, watching to see whether our legislative body in a bipartisan way, can meet the challenge of one of the greatest moral issues of our time—extension of the Voting Rights Act of 1965.

The Federal Government must continue to take leadership in this effort to ensure the right to vote for every citizen in this society. We call on this committee to stand firm in renewing the national commitment to the right to vote for all American citizens, regardless of race, creed, and color. We call on you to extend the Voting Rights Act by approving H.R. 3112.

Thank you, Mr. Chairman.

[The statement of Rev. George Telford follows:]

"TESTIMONY OF THE
NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A."
BY

THE REV. GEORGE TELFORD, VICE PRESIDENT
NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A.
FOR CHURCH AND SOCIETY

ON EXTENSION OF VOTING RIGHTS ACT

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE
HOUSE COMMITTEE ON THE JUDICIARY

MAY 7, 1981

Mr. Chairman and members of the Committee, my name is George Telford. I am from the state of Georgia. I am a minister in the Presbyterian Church in the U.S. and Vice President of the National Council of the Churches of Christ in the U.S.A. for Church and Society. I am here on behalf of the National Council of the Churches of Christ in the U.S.A. which represents 32 Protestant and Orthodox denominations and 42 million people. I am not undertaking to speak for all 32 constitutent member denominations, but for the policy making body, the Governing Board which is made up of representatives of our member denominations chosen by them in their own way and in proportion to their respective membership.

The National Council of the Churches of Christ in the U.S.A. has always been committed to the struggle for justice and human and civil rights. As religious people, we have historically felt that it was our moral duty and Christian responsibility to be concerned about the plight of minorities in this country. We are not newcomers to the issue before this Committee today. Throughout the years our position on voter rights has been clear. As early as 1952, two years after we were formed, we spoke out against "racial discrimination and segregation in all sectors of society."[1]

In February, 1961, in a "Resolution on the Right to Vote," we affirmed our position on the right of every citizen of this country to vote. I would like to read that resolution to you, for it speaks to the reason we are here this morning:

> "It is a clear teaching of the Christian faith that human rights, far from being granted by human authorities are inherent in man as fashioned in the image of his creator and should be thus honored by society. The Christian faith also affirms the belief that men have a corresponding responsibility to exercise these rights. The responsible society affords all men the opportunity to do so.
>
> As Christians in the United States, we believe that local, state and national governments deriving "their just powers from the consent of the governed," are responsible to God and to the people to maintain the freedom of all men under their respective jurisdictions to exercise these rights with due regard for the rights of others and for public order.
>
> The right to vote is guaranteed by the basic law of the land. Whatever qualifications are made by state law, the Fifteenth Amendment to the Constitution of the United States specifically provides that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or any state on account of race, color, or previous condition of servitude."
>
> Yet it is a fact that thousands of citizens are denied the opportunity to exercise the right to vote because of race or color. In many communities Negroes are denied the opportunity to register or, having been registered, have had their names removed from the registration rolls, or die not voting because their fear of bodily harm, the loss of jobs or other economic pressures. It is noteworthy that courts have declared unconstitutional state laws designed to deny the opportunity to register and vote on the basis of race and color.
>
> The denial of the right to vote contradicts the professed ideals and undermines the democratic heritage upon which this nation is founded. It is a violation of justice that prevents the exercise of responsible citizenship which is necessary to the creation of the good society."[2]

In July, 1963, the National Council of the Churches of Christ in the U.S.A gave joint testimony with the National Catholic Welfare Conference, and the Synagogue Council of America, on the voting rights issue before the Committee on Judiciary of the House of Representatives. In that testimony we stated:

> "It is a fact that on the basis of color or race hundreds of thousands of citizens are denied the opportunity to register and to exercise the right to vote. Therefore, we welcome and support legislation which will provide realistic guarantees for all citizens regardless of race or color, the full opportunity to register and to exercise the right to vote."[3]

In June, 1965, the National Council of the Churches of Christ in the U.S.A. adopted a Policy Statement on "Equal Representation is a Rights of Citizenship." In this Policy Statement, we reaffirmed our support of the right to vote and further stated:

> ". . . that many of the causes of civil rights and liberties we have long supported are at stake in the question of equal representation, and (we) now affirm our Christian conviction that one of the fundamental rights of citizenship is the right of every citizen to representation substantially equal to that of other citizens, regardless of where he lives or what may be his wealth or learning.
>
> We do not find in the nature of men as children of God any distinction of such kind that one man should cast a vote worth more than anothers. Neither race nor religious adherence, neither property nor education, neither rural residence, nor urban, nor appeal to states rights, entitles one man or group of men to a disproportionate share in the basic franchise by which their civic affairs are governed. The structures of government erected upon this base may vary in design and operation according to the development of the techniques of political science, but the right of every person to say his full "yea" or "nay" in periodic elections is more than a technical question.
>
> If the right to vote is denied, or if the vote itself is diluted, then to that extent, the membership of the voter in civil society is diminished and his political personhood is impaired. He becomes less of a "man" than his fellows, and loses to them, some portion of his right to help determine his civic destiny. This is a moral question and ultimately a theological one, concerning which the National Council of the Churches of Christ in the U.S.A. may not remain silent."[4]

We come before this Committee today for three reasons. First of all, we believe that the Voting Rights Act is one of the most successful pieces of civil rights legislation in the history of this nation.

In those states and countries, especially in the South and West, affected by Sections 4 and 5, we have seen progress in minority voter registration in the election of

minority officials and in the protection of minority voting rights. It is our feeling that the Voting Rights Act is crucial to minority political participation.

Many of our congregations are located in the areas affected by Section 4 and 5 of this Act and we have seen minorities in those areas exercise their right to vote with dignity and pride. We have seen minorities become enthusiastic about government when they see that they are not excluded from representation because of the color of their skin. We have seen minorities applaud the fact that the number of minority elected officials has increased tremendously over the past 16 years. Recently, minorities have seen themselves represented in local, state and federal government as a result of the Voting Rights Act and they relish the fact that our system of government finally works for them.

Statistical data clearly supports this. According to statistics recently released by the Voter Education Project of Atlanta, "607 Blacks are holding elected offices in 11 Southern states representing an increase of nearly 19% in the 1980 elections."[5] The Census Bureau figures for 1976 shows that Black voter registration increased 60.7% in Mississippi, 35.1% in Alabama, 31.9% in Louisiana, 21.8% in South Carolina, 15% in Virginia and 12.3% in Georgia from 1964 to 1976.[6]

Data on Hispanic voter registration shows much greater participation by this group, especially in the states of Texas, California, and Colorado, since the mandate of bilingual elections.

For probably the first time in our history, men and women regardless of color or race have the full opportunity to register and exercise their right to vote. But let us not assume that the progress made over the past 16 years under the Voting Rights Act has vetoed over 300 years of disenfranchisement for minorities in this great nation. It has not.

Although the Voting Rights Act has been instrumental in eliminating poll taxes and intimidation of minorities, more subtle efforts still exist to dilute the minority vote. According to "The State of Civil Rights: 1979" issued by the U.S. Commission on Civil Rights, the U.S. Justice Department continues to initiate litigation to protect the voting rights of minorities.[7] Such manipulation of the electoral process is often discriminatory in nature. Among the practices which hamper effective participation by minorities are at-large local elections, redrawing district lines, annexation, and moving polling places.

Our position is very clear on this issue. The Resolution read earlier stated, "If the Right to Vote is denied or if that vote itself if diluted, then to that extent the membership of the voter in civil society is diminished and his political personhood is impaired."[8]

Few would argue that discrimination still exists in this society. The Voting Rights Act has done much and is still doing much to insure equality for minorities as they exercise their right to vote. We firmly believe that it is paramount that an extension of this Act be granted through 1992 in order that this legislation will apply to reapportionment after the 1990 Census.

Secondly, we are here because we are concerned that opponents of this legislation say the special enforcement provisions of the Voting Rights Act are no longer justified because the Act has been so effective. The Act <u>has</u> been successful. More Blacks are registered to vote than at any time in history. Sections 4 and 5 have been expanded to cover Hispanics, Native Americans, Asian Americans, and Alaskan natives. Bilingual elections have been mandated in many states and counties and the Hispanic vote has seen a tremendous increase. Yes, this Act has been effective. But <u>too</u> effective? What an absurdity.

Discrimination at the polls still continues. As absurd as it may seem, this Act is under attack because of its success. It is ironic that the success of this law is a factor that now makes it vulnerable.

At the heart of the Voting Rights Act is the provision for preclearance. If the preclearance provision were eliminated or expanded to all states, the effectiveness of the law would be seriously affected unless additional funds were added to insure that enforcement activities in areas presently covered by the law are not diminished. Without effective preclearance, further dilution of the minority vote would occur.

It is our belief that not enough time has elapsed to test the full impact of the Voting Rights Act and insure full voter participation for minorities. A few years of success cannot eradicate hundreds of years of discrimination.

Those who argue that preclearance discriminates against one region must be reminded of the continued efforts of many states covered by the preclearance provision to dilute the minority vote.

It is only just that those states that have historically had the worst records of discrimination against minorities continue to share the major burden of eliminating those past and present discriminatory practices.

Third, we are here today because we believe that our democratic government is "by the people and for the people." Our concern for the maintenance and enhancement of human rights and liberties and our concern for the ever fuller attainment of a just and open society are epitomized by our determination to protect the right to vote. The urgency of giving all adult members of our society equal access to the ballot must be realized by all Americans. It is in the interest of all Americans, and particularly the duty of their elected representatives in Congress, to protect

the quality of the ballot.

Let me close by restating several paragraphs from our Policy Statement on "Equal Representation As A RIght of Citizenship."

> "The story of this nation is in part the story of the extension of franchise to all adult citizens. The founders of our nation failed to apply fully their daring insight that all men are created equal. They failed to give women the right to vote, and for the purpose of allocating representatives to the States counted Negro slaves as three-fifth persons and even then denied them the right to cast these votes themselves.
>
> Ever since that time, we have been striving as a nation toward a goal which could not then be, and has not yet been fully attained. For over a century we have suffered as a nation, the continuing consequences of undervaluing the personhood of some of our fellow men. Recently, we have begun to perform a national penance for this injustice . . . we should move toward the integrity and equality of every citizen's full belonging to the civic commonwealth of God's children. If our democracy is to function properly those who are eligible to vote should be encouraged to exercise their franchise and to prepare themselves to vote intelligently on candidates and issues.
>
> We believe that equal representation is every person's fundamental right and a necessary adjunct to full political personhood . . ."

As these proceedings continue, the eyes of the world will be upon this Committee, watching to see whether our legislative body, in a bi-partisan way, can meet the challenge of one of the greatest moral issues of our time - extension of the Voting Rights Act of 1965.

The federal government must continue to take leadership in this effort to insure the right to vote for every citizen in this society.

We call on this Committee to stand firm in renewing the national commitment to the right to vote for all American citizens regardless of race, creed, and color. We call on you to extend the Voting Rights Act by approving H.R. 3112.

Thank you.

FOOTNOTES

1. A resolution on "Christian Responsibility in the 1952 Election." A statement passed by the General Board of the National Council of Churches of Christ in the U.S.A. at its bimonthly meeting on September 24, 1952 in New York City.

2. A resolution on the "Right To Vote." A statement passed by the General Board of the National Council of Churches of Christ in the U.S.A., February 23, 1961.

3. "Testimony on Civil Right's Legislation" presented to the Committee on Judiciary House of Represenatives by the National Catholic Welfare Conference, Synagogue Council of America, and the National Council of Churches of Christ in the U.S.A., July 24, 1963.

4. Policy Statement on "Equal Representation as a Right of Citizenship." A policy statement of the National Council of Churches of Christ in the U.S.A. adopted by the General Board on June 3, 1965.

5. Washington Post article, "19% of All Blacks Gain Office in '80's." Washington Post, April 23, 1981.

6. Voter Project of the Southern Regional Council; 1976 statistics, U.S. Census Bureau, 1978.

7. United States Commission on Civil Rights, "The State of Civil Rights, 1979," published in January 1980.

8. National Council of Churches of Christ in the U.S.A. Policy Statement, "Equal Representation is a Rights of Citizenship." June 3, 1965.

9. National Council of Churches of Christ in the U.S.A. Policy Statement, "Equal Representation is a Rights of Citizenship." June 3, 1965.

The Right To Vote

It is a clear teaching of the Christian faith that human rights, far from being granted by human authorities are inherent in man as fashioned in the image of his Creator and should be thus honored by society. The Christian faith also affirms the belief that men have a corresponding responsibility to exercise these rights. The responsible society affords all men the opportunity to do so.

As Christians in the United States we believe that local, state and national governments deriving "their just powers from the consent of the governed," are responsible to God and to the people to maintain the freedom of all men under their respective jurisdictions to exercise these rights with due regard for the rights of others and for public order.

The right to vote is guaranteed by the basic law of the land. Whatever qualifications are made by state laws, the Fifteenth Amendment to The Constitution of the United States specifically provides that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color or previous condition of servitude."

Yet it is a fact that thousands of citizens are denied the opportunity to exercise the right to vote because of race or color. In many communities Negroes are denied the opportunity to register or, having been registered, have had their names removed from the registration rolls, or do not vote because they fear bodily harm, the loss of jobs or other economic pressures. It is noteworthy that courts have declared unconstitutional state laws designed to deny the opportunity to register and vote on the basis of race or color.

The denial of the right to vote contradicts the professed ideals and undermines the democratic heritage upon which this Nation is founded. It is a violation of justice that prevents the exercise of responsible citizenship which is necessary to the creation of the good society.

THEREFORE, BE IT RESOLVED THAT THE NATIONAL COUNCIL OF CHURCHES

1. Commits itself to work to assure the opportunity for all citizens regardless of race or color, to exercise their right to vote:

   a) by moral suasion;

   b) by social education and action;

   c) by supporting public officials and government agencies in the enforcement of existing laws guaranteeing the opportunity to register and vote; and

   d) by supporting in principle through appropriate means additional legislation which may be necessary to guarantee to all citizens regardless of race or color, full opportunity to register and vote.

2. Calls upon the member denominations, their churches, councils of churches and individual Christians to work to assure to all citizens, regardless of race or

color, the opportunity to register and vote.

3. Urges church groups and individual Christians

   a) to discover the facts about registration and voting in their communities;

   b) to acquaint themselves with state laws and practices affecting registration and voting and with the provisions of the Federal Civil Rights Acts of 1957 and 1960;

   c) to develop programs such as citizenship conferences and voter's clinics to encourage all citizens to register and vote intelligently and responsibly;

   d) to support and cooperate with similar programs carried on by community organizations;

   e) to support persons in their efforts to register and vote in communities where the opportunities are denied or restricted because of race or color;

   f) to support public officials and government agencies in the enforcement of federal and state laws that protect the right to register and vote;

   g) to support the enactment of additional federal and state legislation necessary to guarantee the franchise to all citizens.

BE IT FURTHER RESOLVED

that the General Board authorize representatives of the National Council of Churches to testify at public hearings along the lines indicated above.

Adopted by the General Board of the National Council of Churches, February 23, 1961

A POLICY STATEMENT *of the National Council of the Churches of Christ in the United States of America*

EQUAL REPRESENTATION IS A RIGHT OF CITIZENSHIP

Adopted by the General Board

June 3, 1965

The General Board of the National Council of Churches of Christ in the U.S.A. has repeatedly expressed its Christian concern for the maintenance and enhancement of human rights and liberties, most recently for "the right to full participation of the person in political and civic life."[1] The General Board has an equal concern for the ever fuller attainment of a just and open society. Both of these concerns have come to focus in the right to vote.

As our understanding of the God-given dignity of man has developed and matured, most of our fellow-citizens have now realized the urgency of giving all adult members of our society equal access to the ballot. What has not been as widely realized is the necessity of protecting the quality of the ballot. We welcome the action of our Commission on Religion and Race within its special mandate witnessing to the conviction that "every American citizen has, as his inalienable right, not only an equal right to vote, but also a right to an equal vote."[2]

The condition has arisen in our country that many legislatures have refused to reapportion themselves according to the shifting of population, thus permitting the representatives of less populous areas to continue to outnumber the representatives of the growing cities and suburbs, and so to maintain their dominance over the affairs of the several states.

In recent years, the courts have sought to rectify this condition by insisting that the legislatures be reapportioned in proportion to the current distribution of population, so that the votes of all citizens for their legislators would be substantially equal in effect. The Supreme Court's interpretation of the equal protection clause of the Constitution guarantees this personal right of representation for individual voters. This right must not be abrogated by any constitutional revision. But the Supreme Court's decisions have been met by moves to amend the United States Constitution to withdraw this issue from the jurisdiction of the courts and to permit the states by referendum of their present voters or by other means to apportion the membership of one house of a bicameral legislature on factors other than population.

In the light of these circumstances, the General Board concludes that many of the causes of civil rights and liberties we have long supported are at stake in the question of equal representation, and now affirms our Christian conviction that one of the fundamental rights of citizenship is the right of every citizen to representation substantially equal to that of other citizens, regardless of where he lives or what may be his wealth or learning.

We do not find in the nature of men as children of God any distinction of kind such that one man should cast a vote worth more than another's. Neither race nor religious adherence, neither property nor education, neither rural residence nor urban, nor appeal to states rights, entitles one man or group of men to a disproportionate share in the *basic franchise* by which their civic affairs are governed. The structures of government erected upon this base may vary in design and operation according to the development of the techniques of political science, but the right of every person to say his full "Yea" or "Nay" in periodic elections is more than a technical question.

If the right to vote is denied, or if the vote itself is diluted, then to that extent the membership of the voter in civil society is diminished and his political personhood is impaired. He becomes less of a "man" than his fellows, and loses to them some portion of his

[1] Policy Statement on *Human Rights*, unanimously adopted by the General Assembly, December 6, 1963.

[2] Resolution on Reapportionment, by the Commission on Religion and Race, April 14, 1965.

right to help determine his civic destiny. This is a moral question and ultimately a theological one, concerning which the National Council of the Churches of Christ may not remain silent.

When the founders of our nation declared, "All men are created equal and are endowed by their Creator with certain inalienable rights," they perceived and expressed a profound truth about the nature of man, which earlier generations had not had the social experience or political opportunity to discover. In the Christian view man is a child of God who is loved by His Heavenly Father, and who is called to love his brother as a member of God's family. As such he is also a son of God who is of infinite value in God's sight and who, in obedient response to His will, values all other human beings as sons of God with the dignity and the freedom of action of such sonship.

Believing, then, that "all men are created equal" – not in their abilities but in their rights among the rest of humankind – we do not know of any proper basis on which that equality can be reduced or the rights which God has given alienated, not even by majority vote of the electorate. Individuals may refrain from exercising their franchise, but it ought not to be kept or taken from them – in whole or in part – by those who presently possess political power in order to perpetuate their possession of that power. Rights guaranteed to persons by the Constitution are not "rights" if they depend on the outcome of elections.

The story of this nation is in part the story of the extension of the franchise to all adult citizens. The founders of our nation failed to apply fully their daring insight that all men are created equal. They failed to give women the right to vote, and for the purpose of allocating representatives to the states counted Negro slaves as three-fifths persons and even then denied them the right to cast these votes themselves.

Ever since that time, we have been striving as a nation toward a goal which could not then be, and has not yet been, fully attained. For over a century we have suffered as a nation the continuing consequences of undervaluing the personhood of some of our fellowmen. Recently we have begun to perform a national penance for this injustice. But having striven thus far toward achieving a genuine and effective political equality, we should not now change our Constitution in any way that would take our nation back toward fractional citizenship. Rather we should move in the opposite direction: toward the integrity and equality of every citizen's full belonging to the civic commonwealth of God's children. If our democracy is to function properly those who are eligible to vote should be encouraged to exercise their franchise and to prepare themselves to vote intelligently on candidates and issues.

We believe that equal representation is every person's fundamental right and a necessary adjunct to full political personhood. Therefore, the National Council of Churches records its opposition to the proposals for an amendment to the Constitution or any other moves which would restrict the right of every person to substantially equal representation.

For 77 - Against 16 - Abstained 7.

Mr. EDWARDS. Thank you very much, Dr. Telford, for your very scholarly and comprehensive and useful statement.

Rabbi Saperstein, I wonder what—well, in light of what has being going on with regard to, we'll say black people in the United States, where a number of social programs that have been designed to assist them in becoming full partners in American society will be cut back, where we find unfortunately a resurgence of the Ku Klux Klan, we see congressional attacks on affirmative action programs and we also see a new interest in being friendly with South Africa, what is going to be the impact on America, on our minority populations, if this Voting Rights Act is not extended?

Rabbi SAPERSTEIN. You point out various manifestations of the kind of tone and mood to which I alluded in my testimony. The social vision of America, the vision of America as the nation exemplar to the world of social justice, of equal rights, of a commitment to human rights throughout the world, has become, particularly in the last year, as a result of the rhetoric of this last election, confused and blurred. This has helped disguise the fundamental commitment to that vision that I still believe exists.

It is clear to me that if this act, one of the most successful laws in the history of this country, one of those acts that symbolizes a commitment to racial justice and social equity in this country, is diluted or defeated, that a message will reverberate to the minorities of this country, to all good people throughout the world, that the United States no longer stands firm in its commitment to achieving those goals.

Therefore, I think there is a symbolic as well as a fully functional reason why this act needs to be preserved and continued in the form that it has served this nation so well.

Mr. EDWARDS. Would it be difficult for us to continue to move toward a healthy, peaceful society?

Rabbi SAPERSTEIN. That seems to be clear. The recent gutting of social programs is in danger of producing an underclass of people in this country, particularly minority people in this country, particularly minority youth in this country who sit on the dungheaps of our ghettos and slums; people who are out of work, who are out of school, out of job opportunities, out of patience, and out of hope. And we are in danger of recycling them into a permanent underclass that makes a mockery of our pretensions to justice and democracy.

They are a profound challenge to us and if now we deprive that same group of the fundamental ability to redress their grievances through the exercise of fundamental voting rights, then I think we have lost the battle and this country is going to be torn apart. So I see this as one part of a larger test of our commitment to social justice and fairness in this country.

Mr. EDWARDS. Thank you.

Dr. Telford, in the next few months there will be a strong campaign for this legislation and a strong campaign against it, in both Houses of Congress, and I think from what your testimony indicated, that those who are working to extend the Voting Rights Act will receive support on a nationwide basis from the National Council of Churches, various denominations in the United States; is that correct?

Dr. TELFORD. Mr. Chairman, I am firmly convinced that there are matters of dispute within the religious community on a variety of issues, but there is very little question that the religious community in this country at large, and the Christian community as one section of that community, has found this particular act absolutely crucial for our health and the society as a whole. I am convinced that the vast majority of members of the religious community find this an eminently sane act; moreover, they find it an act which enables us to achieve a fundamental measure of justice without a long and cumbersome and costly procedure which requires persons to initiate various acts of legislation.

I am convinced that the deterrent effect of the preclearance procedure has been something that has contributed to our health as distinguished from one that would require citizens to enter into a situation of litigation that does not bode well for our future. I share with the Rabbi a concern about the signals that would be given in this time, to which you made reference, in which persons and minority communities are not experiencing as much hope in the legislative and political processes as they might like.

This is a very fundamental act, and I am convinced that men and women of good will and in the religious community nationwide will bind themselves very strongly to their brothers and sisters in the minority community in this country, to preserve this critical act for their life, and I think it is just crucial for this committee, to which the religious community has looked and for so long as a critical bellweather for justice and for health and wholeness in our Nation, to presevere very strongly in this act, and I am convinced it will have the support of the vast majority of the citizens of the country.

It may not have it from people who find themselves occasionally bothered by specific procedures that they have to initiate in order to get clearance for changes they wish to make in voting procedures in their communities, but my own sense of the situation is that those procedures have been minimally burdensome on the persons that have had to get those clearances. It is, as you yourself know, not a very burdensome procedure. As a matter of fact, it will become much more burdensome, it seems to me, if we had to go through a long court procedure to achieve fundamental justice in this.

So I am convinced that—not simply for moral and religious reasons, but for very pragmatic reasons, cost effectiveness and health of our society—the religious community as a whole—and not simply elected formal leadership people, but the grassroots people and in the South itself where it is alleged that this is such a major burden—has found it contributing very significantly to the health of their communities. I do not detect from the members of the congregations that I have served in Alabama, Virginia, and Florida, a great hue and cry about this being a burden.

Mr. EDWARDS. Thank you.

Counsel?

Ms. DAVIS. Thank you, Mr. Chairman. My question is directed to both of the witnesses.

I would like to know if you can indicate in your travels throughout the South what kind of voting discrimination you see going on today?

Dr. TELFORD. There are a varity of such things. The Atlanta Constitution several weeks ago now had a series of articles in which they examined what was happening, particularly in south Georgia counties—the various efforts that are made to dilute minority voting strength. I don't have those articles with me, but they would be useful for the committee to look at as a report out of the South itself, from one of its leading newspapers, regarding those instances. I do know the controversy in DeKalb County, Ga., right next to my residence, over use of the at-large method of electing school board members, as well as over the number of State representatives and the size of the 56th District. The 56th District has 75,000 residents who elect three delegates to the Georgia House of Representatives on a districtwide basis. And although that district contains a large percentage—not a majority—of blacks, blacks are complaining about the size of the district diluting their voting strength.

In fact, all three delegates from the 56th District are white, and black residents are concerned that the county establish a single-member district so that they may have some just representation.

It's not only that kind of positive action, but as a matter of fact, where there are single member districts, there is an effort constantly being made to dilute voting strength. The Justice Department indicates that most of the changes it has had to reject from those regions of the country are proposals for at-large elections where there were previously district elections, I am convinced that those would be used much more if the Justice Department advance approval were not needed.

I am convinced that the deterrent effect is at least as critical as the effect of the particular objections that are rendered. I think the committee must surely be sensitive to that. I know from time to time persons note that after all, there were not all that many objections. But the objections seem to be increasing, and certainly the number of proposed election law changes have increased during this past 4-year period.

The State of Georgia from 1965-80 proposed 3,091 election law changes. Of that number, 1,998 were in the period 1976-80, and they tend to be proposals that attempt to dilute minority strength either by at-large elections or by annexation. There are efforts constantly now to propose in my own section of the country, that the city which I am a resident of be enlarged by annexation—a proposal that is not supported by the city of which I am a resident. But it is supported by members of the State legislature who themselves also are proposing to find some way to enlarge the city.

And all the proposals that I have seen do not propose to enlarge the city by an equitable representation of the racial makeup of that region. City residents of minority heritage are located largely in the south and southwest part of the city, and most of the proposals for annexation would annex the north part of the city outside of the city, which is itself almost totally white. That being the case, if that were successful, then one of the cities of the country that has provided some of the strongest leadership and

been a great encouragement to many, not only in that particular region but to people across the South, will find itself adversely affected.

These proposals are not made from simply a proposal that we increase the tax base, though that is often what is alleged to be the case. These proposals are made—and one hears the comment on the side and sometimes sees comments in print, indicating a very serious concern about the political makeup of the city. These are the kinds of things that, it seems to me, are problems all over the South. It seems to me that one is not helped by forcing those issues constantly into the courts. I believe that does not contribute to the health of the political process that we need.

Rabbi SAPERSTEIN. My only experience is Dr. Telford's precisely. I would merely point out that the fear amongst people struggling for rights in the South, that this trend will be intensified and is exacerbated by revisions done at the end of the census period, and there is normally a flurry of such redistricting at that time. And I think it is more important than ever before, during these next few years, that these provisions be strongly in effect.

Mr. EDWARDS. Counsel, Mr. Boyd.

Mr. BOYD. Dr. Telford, you mentioned that since 1976 there were over 4000 proposals involving electoral changes?

Dr. TELFORD. The figures I have indicate that of the 3091 proposed election law changes in Georgia, 1998 of these were proposed from 1976 to 1980.

Mr. BOYD. How many of those were objected to?

Dr. TELFORD. I don't know that. I don't have the percentage of the ones from 1976 to 1980. I only have the percentages of those for the period from 1965 to 1980. My sense is that there probably were not an enormous number of those. My sense also is that the reason for that is the deterrent effect of the particular law that is now in effect. It's clear to me from my own reading of the paper and on consultation with other persons, that there are advance consultations with the Justice Department before such proposals and made. The question of the number of objections does not seem to me to be a very salient factor in the thing.

It is possible that maybe objection and the accommodations that are made before laws are fully put into effect are appreciable.

Mr. BOYD. I understand. I mentioned the number of objections because you raised the number of proposals.

On page 6 of your statement you speak, as others have this morning, of concern for proposals which would extend section 5 nationwide; that is, the preclearance provisions of section 5 nationwide. I wonder if you could provide us with the particular proposals to which you refer.

Dr. TELFORD. I don't have those proposals readily at hand. I was comforted by Mr. Hyde's assurance this morning that no present members of this committee—nor any members of the House that he knows of—are proposing that at the present time. It is my understanding that such proposals have been made in the past.

Of course, if such proposals were made, then it would seem to me that would effectively emasculate the law by making it almost impossible to administer. But it is indeed comforting that that is not what is being presently proposed.

Mr. BOYD. I think Mr. Hyde would agree with you.

Thank you, Mr. Chairman.

Mr. EDWARDS. Well, our thanks to both of the witnesses. Those bells mean that I have to go to the floor, and we have had excellent witnesses this morning and I hope that the message gets through, and I feel confident that it will. That is my goal, and I hope President Reagan will one day soon let us know of his support also. But that is an important part of your work, too. I am sure there are any number of people that attend your churches who voted for President Reagan and have connections with him, and I think it is very important to have this support also.

We haven't heard from him yet, but both of your statements and answers to the questions we appreciate.

[Whereupon, at 12:45 p.m., the hearing was adjourned.]

[H.R. 3473, introduced by Mr. Hyde on May 6, supersedes his previous bill, H.R. 3198. H.R. 3473 follows:]

I

97TH CONGRESS
1ST SESSION

H. R. 3473

To Amend the Voting Rights Act of 1965.

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 1981

Mr. HYDE introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To Amend the Voting Rights Act of 1965.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Voting Rights Amendments Act of 1981".

SEC. 2. Section 2 of the Voting Rights Act of 1965 is amended—

(1) by inserting "(a)" after "SEC. 2."; and

(2) by adding at the end the following new subsection:

"(b) No State or political subdivision shall enact or seek to administer any voting qualification, or prerequisite to voting, or standard, practice, or procedure with respect to voting, different from that in force or effect on the date of enactment of the Voting Rights Amendments Act of 1981, for the purpose or with the effect of denying or abridging 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).".

SEC. 3. Section 3(c) of the Voting Rights Act of 1965 is amended by striking out "If" and all that follows through "during such period" and inserting in lieu thereof "If an aggrieved person or the Attorney General prevails in a proceeding instituted by either person against a State or a political subdivision under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment the court may, and if an aggrieved person or the Attorney General prevails in any proceeding instituted against a State or a political subdivision under section 12(g) the court shall, in addition to such other relief as the court shall grant, order that, for a period of not more than four years after the order is made,".

SEC. 4. (a) Section 4(a) of the Voting Rights Act of 1965 is amended—

(1) by striking out the first sentence;

(2) in the second sentence—

(A) by striking out "on account of race or color, or" each place it appears; and

(B) by striking out "the third sentence of";

(3) in the sentence beginning "The court shall retain jurisdiction" by striking out "on account of race or color, or";

(4) by striking out the first sentence beginning "If the Attorney General determines that he has no reason to believe"; and

(5) in the second sentence beginning "If the Attorney General determines that he has no reason to believe"—

(A) by striking out "on account of race or color, or"; and

(B) by striking out "the second sentence of".

(b) Section 4(b) of the Voting Rights Act of 1965 is amended—

(1) by striking the first two sentences; and

(2) in the third sentence by striking out "in addition to any State or political subdivision" and all that follows through "the previous two sentences, the provisions of".

(c) Section 4(f)(4) of the Voting Rights Act of 1965 is amended by striking out "the second sentence of".

SEC. 5. Section 5 of the Voting Rights Act of 1965 is amended by striking out "Whenever a State" and all that follows through "based on determinations made under the third sentence of section 4(b)" and inserting in lieu thereof "Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a)".

SEC. 6. Section 12 of the Voting Rights Act of 1965 is amended by adding at the end the following:

"(g) Whenever the Attorney General has reasonable cause to believe that any person or governmental entity or group of persons or governmental entities is engaged in a pattern or practice which has the purpose or effect of denying the full enjoyment of any of the rights granted or protected by this Act, or that any group of persons has been denied any of the rights granted or protected by this Act and such denial raises an issue of general public interest, the Attorney General may bring a civil action in any appropriate United States district court by filing with that court a complaint setting forth the facts and requesting such relief, as the Attorney General deems necessary to assure the full enjoyment of the rights granted or protected by this Act.

"(h) In any civil action instituted by an individual to secure rights granted or protected by this title, the Attorney General may intervene in such civil action if the Attorney

General certifies that the case is of general public importance.".

EXTENSION OF THE VOTING RIGHTS ACT

WEDNESDAY, MAY 13, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, at 2 p.m., in room 2237 of the Rayburn House Office Building, Hon. Don Edwards (chairman of the Subcommittee) presiding.

Present: Representatives Edwards, Kastenmeier, Schroeder, Washington, Hyde, and Sensenbrenner.

Staff present: Catherine LeRoy, counsel; Ivy L. Davis and Helen C. Gonzales, assistant counsel; and Thomas M. Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

Today we are going to continue our hearings on proposed legislation to extend and amend the Voting Rights Act of 1965.

Our previous witnesses have eloquently set forth the historical basis for passage of the original act in 1965, and with today's hearings we are going to turn our focus to current voting discrimination problems which compel extension of the special provisions of the Voting Rights Act.

I yield to the gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

I ask unanimous consent that the subcommittee permit coverage of this hearing in whole or in part by the television broadcasters, radio broadcasters, still photography, in accordance with committee rules.

Mr. EDWARDS. Any objection?

[No response.]

Mr. EDWARDS. The Chair hears none. So ordered.

The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. I'll save the opening statements until the witnesses start. Thank you, Mr. Chairman.

Mr. EDWARDS. The gentlewoman from Colorado.

Ms. SCHROEDER. I'll save mine, too.

Mr. EDWARDS. We are honored today to have as our first witness the Reverend Jesse L. Jackson, president of Operation PUSH, Inc.

As an aide to Dr. Martin Luther King, Reverend Jackson played a key role in the efforts of the civil rights movement to assure passage of the Voting Rights Act.

Reverend Jackson has continued voter registration efforts in Chicago and elsewhere, and has recently returned from a trip to the South where he surveyed black registration and voting issues.

Reverend Jackson, we welcome you. Will you introduce your colleagues, and you may proceed.

TESTIMONY OF THE REVEREND JESSE L. JACKSON, PRESIDENT, OPERATION PUSH, ACCOMPANIED BY LES McLEMORE, PROFESSOR OF POLITICAL SCIENCE, JACKSON STATE UNIVERSITY, AND STATE COORDINATOR OF OPERATION PUSH; LAMOND GODWIN, SPECIAL ADVISER; AND JOHN HARPER, ESQ., VOTING RIGHTS ACT LITIGATION SPECIALIST

Reverend JACKSON. Thank you very much, Mr. Chairman.

To my right is Dr. Les McLemore, professor for political science at Jackson State University in Mississippi, State coordinator of Operation PUSH; to my immediate left, Mr. Lamond Godwin, who is serving as special adviser to Operation PUSH; and Mr. Chairman, to my extreme left, attorney John Harper from Columbia, S.C., who is a Voting Rights Act litigation specialist in South Carolina who is our State coordinator for Operation PUSH and——

Mr. EDWARDS. Can the people in the back of the room hear Reverend Jackson?

[Chorus of noes.]

Reverend JACKSON. The Baptist preachers have to build to a crescendo, Mr. Chairman. We can't start off too high. [Laughter.]

I'll go through it again.

To my extreme left, Attorney John Harper from Columbia, S.C., who is a Voting Rights Act litigation specialist and a State coordinator for Operation PUSH in that State; Dr. Lamond Godwin to my immediate left, special adviser to Operation PUSH; and Dr. Les McLemore, professor of political science, Jackson State University in Mississippi and State coordinator of Operation PUSH in the State of Mississippi.

Mr. Chairman and members of the subcommittee, Congressman Hyde, Congressman Washington, Congresswoman Schroeder, others of you, I am here today to inform you of my unequivocal support of the Voting Rights Act which is unquestionably the most effective civil rights law ever enacted by the Congress in the entire history of this Nation.

This law which should never have been needed in a democratic society in the first place was enacted in 1965 and extended in 1975 because of 100 years of litigation under the 14th and 15th amendments and other so-called civil rights laws proved to be useless in combatting blatant racist tyranny against blacks and other racial minorities, especially in the southern states.

The Voting Rights Act is the only piece of national legislation that has succeeded in transforming the vague guarantees provided to blacks, other minority groups, and poor whites under the Constitution from hollow, half-hearted promises into legally enforceable rights.

Moreover, one of the most important, but least appreciated, accomplishments of the Voting Rights Act is the fact that by striking down literacy tests and other undemocratic voting restrictions, this law has liberated and enfranchised millions of poor whites.

Because of this law the number of blacks registered to vote in South Carolina, Alabama, Mississippi, Louisiana, Georgia, Virginia, and parts of North Carolina has doubled since 1965; Hispanic regis-

tration has increased by 30 percent nationwide and by 44 percent in the Southwest.

Thousands of black and Hispanic men and women have been elected to public office; and the U.S. Department of Justice has developed special expertise in fighting racial discrimination in voting that it otherwise would not have.

This vital piece of legislation places the full force and power of the Federal Government on the side of those millions of citizens who have been systematically denied the right to vote or had that right compromised.

Unless the Congress takes action to preserve the Voting Rights Act, its key provisions, especially section 5 which is the heart of this law, will expire after August 6, 1982.

I am here today to urge that you not only extend these provisions, but also that you strengthen the Voting Rights Act to combat new forms of denials and to correct a misinterpretation of the act resulting from the recent Supreme Court decision in the *City of Mobile* v. *Bolden* case.

I therefore endorse H.R. 3113, introduced by Congressman Rodino, and S. 895, cosponsored by Senators Mathias and Kennedy. These identical legislative initiatives would:

First, provide for a 10-year extension of section 5 which requires that certain State and local governments demonstrate to the U.S. Department of Justice prior to their implementation that new changes in voting or election procedures will not discriminate against blacks and other racial minorities.

Second, continue the requirement that certain State and local jurisdictions provide assistance in other languages to voters who are not literate or fluent in English.

Third, amend section 2 of the act to clarify the confusion caused by the *Bolden* decision concerning standards of evidence for proof of voting discrimination.

We must not allow this vital legislation to expire because, despite the progress that has been achieved, there are still large concentrations of unregistered black and brown voters in the South and Southwest.

I will tell you that black and Hispanic people are still being denied the right to vote in the jurisdictions covered by the Voting Rights Act. Although we may have moved from blatant tyranny and terror to equal protection under the law, we have a long way to go to achieve equal protection within the law, because new and subtle forms of denial have replaced the literacy test and the poll tax.

For example, discriminatory annexation schemes are a new form of denial; the use of inconvenient registration times and polling places are new forms of denial; shifting from district or ward elections to at-large elections is a new form of denial; prohibition of single-shot voting is a new form of denial; racial gerrymandering of district lines is a new form of denial.

Although we changed the law, we simply moved from blatant tyranny to surreptitious tyranny in many of the jurisdictions covered by the Voting Rights Act because we left the foxes in charge of the hen house.

We have abundant evidence to substantiate the continuing denial of the voting rights of black citizens in the South. Edgefield County, S.C., the home of Strom Thurmond, chairman of the Senate Judiciary Committee, is a notorious example of this. One year after the voting rights law was enacted the Edgefield County government was illegally restructured in flagrant violation of section 5.

On two separate occasions, once in 1966 and again in 1976, changes in the county's political system were made without preclearance from the Department of Justice, as is required by the Voting Rights Act.

I am telling you that the Edgefield County government broke the law and the Federal Government has done nothing about it. The Justice Department was not even aware that these violations had occurred until black citizens filed complaints, because the Federal Government's monitoring procedures are inadequate. And when the complaints were filed they were ignored. At this very moment Edgefield County is in violation of the law.

I challenge this subcommittee to go with me to Edgefield County to investigate these violations. You need to hear testimony directly from the people who have been victimized. You need to learn first hand why no black person has been elected to county office in Edgefield in this century, even though the population of this county was 70 percent black in 1970 and is roughly 50 percent black today.

Many black people in Edgefield County believe that certain members of the Congress are more interested in placating the chairman of the Senate Judiciary Committee than in protecting their civil rights laws.

I challenge you to examine first hand the violations of the Voting Rights Act in Senator Thurmond's hometown.

Jackson, Miss., provides evidence of another form of denial. The city of Jackson annexed white areas in a clear effort to dilute the black vote. The Department of Justice registered an objection under section 5 in 1976. The city refused to honor the objection, continued to allow residents of the illegally annexed areas to vote, and the Justice Department has taken no action to enforce the law.

Section 12 of the Voting Rights Act prescribes the penalties for such violations; the Justice Department has never invoked them.

Next month, June 2, a black person running for mayor of Jackson is likely to lose the election because the Justice Department has failed to invoke the remedies available under the Voting Rights Act.

I urge you to inquire about the Justice Department's inaction, and I challenge you to go with me to Jackson to see the effect of this new form of denial.

The State of Mississippi also provides evidence of another form of denial—racial gerrymandering. Historically, congressional districts in Mississippi have run from north to south. But in 1966, 1 year after the passage of the Voting Rights Act, Mississippi restructured its congressional districts so that they now run from east to west, a deliberate and successful effort to dilute the voting strength of blacks who are concentrated in the delta region.

Throughout the South, the powers that control State and local governments have made it as difficult as possible for blacks to register to vote. Again in Mississippi, for example, you have to register twice—once with the county clerk to vote in the State and county elections, and then with the city clerk for city elections. You have to register twice for three different types of elections. If you live in northern Sunflower County, Miss., the great Fannie Lou Hamer came from there, you have to drive 50 miles to the county seat in Indianola to register for State and county elections.

Then you have to drive 50 miles back to your home town to register for city elections. And you have to register for the county elections first. How would you feel if you had to travel 100 miles round trip to register to vote? And, I should add, you have to register between 9 a.m. and 5 p.m. on weekdays.

Mr. Chairman, I would also like to introduce for the record a series of articles that appeared recently in the Atlanta Constitution. The articles, which are entitled, "Voting: A Right Still Denied," document that discrimination against blacks in the electoral process is also widespread in rural Georgia.

Mr. EDWARDS. Without objection they will be received for the file. (See pp. 279-301.)

Reverend JACKSON. In sum, the Voting Rights Act legislated blacks into the political process, but new forms of denial at the State and local levels have regulated blacks out of the political process.

We are on the verge of nationwide redistricting following the 1980 census. Without the protections provided by the Voting Rights Act and major improvements in enforcement, the political gains achieved by blacks and Hispanics over the past 15 years can be wiped out in a matter of months.

It is painfully clear to those of us who literally put our lives on the line to secure enactment of the Voting Rights Act, that there are forces in this land who want to turn back the clock—to weaken or destroy this legislation as a first step toward the redisenfranchisement of black and Hispanic people. We are aware that some Members of this Congress are attempting to weaken this law in order to work out a compromise between those who support its extension and those who would allow it to die.

The proposed Hyde amendments, for example, would repeal section 5 and put in its place the same litigation strategy that proved so inadequate and discouraging before the enactment of the Voting Rights Act. Regardless of the intent of these amendments, their effects would be disastrous. I therefore oppose the Hyde amendments. In my view, the right to vote is the very essence of citizenship, and therefore is nonnegotiable. Members of Congress may compromise on budgets and on tax policies and on other pieces of legislation. But the right to vote is too precious and too fundamental to be compromised.

In answer to those who argue that the racism that justified the Voting Rights Act no longer exists, let me remind you that we are experiencing a frightening revival of racial polarization and violence. The Ku Klux Klan is more active today than at any period since the passage of the Voting Rights Act, and has established a

paramilitary training camp near Birmingham, Ala. Just last month a 19-year-old black youth was lynched in Mobile.

The current mood in the Nation is such that poor people in general and minority groups in particular are increasingly being blamed for the country's economic problems. Affirmative action programs are being dismantled, funds for black colleges are being drastically reduced, programs to help the poor are being abolished. The President and other members of the current administration have re-invoked the old "States rights" code word, which for us has always meant States wrongs. The Supreme Court which is the guardian of our constitutional rights, has dealt a severe blow to the struggle for political equality by confusing the very meaning of discrimination and by establishing unrealistic standards for proof of its existence. The Court's decision in the *Bolden* case actually encourages the abridgment of voting rights, so long as politicians conceal their racist intent.

It is in this environment that you deliberate the fate of the Voting Rights Act, the only effective protection of the political rights of black, Hispanic and other disadvantaged people.

Passage of the Rodino bill will help to insure a Federal presence in the South and in other areas where voting rights are threatened. Failure to pass it will send a clear message of encouragement to the racists who are already armed to deprive blacks of their basic rights.

In conclusion, let me say that we not only need to extend the Voting Rights Act and improve its enforcement, we also need new legislation and programs to make the Federal Government as aggressive in getting people registered to vote, as it is in getting people to pay taxes or register for the draft. If taxation without representation is tyranny, then aggressive collection of taxes and passive registration of voters is surreptitious tyranny.

Each year Operation PUSH conducts several voter registration drives for young people in Chicago. We have declared the month of May our National Citizenship Education Month. Last year we registered 10,000 high school seniors and other young people in Chicago. This year we plan to register 20,000 to 25,000 young people. It is a virtually cost-free process. Our goal is to ensure that when a student graduates from high school, he should march across the stage and get a diploma in one hand and a voter registration card in the other—knowledge in one hand, power and responsibility in the other.

We can measure 1.3 million high school seniors every May and June simply by making it a national program. So, many of our people who are unregistered who are keys to being apathetic are caught in a crossfire between ignorance and intimidation. I submit there is still no national will by the Congress or the mass media to use these very available remedies to increase voter registration and education.

Most of our high school students are graduating. Most of those graduating from college are functionally illiterate about the political process because they do not know what ward or district their school is in or who their legislators are. That is not apathy, that is ignorance. I hope that at some future time I will be able to discuss this in greater detail with the subcommittee.

Mr. Chairman, this concludes my formal statement. My appeal to you, beyond this testimony, is to go with me to Edgefield County, S.C., a county that is still in violation of the 1965 Human Rights Act, and then if you will, go with me the next week to Jackson, Miss., a city that is in violation of the Voting Rights Act of 1965, where a black may very well lose his chance to become mayor June 2 because the city is in violation of the law with apparently no will for the law to be enforced.

Thank you very much. (See p. 2170 for prepared statement.)

Mr. EDWARDS. Thank you very much, Reverend Jackson, for a most eloquent statement. We will be operating under the 5-minute rule pursuant to rules of the House.

Reverend JACKSON. Mr. Edwards, if I may just as an addendum to my statement today, there will be major marches in Alabama this weekend because in Sumter and Perry Counties in Alabama, black majority counties, all the voters are being required to register to remain on the voter roles, and that process of reregistration and deregistration have been escalating at a very rapid pace in the last 3 months.

Mr. EDWARDS. The gentlewoman from Colorado, Ms. Schroeder.

Ms. SCHROEDER. Thank you very, very much, and I appreciate your testimony, which is always eloquent and always very factual. I understand very much what you mean about the States rights thing. All the States that you list that you would like for us to go to visit, I remind you, have still not extended even equal rights to women. So when someone says give it back to the States, they're doing such a great job, I think those of us who have looked at what they have done in all areas really understand why the Voting Rights Act was so important and so essential.

Have any of you looked at who the registration clerks are in these States? Are they political appointees of the States in many instances, or are they elected? I want to know who the registration clerks answer to?

Reverend JACKSON. In almost all instances they are political appointees, but what is significant is that when it is convenient for them, they can have registration in churches, in the schools, or mobile units, but there is no urgency or no law to force them to do that, and therefore they do not, and what I am suggesting to you, is that we have been legislated in under the law, and regulated out within the law because the same forces that resisted our having the right to vote in 1965, by 1966 had developed an adapted scheme to minimize the impact of the 1965 Voting Rights Act, and just as jurors have to go through some interrogation to prove relative objectivity, there must be some conditioning and screening process for these persons who are allowed to guard the henhouse in the voter process.

Ms. SCHROEDER. So I hear you saying several things. No. 1, the States down there, even under the Voting Rights Act, have found clever little ways to tapdance around it, sidestep around it, so the worst thing to do would be to repeal it because it would be like, hey, we're home free now. It's almost like the EEOC and affirmative action. Every time I leave my transom open, 45 pieces of paper fly over the top saying it appears affirmative action is dead now because the Federal Government is backing off.

Reverend JACKSON. The most blatant evidence of it is the fact that there is only one black Member of Congress from any of the covered deep-South states, from Texas to Virginia. This despite the fact that it is in those states where there is the closest black-white ratio.

The Voting Rights Act could have turned this around but in response, jurisdictions changed redistricting patterns to reduce minority influence. Mississippi is typical of this pattern. In fact, if the State had continued to run district lines in a north-south direction, there would be a reasonable chance of a black congressman from Mississippi, but in 1966, the State legislature shifted to east-west district lines.

So Mississippi is under the law, but within the law there is still enough play in the wheel to in fact wreck the vehicle.

Ms. SCHROEDER. I also recall, wasn't it the Georgia State Legislature that didn't want to seat Julian Bond?

Reverend JACKSON. It was.

Ms. SCHROEDER. Has that happened in other State legislatures in the South? I think that certainly shows the mentality in the South when even under the Voting Rights Act someone is able to get elected and then they say we don't want to seat you.

Reverend JACKSON. I think the science and the sophistication is beyond that now. That is, that you can't get as close as Julian got, to be denied. They cut people off at the root, cut people off at the paddock, because they have, in fact, in Natchez, Miss. You have to register with the county first, and then register at the city, and you can only do it between the hours of 9 and 5 when most people are working. They can't register on Saturday and Sunday, and those who have resisted to having the right to vote have the authority to purge, declare a new registration and reregistration, then the process is very frustrating.

In many instances the Federal remedy, which is supposed to be the ultimate safety net, is too far removed from immediate violations. That's why with an inadequate monitoring mechanism there is still so many people coming to Washington and State legislatures against the law, and that has a penalty: $5,000 and 5 years for people who violate the law. Nobody has been fined or jailed, which represents a kind of unseriousness in the implementation. Aggressive taxation and passive registration shows an imbalance and concern that must be adjusted.

Ms. SCHROEDER. Thank you very much; my time is up.

Mr. EDWARDS. I might suggest, Reverend Jackson, that these are outrageous alleged violations that you have mentioned, and the people who are being discriminated against and where the Federal law is not being enforced, should certainly have let this committee know because we have oversight jurisdiction over the Department of Justice, and the Civil Rights Division.

These violations are the first I've heard of these particular ones. Now, the gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

Reverend JACKSON. The point I really want to be clear on is that we have submitted these complaints to the Justice Department, but they've not been acted on. I mean, that's why I'm appealing to this committee, you know, to go with me to Edgefield County.

I was at Jackson State University Friday, 2 weeks ago, to conduct voter registration. We inspired 200 young people to register to vote.

What we then had to do, if you can believe it, we had to bus those students downtown to two places to register. I mean, bus them.

They are advocating busing in Mississippi for voter registration. I mean, an honest to God yellow bus. [Laughter.]

We could have had 8 cars to come to the campus to register 200. We had to get 200 on buses, you know, and get and use foreign gasoline.

Mr. EDWARDS. I think that speaks for continuation of the law.

The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

Reverend Jackson, some of the practices in South Carolina and Mississippi that you have outlined are indeed outrageous. They remind me of a case I tried some years ago in Chicago, representing a poor young man who wanted to be an alderman. And lo and behold, the great board of election commissioners struck his petitions because his notary seal was on the left side of the affidavit and not the right side, and that was sustained by the circuit court.

So, outrages occur in the North and the South, and all over.

But I would like to ask your counsel, if I may, why hasn't section 3(c) been invoked by the NAACP, the Urban League, the League of Women Voters, the ACLU, or some private party?

Because that section is available. And if the Federal Government doesn't want to do anything, a private party can, and can also recover attorney's fees.

If you're not prepared to answer that, we will talk about it later. But that section 3(c) is powerful, and private parties can initiate it. And that's permanent. That isn't going to be expiring.

You know, when we talk about weakening the Voting Rights Act, as preclearance does, I concede, if that goes—it is certainly not the extraordinary remedy that now is there. But 3(c) is in there, and instances such as in South Carolina and Mississippi ought to be reachable by 3(c) by, you know, any organization or private party, and have their attorney's fees paid.

Second, let me just say that the proposition that I have put forward is not written in concrete. I haven't made up my own mind. Now, that's why we're holding these hearings, why we're going to go to Mississippi. And I hope we go everywhere. We should go, and I know Chairman Edwards will take us there.

Reverend JACKSON. I do hope that we will go before June 2, if it is possible, because a major election is at stake there. And since that city made that decision, against the advice of the Justice Department, and remains illegal, that election is in fact illegal.

If, in fact, the Federal Government or Congress chooses to exercise its remedy, it will occur June 2, and will come in June 8, and June 10 they will bring in sufficient oxygen, but too late.

Mr. HYDE. That is something we can discuss. But I can assure you, the disposition of everybody on this subcommittee, Republican and Democrat, is to get to the heart of this problem. It may well be after the hearings are over that preclearance should be extended, and I won't object to it.

But my suggestion for court remedy is on the table for discussion at some point down the line.

I have no further questions. Thank you.

Mr. HARPER. May I respond to your question?

Mr. HYDE. Yes, sir, if you will.

Mr. HARPER. I feel that your question clearly indicates the magnitude of this problem, in that being in South Carolina, as I have, and being concerned with implementation of the Voting Rights Act over the past 10 or 11 years, there are a lot of ways in which the Voting Rights Act can be used by various organizations.

I cannot specifically answer why these organizations have not availed themselves of the remedy.

However, there is still a great need for all of the provisions of the Voting Rights Act, and the problem is so great at this point that we're talking about—in particular in South Carolina, where we've got 46 counties, 200 or 300 municipalities, and of course State offices as well. The Voting Rights Act covers every one of them.

I haven't been, myself, personally involved in a lot of litigation and a lot of administrative procedures involving violation of voting rights. The magnitude of the problem is so immense that we cannot afford to lose any single protection that we have now. We actually need more.

Mr. HYDE. That's an answer. In other words, there are so many—you've only cited a couple, but they're part of a long list. And to have to initiate court action to remedy each one under 3(c) would be too expensive or too large a problem.

Mr. HARPER. There's no doubt about that. And in this area—in this era of limited resources—and I presume, since you said you're an attorney yourself, you know the escalating costs of conducting a law practice. Everything costs a lot of money, much more than it did 10 years ago when I started practicing.

But even beyond that, in many States the courts are escalating costs because of emphasis on court reform, both at the Federal and State levels.

Mr. EDWARDS. The time of the gentleman has expired.

Mr. HYDE. I do thank you for that answer.

Mr. EDWARDS. Our distinguished new member, the gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. Thank you, Mr. Chairman.

Reverend Jackson and your colleagues, I want to welcome you, and join the chairman and the balance of the committee in so doing, in gladly welcoming your proud and powerful voice on this issue.

You know, Strom Thurmand's loss is my gain. I understand that you were born and raised in South Carolina, and now you are a voting member in good standing in the First Congressional District of Chicago, which is my district.

Reverend JACKSON. I'm a refugee.

Mr. WASHINGTON. A refugee?

Reverend JACKSON. Yes, sir, I escaped Thurmond's plantation.

Mr. WASHINGTON. The First Congressional District—we're like the Statue of Liberty: bring them to us. It's good to see you here.

I want to get the record straight. Are you saying 17 years after the passage of the Voting Rights Act, that if this act were not extended or watered down, that there is a clear possible danger that violations of voting rights would not only continue but might increase?

Is that what you're saying?

Reverend JACKSON. Without the Voting Rights Act extended and more aggressively enforced the same thing would happen to blacks in this century that happened to us exactly a century ago. The extent to which we can protect eroding gains now is almost in proportion to our voter registration and having blacks and sympathetic allies elected to office.

Without the Voting Rights Act we cannot protect the implementation of grants. We cannot protect black colleges. We cannot protect ourselves in the courts. We have no impact on the Congress or judges.

That's the most fundamental right, and right now the forms of denial and tyranny and intimidation have the effect of people appearing to be apathetic, when in fact they're either ignorant or intimidated.

When I walked up to a group of students at CPS and asked them what ward is this, none of the seniors knew. Only one or two of the teachers knew. Who is your alderman? They did not know. What legislative district are you in? They did not know.

They were not apathetic. They were ignorant. When we then told them the ward and the relationship between a vote and an alderman—when 700 students registered in one morning—they went from "those children" to "minor distinguished constituents" in 1 hour.

And many things happened around the school rally immediately, because they had been moved from ignorance of information and been given power; because the right to vote had been handed to them. Because we put enough pressure on the voter registration commission to get them to the school. We could not bus the 700 downtown to register to vote.

And that's why we must look at this in new and different ways. And the correlation of violation in those areas of the South where you have a majority of black counties—you must hold on suspicion, Mr. Chairman, that counties that have a majority of black votes and no black elected officials—that ought to be a tipoff as to what is happening.

Mr. WASHINGTON. I also interpreted your testimony to state that one way possibly to prevent the burgeoning increases of violence against blacks throughout the South is to make certain that the voting right is held inviolate and protected, so that people can proliferate their powers, control their sheriffs, and get their police in order and shape so they can control the coming violence which you see.

Reverend JACKSON. If we have the right to vote, we stand a reasonable chance of living in the black world in the daytime. Without the right to vote, we stand no chance against the white sheet at night.

Mr. WASHINGTON. I'm intrigued by your comments about Edgefield County.

Reverend JACKSON. Edgefield County, S.C., would be a place I would appeal to this committee to go.

The rumor is that the Congress is intimidated by the Senate in general, and by Mr. Thurmond in particular, to accept that challenge. I won't call it a challenge. I call it an appeal. [Laughter.]

Mr. WASHINGTON. You don't have to appeal to me; 400 years of history in this country appeal to me. I'm going to try to prevail upon our good chairman to add to the itinerary Edgeville County, S.C.

My time is expired.

Mr. EDWARDS. The gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. I have no questions, Mr. Chairman.

Mr. EDWARDS. Counsel?

Ms. DAVIS. I have no questions.

Mr. EDWARDS. Counsel?

Mr. BOYD. I have no questions.

Mr. EDWARDS. Reverend Jackson, you and your colleagues have made a very outstanding contribution to our search for information, and especially with regard to the specific needs in the future for the extension of the act.

The fact that there are still violations, still people and officials trying to get around the act, is very important to us.

Reverend JACKSON. May I ask you a question about the right now situation?

Mr. EDWARDS. Yes.

Reverend JACKSON. Many people say in Edgeville County, S.C., or Jackson, Miss., either because of the expense or the disconnection from politics, they do not know the route from that place to Mr. Edwards and his oversight committee.

We need a more effective—should I say greater access to you. So that once you get a complaint that is not laundered—washed out and watered down—there can be a more immediate response.

When people don't register for the draft, there's an immediate response. People don't pay taxes, there's an immediate response.

Yet, when people's rights to be a first class citizen is violated, it's a long, difficult, expensive process.

What can we do, for example, in the case of the Jackson, Miss., elections about to be held? The law's being in violation right now. Or Edgeville County, immediately—since we finally got to Washington?

Mr. EDWARDS. Well, thank you very much, Reverend Jackson. We are always interested in information, whether or not there is a Voting Rights Act or any other civil rights bill before the subcommittee, either individually or collectively, we try to be involved in all civil rights matters.

Such matters as the Wilmington Ten took a large part of some of our individual efforts. The *Hannigan* case in the southwest.

It's very important that these laws be enforced. We don't like the sound of some of the information that you gave us today, to the effect that section 5 is not being obeyed. Because it's there, it's Federal law, and as far as we're concerned, it's there to be enforced by the Justice Department.

Mr. HYDE. Would the chairman yield?

Mr. EDWARDS. Yes.

Mr. HYDE. I think, Mr. Chairman, I would suggest that we send a transcript or a copy of Reverend Jackson's testimony to the Justice Department today, and say that there are serious charges of voting rights abuses, and request an immediate investigation.

I would think that we ought to do it today, when these hearings are over.

Reverend JACKSON. I knew I could depend on you.

Mr. HYDE. Thank you.

[Applause.]

Mr. EDWARDS. Thank you very much. We appreciate your testimony.

Our next witness is Prof. Archibald Cox, who really needs no introduction. A personal friend of a number of us, Professor Cox is chairman of Common Cause and an outstanding constitutional scholar.

TESTIMONY OF ARCHIBALD COX, CHAIRMAN, COMMON CAUSE; ACCOMPANIED BY ANN McBRIDE, LEGISLATIVE DIRECTOR, COMMON CAUSE

Mr. WASHINGTON [presiding]. Chairman Edwards had to go down to the Judiciary Committee. He is handling a bill on markup there, Mr. Cox. He will be back shortly. In the meantime, I will preside.

Mr. Cox, will you proceed?

Mr. COX. Mr. Chairman, may I thank the committee and all members of it for this opportunity to express my personal strong support and the strong support of Common Cause for the proposed 10-year extention of the Voting Rights Act. We applaud the leadership that you and Chairman Rodino and Chairman Edwards and others have given on this vital issue.

Second, may I introduce to the committee Ann McBride, the legislative director of Common Cause, who is seated here at the table with me.

The Voting Rights Act is justly acclaimed as one of the most important and effective pieces of civil rights legislation ever passed by the Congress. The act is an essential part of the process of opening up governmental institutions to all citizens and actively involving more citizens in self-government. This has been a major goal of Common Cause from its beginning.

By the Voting Rights Act, hundreds of thousands of black and Hispanic Americans were enabled to exercise the most precious of constitutional rights—the right to vote. By enfranchising these citizens, the act also has removed barriers that previously barred the election of members of minorities to public office. Both changes have greatly strengthened the legitimacy of representative government in the United States.

But the hard-won gains under the Voting Rights Act are fragile, and we should not be complacent about the future. The patterns and habits of discrimination became engrained over the century preceding the Voting Rights Act. It would be naive to suppose that such deeply engrained ways of thought have been removed so quickly. And indeed, there is very specific and concrete evidence that they have not disappeared.

In my prepared statement, Mr. Chairman, I say a few words about the history that led to the passage of the Voting Rights Act, the progress made under the act, but I skip over those so that I may come immediately to the need for extension, because we are

convinced that despite the gains that have been made, neither the Congress nor the country can relax.

There is urgent need to make still further progress. The job isn't done. The Atlanta Journal/Constitution concluded after a 1980 series on the act that the promise of equal participation for blacks in the electoral process is still unfulfilled in large parts of Georgia and the South. And the newspaper then went on to cite some specific instances.

Equally important, perhaps more important, if the act is not renewed, the hard-won gains may be all too quickly dissipated. Failure to renew would open the door to wide-scale resumption of the discriminatory and restrictive practices of the previous century.

In a word, the success of the Voting Rights Act doesn't make the act unnecessary.

Specifically, we submit that section 5, the preclearance provision, should be extended. Without the preclearance of new State and municipal and county laws affecting voting rights, many of the advances could be wiped out overnight with new schemes and devices. Before the act, each time a Federal court or the Congress prohibited one form of testing device to limit minority voters, ingenious State and local election officals came up with another. For example, a new generation of discriminatory measures replaced grandfather clauses, the poll tax, and the literacy test. Racial gerrymandering, switches from district elections to at-large elections, annexations, and similar devices have been employed in efforts to dilute minority voting strength at the ballot box.

Without preclearance under section 5, further backsliding could occur, not only through those devices, but through reregistration requirements, changes in the place of registration or the place of voting, and like devices to dilute minority voting. It must be remembered that the very presence of Section 5 on the books discourages circumvention.

I think the specific data and illustrations would demonstrate the force of my generalizations. Also, I must say, I must leave full documentation to others, since there are enough specifics that have come to my attention to bear out what I have said.

Even after 16 years, some jurisdictions fail to submit for preclearance changes in their election laws affecting voting rights.

Unlawful changes denying voting rights are still submitted to the Department of Justice with great frequency. During the past 5 years, 400 changes were found to be objectionable—no fewer than in the preceeding 5-year period.

Again, it took 14 years of action under the Voting Rights Act and litigation to force the Mississippi Legislature to abandon the discriminatory use of multimember legislative districts. As the Reverend Jackson pointed out in his testimony, there is a suit pending involving Edgefield County, S.C.—Senator Strom Thurmond's home county—over a finding that it never submitted its 1966 at-large election plan to the Department of Justice for review. And, it went ahead with modifications even in the 1976 plan, despite the Department's objections.

My last illustration is drawn from San Antonio, Tex., which attempted to annex a number of predominantly white areas, where the annexation would discriminate against minorities because the

city's elections were conducted at large. As a result of the Department's 1976 objection, the city did adopt a council election system with members selected from individual districts.

So it seems to us that the need for preclearance continues.

Coming down a little more to particulars, Common Cause believes that there are four essential elements that should be embodied in the legislation extending the Voting Rights Act for another 10 years.

First, as I have said, the preclearance provisions should be continued. The objectionable practices continue. Constitutionality of the preclearance provisions has been upheld time and time again. The prompt administrative process in the Department of Justice avoids the need for long and costly legal battles on the one hand; on the other hand it provides sufficient flexibility in making nondiscriminatory, nonprejudicial changes necessary to improve local government.

Some Members of Congress have questioned whether it's appropriate to continue to subject a single region of the country to the act's special provisions. Some say, "Let's avoid that by extending coverage of the preclearance provisions to the entire country." Others have proposed eliminating the present preclearance and substituting a process whereby the Attorney General or an aggrieved person may bring an action to apply the preclearance provision anywhere a pattern or practice of voting rights abuse is found.

I understand that Representative Hyde has put foward such a proposal for the purposes of discussion, without necessarily espousing it. [Laughter.]

Common Cause opposes both approaches—I hope to persuade Representative Hyde that he shouldn't sponsor his proposal.

The Voting Rights Act is already a national rather than a regional act. The permanent provisions apply nationwide. In section 3 there is provision for bringing in additional jurisdictions under the preclearance procedures, if the need be shown. Even the special provisions apply to 22 States, touching the four corners of the Nation. As you know, there are more people in three covered counties in New York than in four of the six southern States fully covered under the preclearance provision.

To expand the coverage of preclearance nationwide would waste valuable resources and create paperwork and burden the existing enforcement staff.

The vice of the proposal put forward by Representative Hyde for discussion seems to me it would bring back in this very important area the very same evils that the Voting Rights Act was designed to eliminate—the heavy expense and long delays of litigation, the denial of the most fundamental of citizens' rights during the years of investigation, trials, and appeals necessary to prove a pattern or practice of discrimination.

The use of lawsuits and judicial machinery to protect voting rights was tried from 1957 to 1965 under the Civil Rights Act of 1957. Well, Congress found, and the Supreme Court agreed, that the process is simply too slow and too burdensome, too expensive, to right so grievous a wrong.

83-679 O - 82 - 13 (pt.1)

And experience also showed, as I said previously, that some states or subdivisions would resort to the stratagem of contriving new rules pertaining to the electoral process each time an instance of discrimination was established and struck down by court decree. Then a new round of racially discriminatory interference with voting, investigation, litigation, delays, appeals, and more delays, would begin. Meanwhile, all the burden fell on the citizen, who was denied the opportunity to exercise the most precious of rights.

And if there's any doubt or uncertainly, the burden ought to be the other way. It ought to be in favor of voting. And to change that, and to accomplish that purpose, Congress enacted and the Supreme Court upheld section 5. Well, I recognize, of course, that the Hyde amendment, which I will call it for shorthand, applies only to the stratagem of changing election laws so as to deny or restrict the voting power of minorities. But in that important area, it would restore the old regime.

Furthermore, I suggest that proving a pattern or practice of changing voting laws in order to defeat the voting rights of black and Hispanic citizens would be extraordinarily difficult, even more difficult and time consuming. After all, changes in voting laws or districting don't take place with such frequency as to lend themselves to proof of a pattern or practice.

Other forms of discrimination, such as the abuse of literacy tests, could be proved in the past, and could be used to establish a pattern or practice of discrimination. But of course, the act has prevented that kind of pattern or practice from growing up on any large scale or from being continued on any large scale.

So that while the Department of Justice was waiting for enough instances to occur to constitute a pattern or practice, trying to prove it under the Hyde proposal, the rights of minority citizens would be open to denial and often denied. And the period, as experience showed, could be 4, 5, 6, and 7 years before one could go through litigation.

The system of prompt administrative action applicable to the States and political subdivisions where there is evidence of past discrimination is not only more effective and more efficient than litigation, but it's the only way promptly to assure minority citizens the most precious of their rights.

Furthermore, it should be remembered that if the Department of Justice errs, its error can be corrected by the courts. The question is open to judicial review, but during the period of litigation, the presumption, as I said before, ought to be in favor of voting, and ought to be in favor of effective voting power—not against the opportunity, not against the cutting back of the exercise of the most important of rights.

I point out, Mr. Chairman, in my statement, that the constitutionality of the preclearance provisions was upheld not only back in South Carolina against Katzenbach, but again last year in *Rome* v. *United States,* and that the court approved the congressional findings that case-by-case adjudication is simply too slow and unsure.

The second element that we say is essential is extending the Voting Rights Act and the special enforcement provision for a full

10 years to insure coverage of the redistricting that will follow the 1990 census.

By gerrymandering congressional legislative and local government district boundaries, incumbent legislatures can negate the voting gains achieved by minorities. Pockets of minority voters can be dispersed throughout many districts, or packed into a few districts to dilute minority representation.

The record of cases before the Justice Department shows that there is a real threat of that device being used. Since the act's inception in 1965, the Justice Department has objected to more than 100 redistricting changes. In 1975, Congress extended the act for 7 years, so as to cover the redistricting following the 1980 census. We think the same principle of going beyond the next census should be followed in this instance.

Third, Congress should relieve the uncertainty created by the decision in *City of Mobile* v. *Bolden,* by exercising its power to enact prophylactic preventative measures preventing devices that create undue risk of violation of the 15th amendment. Here, I want to be very precise. The plurality, concurring, and dissenting opinions in that case leave much uncertainty concerning the proof necessary to establish a denial or abridgement of the right to vote on account of race or color in violation of the 15th amendment.

Congress cannot and should not attempt to overrule specific Supreme Court decisions interpreting the Constitution. Congress cannot and should not attempt to change the meaning of the Constitution. But Congress clearly does have the power to enact measures in this area of voting going beyond any constitutional requirement in order to create a protective zone, in order to protect citizens against undue risk that the right to vote is being denied or will be denied in violation of the 15th amendment.

That point goes all the way back to the great Chief Justice Marshall, who interpreted the "necessary and proper" clause, and it was applied specifically by the Supreme Court in *South Carolina* v. *Katzenbach* in 383 U.S. 301. And of course, it's never been challenged in subsequent years.

The problem of draftsmanship is a difficult one, but we do believe that Congress could usefully relieve some of the confusion and establish a more workable and more protective test as a matter of a statutory requirement than that set forth in the plurality of opinion of Justice Stewart in the *City of Mobile* case.

I emphasize, not as a test of what violates the 15th amendment, but as a separate, additional statutory protection that Congress believes necessary and proper to ensure the protection of voting rights guaranteed by the 15th amendment.

Fourth, we urge the existing bilingual election requirement should be included in any extentions of the Voting Rights Act. In adopting the bilingual election requirements, Congress recognized that the English-only election materials and voter assistance can constitute a barrier to voting similar to literacy tests. Requirements for bilingual elections have enabled and encouraged minorities to become active participants in the great work of governing ourselves.

I'm not unmindful of the argument that bilingual provisions will tend to polarize American society. But surely bilingual voting has just the contrary effect.

The best way to avoid a separatist movement in this country is to encourage participation in the exercise of the right to vote, to encourage participation in self-government.

For one thing, participation and free opportunities to participate in the electoral process, without language barriers, make it plain to all, including those who suffer under disability of having a different first language than English—make it plain to all that we are one Nation, one Government for all the people.

The bilingual provisions have been criticized as excessively costly. Testimony at these hearings has already begun to show, and will continue to demonstrate, not only the need for the provisions but that the costs can be very greatly critical.

Los Angeles and Santa Clara Counties in California provide examples of how the bilingual provision can be implementing in a cost-effective manner through special targeting and other methods.

With the good faith efforts of the local election officials and more effective assistance from the Department of Justice, that could be spread and we could have greater assurance that the right to vote should not be lost simply because of minority language.

I might say that, although it's not in my statement, I understand in Los Angeles County the cost of compliance with the bilingual provision is 1⅔₁₀ percent of the cost of conducting elections, surely a small price to pay for assuring all citizens the opportunity to vote

Just a word in conclusion. During the past 6 years the Voting Rights Act has continued to build on the success of the previous 10 years. We have witnessed unprecedented advances in opening up the political process to fuller participation by minorities. Nevertheless, there is hard evidence that discrimination, though lessened, has not been irradicated. Continued vigilance is essential if the promise of the 14th and 15th amendments is to be fulfilled.

Consequently, Common Cause urges the committee and the full House Judiciary Committee to act promptly to report a 10-year extension of the Voting Rights Act, with the essential provisions I have described.

Perhaps, Mr. Chairman, I might add just one more word that is not in the written statement. I sometimes hear it said that including some States and counties, but not others, under the preclearance provision creates resentment. And we are dealing with an area where emotions—feelings are involved.

But we must think of the feelings and emotions of everyone affected by the Voting Rights Act. And I think, being subjected to what may be a nuisance in some instances, because there is no intent to cut down on the voting power of minorities, is not as important, not nearly as important as the hurt that would be done to the feelings of those who have been protected by the Voting Rights Act.

If Congress should weaken this act, the message would go out that we don't care as much about your right to vote as the previous Congress, we aren't as interested in insuring that everybody have the opportunity to vote. And the message would create doubts about our insistence on making other provisions for insuring great-

er equality for people, without regard to race, sex, national origin, or religion.

That does finish my statement, Mr. Chairman. (See p. 2154 for prepared statement.)

Mr. EDWARDS. Thank you very much, Mr. Cox. I apologize for being absent during a portion of the time you were making your splendid statement.

The gentlewoman from Colorado.

Ms. SCHROEDER. I want to compliment you on your statement. I also have to apologize; we are running and trying to cover two committees simultaneously. And I guess we felt very competent we could miss yours because we preread it and we thought—at least I thought that everything you said made an incredible amount of sense.

You did note, on page 10 of your testimony, that preclearance provisions have only been in force since about 1971. Haven't they been in the law since 1965?

Mr. COX. Yes. Oh, yes.

I took the date of 1971 because there was a change in enforcement policy and also because of the figures that were available. But the preclearance provisions have been in the law since 1965. I don't find the sentence right away; but if I said anything to the contrary, I should correct it.

Ms. SCHROEDER. Thank you very much.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

And I, too, appreciate your comments. I want to point out to you that this pattern of practice which you have referred to as so onerous and difficult, it is my intent, which will be spelled out if and when that point is ever reached, to include a retroactive environment to determine pattern or practice, not necessarily prospective. So I want to make it easy to prove pattern or practice, not difficult.

Let me just parenthetically comment on something that is not unique to you, Professor. The previous witness did it, too, but we keep referring to Edgefield County, S.C., Senator Strom Thurmond's home county. I think that's a little gratuitous, frankly.

I remember hearing how terrible guilt by association is, and we can refer to Cook County as Congressman Washington's home county or mine. I don't think it adds to anything, but it does raise on the hackles on a few people, I guess.

Mr. COX. I'm not sure whom I'm quoting, but let me say I accept the soft impeachment. [Laughter.]

Mr. HYDE. Thank you.

Mr. COX. It's a good reminder.

Mr. HYDE. Thank you.

Unlawful changes denying voting rights are still submitted to the Department of Justice with great frequency. During the past 5 years 400 changes were found to be objectionable, no fewer than in the preceding 5-year period.

I believe I'm reasonably accurate that about 35,000 objections have been presented since 1965 and about 800—I'm sorry, 35,000 changes have been submitted under preclearance, and about 800 objections have been made, which is about 3 percent, give or take.

I agree. You can get results very quickly by preclearance, by administrative dispensations of justice.

What about the rights of people to be safe in their homes and in their communities? If you're in a high-crime neighborhood and someone is in that neighborhood, a stranger, who maybe meets a profile of criminality, where should that burden be? What about the preventive detention?

What I'm getting at is we are making a kind of reversal of the burdens of proof and presumptions and everything for the sake of efficiency. I will grant you that it's for a very fundamental right, the right to vote. And I am all for efficiency.

But you know court proceedings are getting a bad name here. They are time consuming sometimes because they are encumbered by rules of evidence and burdens of procedure and burdens of proof. And he who accuses must prove.

Maybe we should find a way to expedite court hearings. But aren't you troubled by the rush to judgment, which is desirable, excluding perhaps fairness, because fairness belongs to both of the parties in a controversy over voting rights; does it not?

Mr. Cox. Several different points, Congressman Hyde.

First, however far you permit the inquiry in the pattern or practice to go, however far back, the burden is going to be enormous. Indeed, if you're saying, "Well, it shouldn't be a very onerous requirement, because I'll permit the Department of Justice and the plaintiff to go back into 1950," but that's 30 years ago. Where is evidence coming from?

Mr. HYDE. I wouldn't think that far. A reasonable time, but coupled with an effects test.

Mr. Cox. But you see, since 1965, there should be virtually no evidence of pattern or practice, and making such a case would be simply making a case that the law has been violated. But it has very little tendency to show what the tendency of the political forces in the community would be in the absence of those requirements, and that's what we're really concerned with.

Mr. HYDE. Are there no States presently locked in for preclearance—mandatory preclearance for 17 years and now for another 10 years? That's 27 years. Are there no States worthy of good conduct?

Mr. Cox. The second point I would make is that being locked in doesn't seem to me to be a punishment. It consists of sending a few papers to the Department of Justice. And if the Department of Justice has 60 days, and possibly another 60-day extension, in which to act, I believe that it does, in fact, dispose of virtually all the cases within those time limits. So I can't be totally dogmatic. I haven't been involved in the administration. That's not like putting somebody in jail, pending trial, as preventive detention. It is an administrative nuisance. And, as I would acknowledge, it's something—people don't like to be singled out.

But then when I think of the precious rights on the other side and the feeling of the people on the other side, in my judgment the balance is clearly in favor of making sure that they will have the opportunity to vote. And there really is no unfairness in the proceeding.

Mr. HYDE. We agree on the importance of the right to vote.

Let me just ask you this: What would you think of any easier bailout from some of these States? In other words, instead of locking them in, by definition, permanently or for another 10 years, what would you think of modifying the bailout or release or escape to some fair basis where a State can get credit for good conduct—a sovereign State can get credit for good conduct?

Mr. Cox. Well, it's awfully hard to give anyone much credit for good conduct, where all they have done is comply with the law. You don't know what they would have done in the absence of the law. Sort of like if you had obtained an injunction from the county court and the district court and the defendant comes in and says, "At the end of 3 months, I want that injunction lifted. My client hasn't violated the injunction at all. See, he's good."

You would be there, in there screaming, "You can't tell what he would do the moment the injunction was lifted." I am sure you would. If you didn't, your client would be after me to represent him.

Mr. Hyde. We should extend it permanently then. And let's assume that what has happened before 1964 is prolog and that, the vengeance aspects of this aside, it should be permanent. Why just 10 years?

Mr. Cox. Well, I don't say it should be forever. I do say another 10 years.

Mr. Hyde. Twenty-seven instead of seventeen.

Mr. Cox. Then we'll see where we stand. One must remember that during this period, while you point very accurately and I accept it, that the percentage of changes that have been made have been objected to is a small percentage.

Whenever I read that 400 changes have been objected, I see that people, perhaps in an entire State, being deprived of their voting rights by just one of those 400. If I multiply that by 400, it seems to me desperately important to prevent that, to prevent their becoming effective, in order to make good the promise of American life.

Mr. Hyde. If I may—you've been very indulgent, Mr. Chairman—a last question.

Would you agree with me that not counting your vote is as bad as not letting you register to vote?

Mr. Cox. Yes. Worse, probably.

Mr. Hyde. I thank you very much.

Thank you.

Mr. Cox. I'd get after them, too, Congressman.

Mr. Hyde. That's what I'd like to see happen.

Mr. Edwards. The purpose of these extensive hearings—and we're going to have more hearings in different parts of the country—the purpose is to determine whether or not the Voting Rights Act should be extended for another 10 years. And in all candor, your testimony and that of all of the other witnesses to date—and we welcome witnesses on the other side—had been that, yes, there is still voting discrimination; yes, there are still massive efforts being made to deprive Hispanics and blacks of their right to vote.

In the covered States, we haven't had any minorities come forward and say that the results would be disastrous insofar as their rights if this section 5, especially, were not extended.

So, we welcome all kinds of testimony. But it would be interesting to see if we could get some hard evidence that this bill is not needed, because all the evidence is to the contrary.

And I thank you very much for your testimony.

Are there further questions from counsel?

Mr. HYDE. If I may just interject, Mr. Chairman, I agree with everything you just said, but every witness has been scheduled by the proponents of this legislation. So naturally nobody has come in and said it isn't necessary.

I don't assume you would schedule such witnesses. But I hope, in due course, that we'll have an opportunity to bring in some people who can add to this discussion by giving the other side. And, of course, I eagerly await that, too. But we haven't really heard the whole story yet, I don't think.

Thank you.

Mr. EDWARDS. Counsel?

Mr. BOYD. Mr. Cox, in your statement you don't really address too extensively the language in title II of the Rodino bill, H.R. 3112, which would extend an effects test in section 2 of the act.

Do you think it's reasonable to conclude that a court could use the language in title II to mandate quota systems for city councils, school boards and, indeed, State legislatures nationwide which do not reflect percentage minority composition of its population?

Mr. COX. I'm sorry. I didn't get the language sufficiently.

Mr. BOYD. There is language in section 2—title II of H.R. 3112.

Perhaps it might be better, Mr. Chairman, in the interests of time, if we could ask Mr. Cox to submit a response, since we have two more witnesses.

Mr. COX. Section 2 of the Voting Rights Act?

Mr. BOYD. As amended by title II of H.R. 3112 of the Rodino bill.

Mr. EDWARDS. Professor Cox, if you would prefer, you can submit that response in writing.

Mr. HYDE. Did you understand the question?

Mr. COX. I'm getting deaf. I'm sorry. I simply didn't get the question.

Mr. BOYD. I'm sorry. The question is: Would you believe that it is reasonable to conclude, or for a court to conclude, pursuant to section 2 of the Voting Rights Act, as amended by the Rodino bill, that city councils, school boards—indeed, State legislatures—could be mandated to maintain quotas, insofar as their membership is concerned, which reflect the percentage population of jurisdictions that they control?

Mr. COX. I would have to—I haven't thought of that question, to be honest. I would have to study the language. If the committee wants a response, I will be happy to do it.

Mr. HYDE. Right. We would be interested in that.

Mr. EDWARDS. Thank you very much, Mr. Cox. Our next witness is the Honorable Roberto Mondragon, Lieutenant Governor of New Mexico. The Lieutenant Governor is the highest elected Hispanic official in the country, in the whole United States, outside of Puerto Rico.

Mr. Lieutenant Governor, we welcome you. Without objection your full statement and the attachment will be made a part of the record, and you may proceed.

STATEMENT OF HON. ROBERTO MONDRAGON, LIEUTENANT GOVERNOR OF THE STATE OF NEW MEXICO

Mr. MONDRAGON. Mr. Chairman and members of the committee, my purpose in being here today is to present the viewpoint of a State which, as a matter of course, generally makes it a practice to include all, rather than to exclude some, of the population of a State in the electoral process. And by attempting to show how the adoption of State statutes which are in line with the Voting Rights Act have encouraged overall participation in our system of government in a positive manner, and to encourage the Congress, through your committee, Mr. Chairman, to continue all the provisions of the Voting Rights Act.

Chairman Edwards and members of the committee, my name is Roberto Mondragon. I am the Lieutenant Governor of the State of New Mexico, and I am honored to have been asked to testify before this subcommittee on the Voting Rights Act. I am confident that you and members of the committee will address the many complex issues surrounding this vitally important legislation in the weeks and the months to come.

Because it deals with people being able to have a direct say as to who will represent us on those issues that affect us directly, there is no issue that is more important to the Hispanic community than the extension of the Voting Rights Act. I fully support the continuation of bilingual elections, the continuation of section 5 preclearance for all of those areas currently covered, and an amendment to section 2 which would clarify standards of evidence in voting discrimination challenges.

Without these protections, many minority members of our society, including Hispanics throughout the country, would be deprived of the most basic right of our democracy, the right to vote. Mr. Chairman, the Spanish-speaking U.S. citizens in New Mexico who, according to the 1980 census composed 36.6 of the population of the State, have always had bilingual ballots and bilingual assistance at the polls. As a State we have always tried to accept, rather than to deny, the linguistic and cultural differences amongst our diverse populations.

Many of New Mexico's minorities are descendants of Spanish settlers who came to Santa Fe and northern New Mexico in 1609 when New Mexico was a part of Spain. New Mexico was a part of Spain through 1821, and then later became a part of Mexico through 1848, when we were a territory, and we became a State in 1912.

Indians compose another part of our minority citizens. They, of course, lived in New Mexico long before the Spanish did, and even now compose about 8 percent of the population of the State.

Mr. Chairman, the history of New Mexico in many respects is the history of the Southwest. The land in the Southwest was settled by Indians and Spaniards, and ceded to the United States by Mexico in the 1848 Treaty of Guadalupe-Hidalgo. Article 9 of the treaty guaranteed to Mexican-origin people the enjoyment of all rights of the citizens of the United States, according to the principles of the Constitution.

Overall, the Treaty of Guadalupe-Hidalgo has been ignored in most parts of the Southwest. Legislative, financial, and court maneuverings were used to deprive native New Mexicans throughout the Southwest of the land grants and ranches and farms that they owned. Heavy taxes were placed on the land, although, like the Indian pueblos, the land grants were not supposed to have been taxed.

Many New Mexicans lacked the money to pay the taxes and they sold the land to the Anglos in order to pay for the legal fees. They were forced to sell parts of the land also, in order to pay the taxes. They were also forced, in order to pay attorney fees, to sell other parts of the land. In some of the areas the native Mexicans were suddenly required to register their lands. This fact was not publicized, and many of them failed to meet the deadline and they lost many of these various land grants.

The new Americans of Mexican heritage were not familiar with U.S. politics, and politicians did very little to inform them of them. A small group of Anglos who arrived in El Paso, Tex., after the 1848 war took control of the local politics in El Paso and they managed the Mexican vote through various agents or patrons, who were rewarded by patronage. By 1870, El Paso had 12,000 inhabitants and only 80 of them were Anglos, yet most of them were elected officials and they controlled the county's wealth in that area.

In California, Mexican-origin people were crowded out of the State legislature, and by the 1880's no Spanish-surname people could be found in public office. As early as 1856 Democratic party bosses called a special convention in Los Angeles to consider splitting or gerrymandering the county into two to increase the Anglos' political influence. It was the beginning of gerrymandering against Mexican Americans, a practice which still limits the political voice of Hispanics in many parts of the Southwest.

Let me touch on New Mexico, which is a little bit unlike these various areas. New Mexico, for the most part, has had a long and rich tradition of political involvement and participation by our State's Hispanics. One reason for this is historical. Hispanics have participated in the government of our State at all levels since 1598 when Don Juan De Oñate was named Governor and Captain General of the area by King Philip II of Spain.

One might say that New Mexico had a Voting Rights Act for non-Spanish speaking individuals throughout history, allowing English speakers to participate in Statewide elections in a Spanish-speaking society. Our State constitution, written in 1910, required that all government documents be written in Spanish as well as English. Unlike any other State in the Southwest, New Mexico, throughout most of our history, has conducted elections and provided election information bilingually, and in many areas trilingually, thus providing election information in the language of our American-Indian populations.

We also have voter assistance at the polls for voters who did not speak English. Mr. Chairman, we have 19 Indian pueblos, we have 2 Apache Tribes, and we have the Navajo Reservation, and for the most part, each of these various tribes has its separate, often unwritten language.

Many Members of Congress have expressed grave doubts about the need for bilingual elections. Those who would like to eliminate bilingual elections contend that all elections should be conducted only in English. They contend that bilingual elections promote cultural separatism; that it is only a matter of time before the United States will find itself with another Quebec. They also contend that bilingual elections cost too much money.

As an official elected statewide in the State of New Mexico, a State which has conducted bilingual elections since our statehood in 1912, I will assure you that each one of these contentions is without foundation. First, with respect—I would like to address a concern raised that bilingual elections will promote cultural separatism; that if citizens vote in a language they understand they will never become integrated into the political process.

New Mexico has a Hispanic population of 36.6 percent and a long tradition of political participation by Hispanics. Today in New Mexico there are 10 statewide elected positions. These include Governor, Lieutenant Governor, attorney general, secretary of State, State auditor, State treasurer, land commissioner, and three corporation commissioners. Hispanics hold 40 percent of these statewide offices. We are the only State in the country where Hispanics hold statewide offices.

In our State, Hispanics account for 35 percent of the state senators, 28 percent of the state representatives. Hispanics make up 35 percent of all school board members in 89 school districts, and 34 percent of all county elected officials in the 33 counties. We also make up 32 percent of the municipal elected officials throughout the State.

As you can see, New Mexico Hispanics do, in fact, participate in the electoral process at all levels, but so do all other parts of the population. Just to give a breakdown of the participation in the State of New Mexico, Mr. Chairman, let me add that the State government officials, including the legislature, the supreme court, and the court of appeals, total 135 and there are 42 Hispanics. At the county level, all of the county positions total 302; 103 of these are Hispanic. We have 89 school districts, about 542 school board positions; 188 are Hispanic. Municipal positions, including mayors and city councils, total 497; 158 are Hispanic. Others, including district attorney, district court and county magistrates, total 138, and 46 are Hispanic.

We are talking total, at all levels of government in the State of New Mexico, about 1479 total elected positions, and 493 of these are held by Hispanics. We are the only State in the country which conducted bilingual elections prior to 1975 when the Voting Rights Act required them throughout Texas, Arizona, and in over 200 counties around the country.

Mr. Chairman, I am proud to represent the State of New Mexico, a State whose tradition of bilingual elections historically guaranteed access to the political process at all levels of government to all of its citizens. It is my hope that New Mexico's acceptance of all of its cultures and all of its languages will serve as an example for the rest of the nation at a time when it seems to be fashionable to blame blacks, Hispanics and Indians, and other people who look foreign, for the problems of our society.

Please do not misunderstand. My statements are not made to imply that New Mexico is entirely without fault. There are some areas of our State, some counties in which election returns do not reflect minority participation. Other Southwestern States however, have a long way to go before it can be demonstrated that the Voting Rights Act is no longer needed.

California, where Hispanics account for about 20 percent of the State's population, has only seven Chicano State legislators. Los Angeles County, whose Hispanic population is 27 percent, does not have a single Mexican American on its city council. Hispanics make up about 50 percent of all the gradeschool children in Los Angeles, yet there is not a single Mexican American on the school board.

Examples of this kind can be found throughout the southwest. In many areas the Voting Rights Act has begun the long, slow process of reversing the centuries-old practice of systematically excluding millions of citizens from the political process.

I understand that the cost of bilingual elections is another issue of concern to Members of Congress. As you know, hostility to the cost of bilingual elections has come almost exclusively from California where the costs of all elections are extremely high, because of the vast amounts of printed materials produced for all elections.

In New Mexico the cost of bilingual elections has really never been an issue. As required by the Federal Voting Rights Act, each county is responsible for implementing bilingual elections. But in New Mexico, the State has assumed some of the cost for bilingual elections. The State pays for many of the local election supplies.

In 1980 the New Mexico Legislature appropriated $250,000 to provide bilingual elections in the State. Of that, $150,000 was appropriated for the primary election and $100,000 for the general.

I am proud to say that elected officials in New Mexico regard bilingual elections as a fundamental right and that they are willing to appropriate funds to insure that right. I know of no other State in the southwest which has made similar financial commitment to its non-English speaking citizens to assure equal access to all of the voting age citizens.

Again, let me repeat that New Mexico is not completely free from discrimination in voting. But I am pleased to say that voting discrimination against Hispanics in New Mexico is the exception, rather than the rule. In discussing the issue with colleagues in the remainder of the southwest, I find in some areas systematic exclusion of Hispanics from the voting booth is still the rule.

Mr. Chairman and members of the committee, all citizens need to have as direct a say about those things that affect them directly, such as education, such as the economy and politics. The only way to assure this is to provide for equal access to the voting booth and the entire political process. It is for this reason that I ask you to continue the implementation of the Voting Rights Act. (See p. 2175 for prepared statement.)

Mr. EDWARDS. Thank you very much, Mr. Lieutenant Governor, for excellent testimony, and you should be very proud of the people of your State.

The gentlewoman from Colorado.

Ms. SCHROEDER. Thank you very much. I want to welcome a neighbor. It's very nice to have you here. I can't underline enough what you said. I come from one of the neighboring States, where

our allegiance to bilingualism has been very difficult. It is continually a political football that the people like to play with, so I think the Voting Rights Act is very important for parts of our State, such as the valley, which is where we have known discrimination in the past and assume it's still going on in some places today. So I really appreciate what you're saying.

I think it's interesting too, you know, I was looking at Switzerland, who runs their elections in not one language and not two, but four and five. And they'll have as many as 27 elections a year. They fine people if they don't show up to vote. They have an entirely different viewpoint of this. So it's interesting to see how here we have to say no, no, no. We have to defend being bilingual. It's fascinating.

I thank you. I appreciate what you have to say and will continue to work really hard to make sure that the State's people can vote.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. I associate myself with the remarks of both the chairman and the gentlelady from Colorado. I have been out to your beautiful State a couple of times and know well your representatives in Congress, and they are great people, and I wish we had you out there. But thank you very much. You have made a great contribution.

Mr. EDWARDS. Mr. Lieutenant Governor, there is a bailout provision that can work, insofar as the language provision of the Voting Rights Act, and I presume that New Mexico wouldn't want to bail out.

Mr. MONDRAGON. New Mexico did, in fact, bail out. They bailed out through the provisions that are in the act at the present time. There were a number of counties which at first were required to be under the act, but because of the fact that the State did meet all of the provisions New Mexico bailed out. This is a perfect example of how, under the provisions a State can, and did, bail out. Let me add Chairman Edwards, that in 1977, the State of New Mexico passed statutes—amendments to the Election Code—which included all of the provisions of the Voting Rights Act. And so it is that State law now provides for—not only bilingual materials and information, but it also provides that in areas where the language of the home environment is an unwritten language, such as some of the Indian languages, that the information will also be provided orally. This, in fact, is being done at the present time in about 50 precincts throughout the State of New Mexico.

Mr. EDWARDS. Thank you very much. Are there further questions? Counsel?

Ms. DAVIS. Mr. Mondragon, some critics of bilingual assistance believe that all U.S. citizens should be able to speak English, either because they were born here or because they were required to pass an English proficiency test, if they were naturalized.

How would you respond to such a statement?

Mr. MONDRAGON. Speaking about Hispanics in the State of New Mexico, and many of the Southwestern States, these people never needed to be naturalized. They were born Americans for many, many generations. My father was born there, as was my grandfather. My great grandfather and his father were born in the same area. And as far as I know, three and four generations further

back. My grandfather never knew how to speak English, although he was an American citizen. Most of us had a first language of Spanish. And certainly, we have had a dual pride; pride of our heritage—pride of being of Hispanic background, pride of our culture, which includes our language—and the pride also of being an American citizen. And so many Hispanics in a lot of the parts of the country, particularly throughout the Southwest have not had an opportunity to become fluent in the English language. Part of the reason behind that, of course, is the failure of the educational system itself.

Ms. DAVIS. Shouldn't it be within the prerogative of the state or local governments, as New Mexico did, whether or not it wishes to provide bilingual voting assistance?

Mr. MONDRAGON. Could you repeat it again, please?

Ms. DAVIS. Shouldn't it be within the prerogative of a state or local government, as New Mexico did, to decide whether or not it wishes to provide bilingual voting assistance?

Mr. MONDRAGON. Let me just say that for a period of time, the election laws in New Mexico were rather watered down. This period was from about 1969 to about 1975 or 1977, but because of the fact that the Voting Rights Act was in place, it gave us a chance to take up the challenge not only to strengthen the laws to provide for more equal access to people throughout the State of New Mexico, but also to provide more within the populations of the State itself. Mr. Davis, Mr. chairman, the fact that there is a Federal Voting Rights Act has helped the State of New Mexico to do better for our people and it certainly will help in other States where there is need.

Ms. DAVIS. Thank you.

Mr. EDWARDS. A vote is pending in the House of Representatives. The subcommittee will recess for 10 minutes.

Mr. Lieutenant Governor, we thank you very much for very valuable testimony. We apologize for Miss Hinerfeld and the League of Women Voters. We will get to you immediately after the vote.

Mr. MONDRAGON. Thank you, Mr. Chairman.

[Recess.]

Mr. EDWARDS. The subcommittee will again come to to order.

We apologize to our last witness for the delay, and we hope that the bells will not ring anymore today.

Our final witness today is Ruth Hinerfeld, who is national president of the League of Women Voters. The league was founded around the concept of extending the franchise. The league chapters have worked to help achieve the goals of the Voting Rights Act. And I might add over the past decade or so, the league has been of immense assistance to this committee in its work in civil rights and enforcing constitutional rights and in the passage of a number of important bills that have to do with the rights of individual Americans.

So Miss Hinerfeld, we welcome you. Please introduce your colleague and proceed. And without objection, your excellent statement will be made a part of the record. (See p. 2163 for prepared statement.)

TESTIMONY OF RUTH HINERFELD, PRESIDENT, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES, ACCOMPANIED BY FUMI SUGIHARA, CHAIR, GOVERNMENT ISSUES

Ms. HINERFELD. Thank you very much, Mr. Chairman. I'm Ruth Hinerfeld, president of the League of Women Voters of the United States. Accompanying me today is Fumi Sugihara, chair of government issues for the league.

We thank you for this opportunity to present the views of our members about the Voting Rights Act and H.R. 3112, the Voting Rights Act Amendments of 1981.

Ours is an organization whose very existence is based on citizen participation in government and, especially, on expanding and protecting voting rights. In fact, the league was established in 1920 by women who had finally won the battle for female suffrage. And League members are as committed now as they were in the beginning to making the right to vote a reality for all citizens.

I am here today in support of H.R. 3112. We support the extension of sections 4 and 5 of the Voting Rights Act for 10 years. We believe that a 10-year extension of the act's special provisions is imperative to insure that the extensive reapportionment and redistricting following the 1990 census are subject to section 5 review.

We support extending the bilingual election provisions for 7 years, in order to put those provisions on the same timetable as other sections of the act. And the league also supports the amendment to section 2, which would clarify what we believe to be the original intention of Congress that both existing and new instances of voting discrimination can be proved by showing direct and indirect evidence of discriminatory effect. This change is necessary in order to restore the protections against voting discrimination that were in effect before the Supreme Court's decision in *City of Mobile* v. *Bolden*.

Other organizations and individuals will come before this subcommittee to testify to the important role of various areas of the Voting Rights Act. We are here to assert that the special provisions of the Voting Rights Act must be retained until citizens in covered jurisdictions are afforded an equal opportunity to register, to vote, to have their vote count, to run for office—in short, to exercise those rights which we all believe are ours under the Constitution.

We will focus our remarks on the area of voter registration. Though it's the area where the greatest progress under the act has been made, members of the league believe the continued existence of section 5 is necessary to preserve and protect the fragile gains made in minority registration and political participation.

We have surveyed local leagues in areas covered by section 5 of the Voting Rights Act to determine the manner in which voter registation is conducted in their communities. Based on this information, we have reached the conclusion that the persistence of subtle discriminatory practices and attitudes toward registering minorities in covered jurisdictions has inhibited progress toward the goal of full minority political participation. They indicate a climate that is still hostile to the idea of equal minority participation and representation.

The League of Women Voters of Norfolk-Virginia Beach, Va., said it best, and I quote:

Longtime residents of both our cities, Norfolk and Virginia Beach, tell wondrous tales of past discrimination, such as "white paper" registrations, where the applicant was handed a piece of blank paper and asked to interpret a section of the Constitution. They also tell of having to produce their poll tax receipts. We have not progressed very far from that sort of mind-set when so many employees of the registrar still argue that "registration should be made hard so they appreciate the right." The Voting Rights Act has made many people aware that voting is an inalienable right that cannot be denied. Without the Voting Rights Act hanging over Virginia, any gains made would quite dissolve.

In addition to that league, other leagues in covered jurisdictions also report that barriers to registration remain high. Inconvenient registration times and places, lack of outreach to the minority community and unwillingness on the part of registration officials to cooperate or work with community groups or to voluntarily take steps that would make registration more convenient and accessible continue to discourage minority registration. These practices work hardship on all potential voters, but the hardship falls most heavily on the minority population, which is more likely to be poor, transient and undereducated. One does not need to be black nor a member of a language minority to recognize the latent hostility of some officials to minority registration and political participation, patronizing treatment, and laggard service are all too familiar tactics for discouraging minority citizens from registering and voting.

Let me give you two examples. The first involves the obstructive attitudes minorities often encounter in the registration process. The League of Women Voters of New York City told us that in New York City, minority groups who request quantities of the voter registration forms for a planned registration drive report that the board of elections is unwilling to cooperate with them or comply with their request; yet a telephone call from the League of Women Voters of New York City usually suffices to obtain the forms.

The second anecdote is an example of the kind of subtle harassment common in the voting process. This incident was reported to us by the Edinburg-McAllen, Tex., League of Women Voters; as follows:

In North Mission, Tex., the business manager of the school district ordered only one voting machine, even though the turnout was predicted to be high. That machine was filled up by 3:30 p.m. For about 45 minutes, until another machine was brought in, voters were not able to vote in the school election. The election judge for the school told us that all the trouble started last year when "those Mexicans started to vote." Too many election judges and clerks are untrained and racist; they are not cooperative; in some cases, they don't know enough about Spanish pronunciation to find names of minority on the registration lists. Training sessions are not mandatory and are pretty much of a job anyway.

That's the end of that quote.

Even when local election officials are empowered by State law to authorize deputy registration, institute Saturday or evening registration hours or set up satellite registration sites—all steps that would make registration easier and more accessible to minorities—they rarely choose to exercise this option.

While none of the above incidents were express violations of the act, I have cited them, in order to convey to you a sense of the climate in which voter registration is adminstered in covered jurisdictions, despite the act's protections.

Violations do occur, of course, and section 5 continues to serve a positive function in protecting minority voting rights. This is illustrated by recent events in DeKalb County, Ga. During the 1980 election year the DeKalb County Board of Elections abruptly discontinued its practice of authorizing the League of Women Voters and other civic groups to register voters in such places as supermarkets and libraries.

In response to this change in policy, the DeKalb County League and the DeKalb County NAACP filed suits asserting that the board acted illegally by not submitting the policy change for preclearance with the Justice Department.

This change would have made voter registration less accessible, particularly to minority citizens, who had been registered in significant numbers as a result of the league's drives.

This subcommittee should know that blacks make up 27.1 percent of the population of the county, but only 16.6 percent of the registered voters. Here is what the DeKalb league said:

> DeKalb citizens numbering 1,302 were registered by League volunteers at the four major DeKalb shopping sites on Saturday, February 2. By comparison during the entire month of January only 2,700 citizens were registered at the 115 established county sites.

In June of 1980, a Federal court agreed with the league and the NAACP. The Justice Department subsequently rejected the proposed change and the board of elections then rescinded its policy.

The DeKalb County story illustrates our major point, which bears repeating—even in the area of voter registration, where we know the greatest progress has been made, it is section 5 which protects and preserves those gains. Without section 5, then, the DeKalb change and probably an undocumented number of other subtly discriminatory changes in election policy, practice, and procedure would go into effect. Without section 5, the only recourse to minorities to enjoin discriminatory election practices and eliminate barriers to registration and voting would be case-by-case litigation, whose tediousness and financially draining nature have been well documented.

Although the DeKalb league may have been able to sustain the expenditure of time and money to pursue its case to a conclusion, I can safely say that many leagues would not have been able to do so. Surely, it is simpler to prevent discriminatory laws and practices than to eliminate them after they are put into effect.

The league believes that the best argument for retaining the act's highly effective administrative enforcement mechanisms for another 10 years is the remarkable success it has had in increasing minority registration and removing many of the barriers to minority political participation.

Although the statistics show progress, they also show that there is still a long way to go before all traces of the discriminatory systems of the past are erased. Even when the outer door to political participation is unlocked through registration and voting, the door to elective office and political power is still difficult for minorities to pass through.

If increased registration rates are to be meaningful they must go hand in hand with increased participation in all facets of political life.

In the words of the League of Women Voters of Georgia, the Voting Rights Act has been the most far-reaching, beneficial piece of civil rights legislation that has come along in recent history. It must be extended. Without it we do not see how minorities could have ever achieved any measure of representation in the State legislature.

Georgia has many counties with majority black populations and yet no black representation on school boards, county commissions, or city councils.

Only through the Voting Rights Act will there be any hope of changing this situation. We are being dragged kicking and screaming into the 20th century. But there can be no other way of doing it.

Attitudes toward blacks have not changed. We still have a long way to go to educate the electorate and remove the fears of the blacks whose jobs may depend on the degree of political activity they engage in.

In closing, I must emphasize the league's belief that at a time when many covered jurisdictions are still marked by racially polarized voting patterns, unequal and inconvenient registration opportunities, and persistent attempts by State and local officials to make discriminatory changes in voting and election procedures, there is little evidence that covered jurisdictions are ready to accept full minority political participation without the effective protections of the act's special provisions.

Thank you.

Mr. EDWARDS. Thank you very much, Ms. Hinerfeld.

Your testimony is that enough time has not passed and that attitudes have not changed substantially so that there would be almost certainly a regression to the bad old days. Is that correct?

Ms. HINERFELD. That's absolutely correct, Mr. Chairman.

Mr. EDWARDS. The league has not come upon portions of the covered jurisdictions where local attitudes, local laws, local affirmative action programs, have tried to replace the Voting Rights Act insofar as the State is concerned?

Ms. HINERFELD. I don't think that that would be a safe statement or a safe generalization to make, Mr. Chairman. However, what we do have is a rather clear and consistent picture of the continuance of attitudes of the past, which would seem to presage a return to passages of the past without the Voting Rights Act.

Mr. EDWARDS. I'm sure we are going to have other people, other witnesses and members bring up the question of a bailout, and I am sure that we will listen respectfully to everybody because it would be very convenient and very appropriate if there was some test that could be administered so that a particular county or a particular State could bail itself out. But it would have to be more than just good voting practices over a period of years. Wouldn't you think that we would have to go deeper than that to determine whether or not in truth that attitudes had changed, that all vestiges of other kinds of discrimination, too, would almost have to be eliminated from the society at least as evidence that the county or city or State could bail out?

Ms. HINERFELD. Well, certainly at a minimum there would have to be a demonstration of progress to the extent that election offi-

cials in the covered jurisdiction were no longer trying to submit changes which were not acceptable under the terms of the act.

And then going beyond that, of course, I think that there would have to be evidence that expressed what you were describing before, a positive, affirmative approach to engaging participation by all segments of the population and full participation in the political life of the jurisdiction.

Mr. EDWARDS. Well, thank you. That's an important point.

One bit of evidence would be the affirmative programs to make registration very easy or to do away with registration altogether. Registration in many places is unnecessary. Everybody knows everybody else. In Wisconsin, I believe, they don't have registration? Is that correct? Or it has same-day registration, for example. Registration is just an invitation to discriminate, isn't that correct?

Ms. HINERFELD. Well, it can be used as a device for discrimination, of course. More generally speaking beyond the immediate issue of discrimination on the grounds of race, color, or language, the League of Women Voters is supportive of facilitation of the registration process through postcard registration or universal same-day registration procedures for all segments of the population.

Mr. EDWARDS. In your testimony you mentioned, was it DeKalb County where you had to go to court to win for section 5?

Ms. HINERFELD. That's correct.

Mr. EDWARDS. Why did you have to go to court? The U.S. Department of Justice didn't come to your aid?

Ms. HINERFELD. I think I will defer to Fumi Sugihara on that question, Mr. Chairman.

Ms. SUGIHARA. First of all, the DeKalb League of Women Voters wanted fast action. They wanted to have that particular policy eliminated. That's why they took the course of going to court. They, of course, could have notified the Justice Department, but the Justice Department does take its time, and it may have taken the time that they did not have.

Mr. EDWARDS. I see. You wanted the court to find the pattern of practice.

Ms. SUGIHARA. No. The only thing the court needed to find was that the policy had to be submitted to the Department of Justice for preclearance. They had failed to submit the change in policy to the Justice Department.

Mr. EDWARDS. I would think at the Department of Justice the Attorney General would have filed the action then.

Ms. SUGIHARA. But they didn't know about it. Unless the DeKalb league would have—until the DeKalb league notified them and the NAACP notified them they didn't, the Department of Justice was not aware that a submission had not been made.

Mr. EDWARDS. The process established under section 5 is cheap, it's fast, people don't have to go to Washington. They don't have to file suits. Sometimes a lot of the details can be taken care of by telephone. That's one of the blessings of the section and the way it is enforced. Don't you think it would be almost tragic if you had to rely on court actions in every case of discrimination?

Ms. HINERFELD. Of course we have a long history of what happens when the only remedy is court action, and it was because of that past history that the Voting Rights Act was passed in 1965.

Mr. EDWARDS. Thank you.

Ms. Davis?

Ms. DAVIS. Thank you, Mr. Chairman.

Ms. Hinerfeld, if the section 5 preclearance provision is extended in its current form, you've spoken already to your views on amending the bailout provision, but have you given any consideration to whether the jurisdictions, as they presently are allowed or permitted under section 5 to get preclearance either through the Department of Justice or through the district court in the District of Columbia, have you given any consideration as to whether that provision should be amended so that a jurisdiction could get a declaratory judgment from any Federal district court? Or it should still be required to come to the D.C. court?

Ms. HINERFELD. The league has not given its consideration to that question.

Ms. DAVIS. What is your response to a statement that the section 5 preclearance provision is too burdensome and that the covered jurisdictions should go to make their case before a judge rather than a Washington bureaucrat?

Ms. HINERFELD. We don't believe that the procedures involved in preclearance are too burdensome; 60 days, 120 days maximum, is not overly burdensome, and there are provisions for faster decisions in the event that they are necessary. Actually those who would describe the preclearance procedure as burdensome perhaps are rationalizing an unwillingness to be subjected to it for other reasons.

And in terms of going to a court rather than to a Federal agency or a Federal district court, as I said before, the history of trying to correct or remedy situations of discrimination in voting through the process of litigation, civil action is one that only can reinforce our argument for the necessity of keeping the protection of section 5.

Ms. DAVIS. Thank you. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman.

Ms. Hinerfeld, on page 13 of your prepared statement you say that "without section 5, attempts to make discriminatory voting changes would go unchallenged and enforcement of the Voting Rights Act would be a futile exercise."

How does that statement jibe with the Federal district court's decision in *Jenkins* v. *the City of Pensacola,* which upheld and imposed preclearance pursuant to existing section 3(c) of the act?

Ms. HINERFELD. No, I'm very sorry, sir. We are not familiar with that case.

Mr. BOYD. Well, thank you. The *City of Pensacola* v. *Jenkins* was a case in an uncovered or not presently—at that time uncovered jurisdiction in northwest Florida brought by private parties in the Federal district court and subsequently upheld by the fifth circuit for the northern district of Florida which imposed preclearance to remedy pursuant to section 3(c). So preclearance can become a

remedy, can be imposed, and in fact efforts by local legislatures to disenfranchise covered minorities can be frustrated.

Thank you, Mr. Chairman.

Mr. EDWARDS. What kind of signal do you think it would send if Congress failed to extend the Voting Rights Act or substantially weakened it, as is the desire of some people?

Ms. HINERFELD. It would send a very strong and unfortunate signal. Not only is the extension of the Voting Rights Act important for its real effects, but it is also a symbol, and symbols are important, of gains that this country has made somewhat slowly and painfully, but certainly a direction of great progress toward recognizing the importance of protecting the right of every citizen of this country to vote.

Mr. EDWARDS. I was impressed with those portions of your testimony describing the work that some of your chapters had done in areas covered by section 5. Do those chapters feel the same as you do, that the voting rights bill should be extended?

Ms. HINERFELD. Oh, indeed, they certainly do.

Mr. EDWARDS. Do they have any problems with any of their relatives? [Laughter.]

Ms. HINERFELD. Well, we all have problems with our relatives. I wouldn't be surprised. [Laughter.]

Mr. EDWARDS. Well, you can pass the word to them that the committee would welcome any communications from them, anonymous or not, indicating that we should move ahead because it is a very important American subject, and I agree with you, and I think all the witnesses to date. As Mr. Hyde pointed out, we have not heard from the other side yet. But I just think it would be a tragic signal to send out, not only to the United States but to the rest of the world that we are going to turn around and go backward in this country. But as always, the league's testimony is excellent, first class, and of great help to the committee, and we thank both of you very much for coming today.

Ms. HINERFELD. We thank you, Mr. Chairman.

Mr. EDWARDS. The committee is adjourned.

[Whereupon, at 4:35 p.m., the hearing was adjourned.]

EXTENSION OF THE VOTING RIGHTS ACT

TUESDAY, MAY 19, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 2:14 p.m. in room 2237 of the Rayburn House Office Building; Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Schroeder, Washington, Hyde, Sensenbrenner, and Lungren.

Staff present: Catherine LeRoy, counsel; Ivy L. Davis, Helen Gonzales, assistant counsel, and Thomas M. Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

This afternoon we continue our hearings on the extension of the Voting Rights Act.

We are pleased to have, as our first witness, the city attorney for the city of Rome, Ga., Mr. Robert Brinson.

Do my colleagues desire attention?

Mr. HYDE. Always attention, but no recognition. I have no statement.

Mr. EDWARDS. Mr. Brinson, we welcome you.

And you may proceed.

TESTIMONY OF ROBERT BRINSON, CITY ATTORNEY, ROME, GA.

Mr. BRINSON. Thank you, Mr. Chairman.

I am Bob Brinson, as you have said, the city attorney for Rome, Ga. And I appreciate the opportunity to testify before this distinguished subcommittee.

As the time for my appearance was accelerated, with rather short notice, I am not prepared to file the written statement, which I wish to insert in the record. And for that, I apologize to the committee.

Mr. EDWARDS. What statement is this we have here, Mr. Brinson?

Mr. BRINSON. I was about to say that I have distributed a brief summary of my remarks for your use today. I would ask the Chair's permission to file a formal statement at a later date.

Mr. EDWARDS. Without objection, your formal statement will be made part of the record.

[The prepared statement of Mr. Brinson follows:]

SUMMARY OF STATEMENT OF ROBERT M. BRINSON, ATTORNEY FOR THE CITY OF ROME, GA.

Mr. Chairman, I am Bob Brinson, city attorney for Rome, Georgia. I appreciate the opportunity to testify before this distinguished subcommittee.

As attorney for the City of Rome, Georgia, I have lived with the Voting Rights Act for many years. I have followed its preclearance procedure from A to Z—from initial submissions of changes to the Attorney General through the United States District Court for the District of Columbia and on to argument in the Supreme Court of the United States. I have also attempted the Act's "bailout" procedure on behalf of my City. It has been suggested that this experience might be of some value to this committee as it considers possible extension and modification of the Act.

No one can deny the initial need for, and success of, the Voting Rights Act of 1965. This is totally accepted in Rome, Georgia, and among city officials throughout Georgia and other covered states. Although it is distasteful to me for Georgia to be a "covered state" and for Rome, therefore, to be a "covered unit"; I have determined that the less rhetoric on that point I engage in, the more help I may be to this body. The failure to elaborate on my distaste, however, should not be taken as a lack thereof. More important is the recognition that if the South, or the covered states, are still guilty of discrimination which justifies the Act, then so is the rest of the nation.

I would not oppose the extension of § 2 of the Act as now written, nor the federal examiner and inspector provisions, and there is no reason that they should not be applied nationally. Universal voting on the part of all citizens everywhere is certainly a desirable national goal. I do, however, oppose extension of § 5 of the Act, at least in its present form and application.

The Act—and particularly § 5—has not just lived a history, but it has undergone a mutation, or, indeed, a permutation, both in its purpose and in its enforcement. I think all of us would have to agree that, originally, the Act had as its commendable purpose the enforcement of the 15th Amendment and the realization of the freedom to vote; § 5 was designed to assure that, once registration and voting obstacles to individual voters were removed, the removal would remain and not be circumvented. It seems now to have become an instrument for attaining representation guaranteed in proportion to an ethnic group's numerical strength. In any event, however, given the objection ratio (0.2 percent as of June, 1979), I submit to you that it has become a "trivial, though burdensome administrative provision," as suggested by Mr. Justice Stevens.

Having commented on the background of the Act, I now wish to draw from the experience of the City of Rome. On the heels of the one-man, one-vote decisions of the Supreme Court, the City of Rome overhauled its electoral system generally in the years 1966–1971. Also, as a result of its natural growth, Rome effected some sixty small annexations from late 1964 through 1973. As of 1973, the Justice Department had begun enforcement of § 5. As a result of various submissions, the Department's response and the interplay of state and federal law, Rome's electoral system began what was to be a six-year freeze.

The Georgia Municipal Election Code, in the meantime, having electoral provisions identical to those individually submitted by Rome (i.e., majority vote, numbered posts and staggered terms) was submitted by the state and pre-cleared. Although it applied to Rome and had received pre-clearance, Rome could not rely upon it because, as was ultimately held, all municipal charters to which the general state law applied had not been submitted by the state.

With respect to Rome's annexations, although the factual basis for objection was never substantiated by the Attorney General during the submission stage, the district court held that a 1 percent change in voting strength, which occurred without discriminatory purpose and which produced no change in voting balance, nonetheless brought about a § 5 objection.

The foundation upon which the objection to Rome's changes and annexations was necessarily based was the argued existence of racial bloc voting, a finding strenuously contested by the City. Although never substantiated by the Attorney General, the district court nevertheless found block voting based upon (1) the unsuccessful campaign of a black candidate for the Board of Education in 1970, wherein he, a newcomer to Rome, narrowly lost a run-off election with 45 percent of the vote in a city where blacks make up only 15 percent of the voters and (2) a political sociologist's opinion that bloc voting existed in Floyd County (not the city) during the 1968 Democratic United States Senate Primary between Herman Talmadge and Maynard Jackson, who was making his first bid for office.

In the United States District Court for the District of Columbia, Rome proved, and the court found, that the electoral changes were enacted without a racially discriminatory purpose; the United States had admitted the absence of any racially

discriminatory purpose for the annexations. Supporting these two central determinations by the court were eighteen subsidiary findings of fact describing the City's behavior: (1) "no literacy test or other device has been employed in Rome as a prerequisite to voter registration during the past seventeen years;" (2) the City has not employed other barriers to registration with respect to time and place, registration personnel, purging, or reregistration;" (3) "there have been no other direct barriers to black voting in Rome;" (4) "[i]ndeed whites, including City officials, have encouraged blacks to run for elective posts in Rome;" (5) "white elected officials of Rome, together with the white appointed City Manager, are responsive to the need and interests of the black community;" (6) "[t]he City has not discriminated against blacks in the provision of services;" (7) "[the City] has made an effort to upgrade some black neighborhoods;" (8) "the City transit department, with a predominantly black ridership is operated through a continuing City subsidy;" (9) "the racial composition of the City workforce approximates that of the population, with a number of blacks employed in skilled or supervisory positions;" (10) "[i]n Rome politics, the black community, if it chooses to vote as a group, can probably determine the outcome of many, if not most contests;" (11) "blacks often hold the balance of power in Rome elections;" (12) "[t]hus many white candidates vigorously pursue the support of black voters;" (13) "[blacks] are situated to assert considerable influence over many elected officials, not simply those representing an exclusive black constituency;" (14) "[a]lso probative of the lack of discrimination in registration is the fact that black registration remained at a relatively high level throughout the period 1963-74;" (15) "[b]lacks have not been denied access to the ballot through the location of polling places, the actions of election officials, the treatment of illiterate voters or similar means;" (16) "a black. . . was appointed to the Board of Education when a vacancy occurred in that body;" (17) "[s]everal present Commissioners testified that they spent proportionately more time campaigning in the black community;" (18) "[n]or is there any evidence of obstacles to black candidacy with respect to slating of candidates, filing fees, obstacles to qualifying, access [of] voters [to] polling places, or the like."

As you know, Rome did not prevail in the Supreme Court of the United States. In an opinion by Mr. Justice Marshall, with two concurring opinions and three Justices dissenting, the Court upheld the lower court. It was observed that the changes made by Rome prevented single shot voting by blacks, thereby have a retrogressive effect on blacks' voting power.

In addition to arguing for preclearance, Rome, in a matter of first impression, sought to bail out from coverage pursuant to § 4 of the Act, and, indeed, the district court found that Rome had proven the factual predicate therefor, when it said:

[W]e find that no literacy test or other device has been employed in Rome as a prerequisite to voter registration during the past seventeen years.

Nevertheless, it was held that Congress did not intend to allow a political unit which had not been separately designated to exempt itself from coverage, even if entirely innocent. In the *City of Rome* case, Mr. Justice Powell observed, in dissent, that "[s]uch an outcome must vitiate the incentive for any local government in a state covered by the Act to meet diligently the Act's requirements."

After the decision, Rome submitted its plans for an interim primary and election to the Justice Department. After some discussion, preclearance was granted and a primary was held. Two black candidates offered for the Rome City Commission. One, Napoleon Fielder, was not only nominated, but he received the highest number of votes in the contest. In the general election, Mr. Fielder received some three hunderd more votes—still the highest—was elected, and is now well-serving all citizens of Rome. In the school board election, the incumbent (appointed) black member also received the most votes.

Philosophically speaking, if I could convince this body and the Congress of anything, I would plead (1) for the recognition that, although racial bloc voting may exist, it is not, I submit, as widespread as perceived, and it does not exist or prevail in all areas of the covered states, and (2) the encouragement of single shot voting by minorities is, I submit, just as separatist as gerrymanders, and is, indeed counterproductive to the democratic ideal.

In Rome, for example, as the court held, blacks often hold the balance of power in elections, and, thus, "Rome's elected officials have been quite responsive to the interests of the black community." In short, there has been no true bloc voting in Rome because there has been no impulse for it; the people of Rome have all been well represented. I am sure there are many other examples of the inaccuracy of the notion of racial bloc voting.

It would appear that the encouragement of single shot voting by blacks seriously undermines the considerable influence which blacks hold over all candidates. It

would compartmentalize the electorate and divide the community, and political power of blacks would tend to decline.

Rome proved its innocence of discrimination, but because no black had been elected, it was irrebuttably presumed to be guilty. It becomes clear that according to the manner in which § 5 is now enforced, the "effect" proscribed by the provision is the disproportionate result of political processes, rather than disproportionate access to those processes. Indeed, it would appear that a quota of political success is the goal now sought by § 5 proponents.

I recently read that Attorney General William French Smith was calling for practical solutions in civil rights matters in order to avoid frustration and anger sometimes stemming from mandatory quotas. He said that the Justice Department has relied too much on "remedial devices . . . to the detriment of equal opportunity."

> "Some remedies aimed at helping those who have been the victims of past discrimination have themselves come to represent a new kind of discrimination. The frustration and anger resulting from some of those remedies have jeopardized some of the progress that has been so hard-won."
>
> "It would be tragic, having actually achieved so much, if over-reliance on particular remedies—like mandatory, massive busing and mandatory quotas—were to spawn a new intolerance in place of growing good will."

If the Act is to be extended, and good will is to grow and intolerance and frustration is to be avoided, then § 5 should not be extended. If § 5 is to be extended, then it should apply nationally, and § 4 should be amended to allow exemption by political units which can prove their innocence. If the democratic ideal is to be fostered, then the bottom line to seek is not necessarily representatives but representation.

Mr. BRINSON. Mr. Chairman and members of the committee, as attorney for the city of Rome, Ga., I have lived with the Voting Rights Act for many years. We were the plaintiff in that other case that was decided in April 1980, along with the *City of Mobile* case.

I have followed its preclearance procedure from A to Z, from initial submissions of changes to the Attorney General through the U.S. District Court for the District of Columbia and on to argument in the Supreme Court of the United States. I have also attempted the act's bailout procedure on behalf of my city. It has been suggested that this experience might be of some value to this committee as it considers possible extension and modification of the act.

No one can deny the initial need for, and success of, the Voting Rights Act of 1965. This is totally accepted in Rome, Ga., and among city officials throughout Georgia and other covered States. Although it is distasteful to me for Georgia to be a covered State and for Rome, therefore, to be a covered unit; I have determined that the less rhetoric on that point I engage in, the more help I may be to this body. The failure to elaborate on my distaste, however, should not be taken as a lack thereof. More important is the recognition that if the South, or the covered States, are still guilty of discrimination which justifies the act, then so is the rest of the Nation.

I would not oppose the extension of section 2 of the act as now written, nor the Federal examiner and inspector provisions, and there is no reason that they should not be applied nationally. Universal voting on the part of all citizens everywhere is certainly a desirable national goal. I do, however, oppose extension of section 5 of the act, at least in its present form and application.

The act—and particularly section 5—has not just lived a history, but it has undergone a mutation, or, indeed, a permutation, both in its purpose and in its enforcement. I think all of us would have to agree that, originally, the act had as its commendable purpose the enforcement of the 15th amendment and the realization of the

freedom to vote; section 5 was designed to assure that, once registration and voting obstacles to individual voters were removed, the removal would remain and not be circumvented. It seems now to have become an instrument for attaining representation guaranteed in proportion to an ethnic group's numerical strength. In any event, however, given the objection ratio—in June of 1979 that objection ratio was 0.2 percent, I submit to you that it has become a "trivial, though burdensome administrative provision," as suggested by Mr. Justice Stevens.

Having commented on the background of the act, I now wish to draw from the experience of the city of Rome. On the heels of the one-man, one-vote decisions of the Supreme Court, the city of Rome overhauled its electoral system generally in the years 1966-1971.

I commend to the committee, an article known as The Odd Evolution of the Voting Rights Act by Abigail Thurnstrom. This article I think discusses well and has much insight into the Voting Rights Act. It was published in the Public Interest in spring 1979.

Also, as a result of its natural growth, Rome effected some 60 small annexations from late 1964 through 1973. As of 1973, the Justice Department had begun enforcement of section 5. As a result of various submissions, the Department's response and the interplay of State and Federal law, Rome's electoral system began what was to be a 6-year freeze.

Mr. SENSENBRENNER. I would like to raise a point of order against the roving camermen photographing this hearing, since it is in violation of the committee rules that cameras not be wandering about a hearing room, and also no permission has been given to photograph this hearing.

Mr. EDWARDS. Point of order is well taken.

Mr. HYDE. Mr. Chairman, I ask unanimous consent that the subcommittee permit coverage of this hearing in whole or in part by the television broadcast, radio broadcast or still photography in accordance with committee rule 5.

Mr. SENSENBRENNER. Reserving the right, I would like the Chair to advise the gentlemen with the camera what rule 5 provides relative to the stationing of cameras and the fact that cameras cannot go in and out of a hearing room while the hearing is in progress, lest the committee and audience be distracted.

Mr. EDWARDS. The gentleman from Wisconsin has stated the rule.

Our friends with the camera are directed to stand either in one place or another and not wander around the room and so forth.

Mr. SENSENBRENNER. I withdraw my reservation.

Mr. EDWARDS. Without objection, the motion is agreed to and you may continue.

Mr. BRINSON. Thank you, Mr. Chairman.

With respect to the article I just referred to the committee, I would propose to add that as an exhibit to my formal statement which I will file later, with permission of the Chair.

Mr. EDWARDS. Without objection it will be received.

Mr. BRINSON. Thank you, Mr. Chairman.

The Georgia Municipal Election Code, in the meantime, having electoral provisions identical to those individually submitted by Rome—that is, majority vote, numbered posts and staggered

terms—was submitted by the State and precleared. Although it was applied to Rome and had received preclearance, Rome could not rely upon it because, as was ultimately held, all municipal charters to which the general State law applied had not been submitted by the State of Georgia.

With respect to Rome's annexations, although the factual basis for objection was never substantiated by the Attorney General during the submission stage, the district court held that a 1 percent change in voting strength, which occurred without discriminatory purpose and which produced no change in voting balance, nonetheless brought about a section 5 objection.

The foundation upon which the objection to Rome's changes and annexation was necessarily based was the argued existence of racial bloc voting, a finding strenuously contested by the city. Although never substantiated by the Attorney General, the district court nevertheless found bloc voting based upon two factors: First, the unsuccessful campaign of a black candidate for the board of education in 1970, wherein he, a newcomer to Rome, narrowly lost a runoff election with 45 percent of the vote in a city where blacks make up only 15 percent of the voters, and second, a political sociologist's opinion that bloc voting existed in Floyd County, not the city of Rome, during the 1968 Democratic U.S. Senate primary between Herman Talmadge and Maynard Jackson. Mr. Jackson was making his first bid for public office.

In the U.S. District Court for the District of Columbia, Rome proved, and the court found, that the electoral changes were enacted without a racially discriminatory purpose; the United States had admitted the absence of any racially discriminatory purpose for the annexations. Supporting those two central determinations by the court were 18 subsidiary findings of fact describing the city's behavior.

I have listed these as a quote from the actual court opinion in the D.C. District Court in the *Rome* case to show the context in which the submissions of the city of Rome were decided upon:

(1) No literacy test or other device has been employed in Rome as a prerequisite to voter registration during the past 17 years;

(2) The city has not employed other barriers to registration with respect to time and place, registration personnel, purging, or reregistration;

(3) There have been no other direct barriers to black voting in Rome;

(4) [I]ndeed whites, including city officials, have encouraged blacks to run for elective posts in Rome;

(5) White elected officials in Rome, together with the white appointed city manager, are responsive to the needs and interests of the black community;

(6) [T]he city has not discriminated against blacks in the provision of services;

(7) The city has made an effort to upgrade some black neighborhoods;

(8) The city transit department, with a predominantly black ridership is operated thorugh a continuing city subsidy;

(9) The racial composition of the city workforce approximates that of the population, with a number of blacks employed in skilled or supervisory postions;

(10) [I]n Rome politics, the black community, if it chooses to vote as a group, can probably determine the outcome of many, if not most contests;

(11) Blacks often hold the balance of power in Rome elections;

(12) [T]hus many white candidates vigorously pursue the support of black voters;

(13) Blacks are situated to assert considerable influence over many elected officials, not simply those representing an exclusive black constituency;

(14) [A]lso probative of the lack of discrimination in registration is the fact that black registration remained at a relatively high level throughout the period 1963-74;

(15) [B]lacks have not been denied access to the ballot through the location of polling places, the actions of election officials, the treatment of illiterate voters or similar means;

(16) A black * * * was appointed to the Board of Education when a vacancy occurred in that body;

(17) [S]everal present Commissioners testified that they spent proportionately more time campaigning in the black community;

(18) [N]or is there any evidence of obstacles to black candidacy with respect to slating of candidates, filing fees, obstacles to qualifying, access (of) voters (to) polling places, or the like.

As you know, Rome did not prevail in the Supreme Court of the United States.

In an opinion by Mr. Justice Marshall, with two concurring opinions and three Justices dissenting, the Court upheld the lower court. It was observed that the changes made by Rome prevented single-shot voting by blacks, thereby have a retrogressive effect on blacks' voting power.

In addition to arguing for preclearance, Rome, in a matter of first impression, sought to bail out from coverage pursuant to section 4 of the act, and, indeed, the district court found that Rome had proven the factual predicate therefor, when it said:

[W]e find that no literacy test or other device has been employed in Rome as a prerequisite to voter registration during the past 17 years.

Nevertheless, it was held that Congress did not intend to allow a political unit which had not been separately designated to exempt itself from coverage, even if innocent. In the *City of Rome* case, Mr. Justice Powell observed, in dissent, that "[s]uch an outcome must vitiate the incentive for any local government in a State covered by the Act to meet diligently the Act's requirements."

After the decision, Rome submitted its plans for an interim primary and election to the Justice Department. After some discussion, preclearance was granted and a primary was held. Two black candidates offered for the Rome City Commission. One, Napoleon Fielder, was not only nominated, but he received the highest number of votes in the contest. In the general election, Mr. Fielder received some 300 more votes—still the highest—was elected, and is now well-serving all citizens of Rome. In the school board election, the incumbent—appointed—black member also received the most votes in that race.

Philosophically speaking, if I could convince this body and the Congress of anything, I would plead, one, for the recognition that, although racial bloc voting may exist, it is not, I submit, as widespread as perceived, and it does not exist or prevail in all areas of the covered States.

And, two, the encouragement of single-shot voting by minorities is, I submit, just as separatist as gerrymanders and is, indeed, counterproductive to the democratic ideal.

In Rome, for example, as the court held, blacks often hold the balance of power in elections, and thus Rome's elected officials have been quite responsive to the interests of the black community.

In short, there has been no true block voting in Rome, because there has been no impulse for it; the people of Rome have all been well represented. I am sure there are many other examples of the inaccuracy of the notion of the existence of racial block voting.

It would appear that the encouragement of single-shot voting by blacks seriously undermines the considerable influence which

blacks hold over all candidates. It would compartmentalize the electorate and divide the community, and political power of blacks would tend to decline.

Rome proved its innocence of discrimination, but because no black had been elected, it was irrebuttably presumed to be guilty. It becomes clear that according to the manner in which section 5 is now enforced, the effect proscribed by the provision is the disproportionate result of political processes, rather than disproportionate access to those processes. Indeed, it would appear that a quota of political success is the goal now sought by Section 5 proponents.

I recently read that Attorney General William French Smith was calling for practical solutions in civil rights matters in order to avoid frustration and anger sometimes stemming from mandatory quotas. He said that the Justice Department has relied too much on—

> Remedial devices * * * to the detriment of equal opportunity.
> Some remedies aimed at helping those who have been the victims of past discrimination have themselves come to represent a new kind of discrimination. The frustration and anger resulting from some of those remedies have jeopardized some of the progress that has been so hard-won.
> It would be tragic, having actually achieved so much, if over-reliance on particular remedies—like mandatory, massive busing and mandatory quotas—were to spawn a new intolerance in place of growing good will.

If the act is to be extended, and good will is to grow and intolerance and frustration is to be avoided, then section 5 should not be extended. If section 5 is to be extended, then it should apply nationally, and section 4 should be amended to allow exemption by political units which can prove their innocence. If the democratic ideal is to be fostered, then the bottom line to seek is not necessarily representatives but representation.

I thank the chairman.

Mr. EDWARDS. I thank you, Mr. Brinson. The gentleman from Illinois is recognized.

Mr. WASHINGTON. Yes, Mr. Brinson. I came in late, but I gather what you're saying in all of this, is that all is peaceful and quiet in Rome, because of the Voting Rights Act.

Mr. BRINSON. The District Court for the District of Columbia made a finding that there was a very benign racial situation in Rome. Yes, I would say that is true.

Mr. WASHINGTON. It disturbed me to discover that over a period of 17-odd years that there have been a number of ordinance changes in the city of Rome, and the Attorney General had not been involved, had not been apprised of any of it. Were you in office during that period of time?

Mr. BRINSON. Not as there were changes, as a matter of fact, Mr. Washington, but I can certainly explain.

Mr. WASHINGTON. I would hope that you would. If this act has been in effect for 15 or 17 years, and Rome had about 60-some-odd ordinance changes affecting voting rights within the confines of that city over the period of that time, and the Justice Department, contrary to the clear mandate of the statute and also notice served upon all covered jurisdictions, had not been apprised of the changes, it seems to me in the first place, your hands are not clean. Second, that is an argument for the extension of the act, because there has been no compliance. Can you explain it.

Mr. BRINSON. Yes. I anticipated that question. I think it is legitimate. The question fails to understand the history or, as it has been called, the evolution of the act.

Mr. WASHINGTON. Before you proceed, the Justice Department did notify you after the passage of the act that you had to comply with the requirements of the notice?

Mr. BRINSON. I frankly don't know. I don't think it did, Mr. Washington, frankly. That was in 1965, I became city attorney in late 1968, after the major electoral changes took place; however, I would call attention to the committee that although section 5 was a valid part of the law when it was passed, the Justice Department was enforcing the other provisions at the time, and as has been recognized by the Supreme Court itself, the section 5 provision was not enforced, was rarely at all enforced. I think there were less than 500 submissions in the first 6 years or 5 years of the existence of the act.

The turning point was the *Allen* v. *Board of Elections* decision in 1969. It was not until 2 years after that decision that the Justice Department implemented any regulations to tell the jurisdictions how to make a submission. So that in September of 1971, those regulations were issued. It was not until about the middle of 1972 that the notice—the only notice I ever remember receiving was received from the Justice Department. And also as of 1970, it was not known that annexations were to be submitted, and that did not occur until the *Perkins* decisions of 1971, that annexations, were considered covered.

Mr. WASHINGTON. Are you saying that you don't understand the act or you had other things to do, other than to comply with the provisions for notice?

Mr. BRINSON. There are many things to do in the local governments; that is very true. As I say, quite frankly, there was not an understanding of that. There was no enforcement by the Justice Department. There were no regulations to tell you how to make a submission. It was not known what had to be submitted. Most city attorneys that I knew did not submit, because they did not think that things were discriminatory. As a matter of fact——

Mr. WASHINGTON. It wasn't a question of whether they were discriminatory or not; was it? Wasn't the notice of change due, period? I don't think the Federal Government was relying upon the good graces of the city fathers of Rome to determine whether or not something was discriminatory, were they?

Mr. BRINSON. Mr. Washington, as I say, that particular part of the Voting Rights act was not enforced at all. It was not even, really, I don't think city attorneys and city officials or the person who necessarily had to submit, was even aware of it until it became reemphasized in 1969. And more so in 1971. At that time was when section 5 became the real instrument, the real emphasis of the Justice Department. Before that time, the other provisions of the act were what the Justice Department utilized.

Mr. WASHINGTON. It is my understanding, Mr. Brinson, that notwithstanding the fact that there may have been some confusion, that you did not submit your annexation, notice of annexations, until about 1971.

Mr. BRINSON. No, sir, as a matter of fact, it was later than that.

Mr. WASHINGTON. 1974?

Mr. BRINSON. Late 1973, when we first had acted. And the reason—I can give you a number of reasons. No. 1, as I say, it was not known that annexations had to be precleared until the *Perkins* decision in 1971.

Mr. WASHINGTON. What did you think had to be precleared?

Mr. BRINSON. We didn't know exactly.

Mr. WASHINGTON. You knew something had to be precleared?

Mr. BRINSON. Well, we did, but as I say, the matter——

Mr. WASHINGTON. What did you think had to be precleared?

Mr. BRINSON. Something such as some change which would clearly have an effect or cause discrimination on minority voting.

Mr. WASHINGTON. In your opinion.

Mr. BRINSON. Well, that was the general feeling. At the time the emphasis was on seeing that registration was enforced, that there was no obstacle to registration for voting, and that was the initial emphasis of section 5.

Mr. WASHINGTON. Well, I'm pretty certain that the Justice Department maintained that notice was given to all the jurisdictions covered. It seems to me as I said before, you come here with unclean hands, deliberately not complying with simple aspects of the requirements of the act, causing the Justice Department to have to do the work itself and thereby costing the taxpayers more money than if you had just given notice, you might have saved those funds.

It seems to me, you defeat your case when you come here and say that you want to expand the act nationwide. Clearly, what is required, at least at this point, is to make certain that the covered jurisdictions comply, not with what they consider to be their functions, but what the law clearly states. Part of that is notice, and you did not do it, nor did your predecessors, and you cause undue delay, hardship and a lot of other things, perhaps, that we don't know about in this whole matter.

I yield the balance of my time.

Mr. EDWARDS. The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Do you know of any other agencies of government that impose mandatory duties on local governments that don't issue rules, regulations, forms, letter of transmittal, instructions? Don't most agencies of government, when something becomes law, don't they issue regulations and tell you how to comply with them.

Mr. BRINSON. Absolutely, Congressman.

Mr. HYDE. If you were to propose a change in the law, what would you have done, put it in an envelope and say "Department of Justice, Washington, D.C."—I suppose—"Dear Sir, we propose to change this law. Your comments would be appreciated." Something like that.

Mr. BRINSON. I suppose.

Mr. HYDE. I don't justify what was done. It was the law, and it should have been enforced. And it was the job of the legal department of every covered municipality, maybe to seek out some answers. I think it may have been treated less seriously than it should have been.

Mr. BRINSON. I would acknowledge that. That is probably true, Congressman Hyde, but that does not change the reality of what

occurred. It was not from any recalcitrance on the part of local officials.

Mr. EDWARDS. The Chair will declare a recess of about 30 seconds.

[Recess.]

Mr. EDWARDS. The committee will come to order. The gentleman from Illinois is recognized.

Mr. HYDE. Since you have been implementing this law since 1971, would you say?

Mr. BRINSON. I would say that is a pretty good starting day. That is when the Justice Department issued its regulations; yes, sir.

Mr. HYDE. So regulations were not issued by Justice until 1971?

Mr. BRINSON. The latter part of 1971.

Mr. HYDE. And from that time until now, have you been preclearing everything?

Mr. BRINSON. Everything; yes, sir.

Mr. HYDE. And you have had court findings that you are not discriminating, but there is no way you can get out from under it; is that right?

Mr. BRINSON. That's correct.

Mr. HYDE. How long do you think a jurisdiction should be kept under preclearance, because of a previous history of misconduct and voting rights abuses? What is your opinion as to the length of time that special preclearance provision should apply to that jurisdiction?

Mr. BRINSON. To give you a number would be arbitrary, I think. I think the bottom line again is when you show by your activities that the requirement is no longer justified, and that is what the city of Rome did. As a matter of fact——

Mr. HYDE. For 10 years now, not 17. You really didn't get into the act until about 1971.

Mr. BRINSON. That's correct. If the Congressman pleases, the proof in the court, in particular, in the city of Rome's case, went beyond that and proved it was 17 years and, as a matter of fact, there had been no literacy tests used in Rome for over 40 years, and that was proven.

Mr. HYDE. Your community is more white, in terms of population than black?

Mr. BRINSON. Very much so. It is about 80 to 20?

Mr. HYDE. And you have elected black officials in your community?

Mr. BRINSON. We have. Now I must be accurate on that. We had not, as of the time of our case. There had been no elected black official, but only about four had run in the previous 15 years. There were appointed black officials, however.

Mr. HYDE. One of our witnesses made the statement that "I do not trust a white man in the South to watch over my rights." I would draw from that statement that there is no time in the world that any local community or State could bail out from under the provisions from this act, so long as it is being administered by white people. Would you accept that statement?

Mr. BRINSON. As long as that predisposition exists, that's correct. There would be no way to escape the severe sanctions of section 5. Moreover, I might add that a similar statement was made by a

member of the U.S. Justice Department to a Federal court in Atlanta. That is—that exacerbates the situation when that sort of an activity takes place.

Mr. HYDE. And it makes you want to give up trying; doesn't it? If you're in the box and can't get out, then why try to get out?

Mr. BRINSON. Well, sure. As I say, especially in the context as the city of Rome was found to be, as it's black citizens testified, this was the testimony of the black citizens, that the city of Rome's government is and has been for years extremely—the court said "Quite responsive to the interests of the black community."

Mr. HYDE. The statement is made that these jurisdictions are observant of the law, and as good as you are, because of the law. And that if we take the law away, if we repeal the law, you will regress. There will be no sanction to keep your jurisdiction, meaning those covered automatically by preclearance, to keep your feet to the fire, and keep you observing the voting rights of your black citizens.

What is your response to that?

Mr. BRINSON. Our response to that is, I have no objection to there being sanctions, if one's voting rights are violated. Of course, we all know that there existed prohibition against it for quite some time, and that is in the 15th amendment; however, I have no objection to sanctions. I think the sanctions should be applied, not just to Georgia and not just to the city of Rome. I think it should be applied universally. I also say this, I don't think section 5 is a sanction. It has been called a prophylactic measure, and I don't think it's justified. I think it is burning down the barn to kill a mouse.

I think if Toliver County, Ga., or Stuart County, Ga., if they are violating the rights, they ought to be punished or penalized in some way, but not Rome. Not Rome, Ga., that has proven itself not to be and is entitled to some positive reinforcement of its good activities.

Mr. HYDE. Even though you are white, and even though you are a Southerner?

Mr. BRINSON. That's right.

Mr. HYDE. I have no further questions.

Mr. EDWARDS. The gentlemen from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. I have no questions.

Mr. EDWARDS. The gentlewoman from Colorado?

Mrs. SCHROEDER. I have a brief question or two. Isn't it true that there was no one in the lawsuit that you are talking about that was representing black voters?

Mr. BRINSON. That's correct. There was no private plaintiff.

Mrs. SCHROEDER. And isn't it also true that the Department of Justice really was just arguing on the effect of the charges? They didn't really try to disprove purpose?

Mr. BRINSON. They admitted that there was no discriminatory purpose in any of our activities. No racial motivation in any of the activities.

Mrs. SCHROEDER. Well, my understanding was, they really did not make that finding of fact, that the proof was not really that, that the proof was rather that it was based on Rome's statements; no one really questioned the statements that the city made.

Mr. BRINSON. Oh, no, Mrs. Schroeder, that's not true. There were some 17 depositions taken in the case of all the—of black leaders, of commissioners.

Mrs. SCHROEDER. But there is no one on the other side arguing the other way, and under section 5 they don't have to prove intent. It is just the effect of the charge that they need to prove. Isn't that right?

Mr. BRINSON. Of course, the *City of Rome* case had a number of points in it, and one of ours was that Congress did not have the power to go beyond the substantive provisions of the 15th amendment, the same way the *City of Rome* was decided was to require a purpose. We argued that there was neither discriminatory purpose nor effect. The court found that there was no purpose but said that there was effect.

Mrs. SCHROEDER. I guess the way I interpret section 5 is that once the Department of Justice shows a discriminatory effect, that's it. They don't have to go into intent.

Mr. BRINSON. Not necessarily. We also argued that the way that the statute should be interpreted would be to first look and see if there is any racial motivation in any of the electoral changes. If there is, then per se, it is an invalid act.

Mrs. SCHROEDER. It's awfully hard to prove that. I think we all know that. We're going through reapportionment ourselves, and it is very hard to know what is going on in the back room as to motivation.

Mr. BRINSON. That's true, the motivation can be hidden, but there are ways to prove it circumstantially shorter, but that's incredibly difficult. I have always understood that the Voting Rights Act, in section 5, said that you looked at the effect and you don't get into the intent, because that is just too fuzzy, too hard, and so you may have testified to that extent, but you don't make that finding. It just was the effect.

Mrs. SCHROEDER. Was the effect discriminatory or wasn't it?

Mr. BRINSON. As of the ruling in the *City of Rome* case it becomes clear that that is the way the Voting Rights Act can be administered, by showing effect only.

Mrs. SCHROEDER. In all honesty I think that's what we want them to do. I don't think we want them going out and trying to find a litmus paper that they can put in people's mouths and say, we know what your real intent is. I think that gets a little sticky and a little tough.

Mr. BRINSON. I understand.

Mrs. SCHROEDER. I also have to say from my perspective I get very worried about a lot of the people saying they really feel we can do away with the Voting Rights Act now, that everything is all fine and everything is terrific. I guess part of my feeling about that is seeing many things that I cared about, affirmative action, equal employment opportunities, and all sorts of things, appearing to go down the chute. I thought we had won a lot of those battles, and it is fascinating how fast the clock can turn back.

So I was appreciative of your statement that you did not know how many years, you would not set a time certain saying that after so many years you would assume all racism is gone or sexism is

gone or whatever. Bad habits from the past that were not either way, but that's how it happened.

So you really do not—you're one of those that say after a couple of years if you prove it, you get out.

Mr. BRINSON. Yes; that's correct. I think it would be arbitrary to do that. I think different locations may have more success than others. I think, as I say, the measure of proof is what is the bottom line, and that is what Rome did in its case.

Mrs. SCHROEDER. I guess that's still what I'm quarreling with you about. I don't think there was a measure of proof. I think they just looked at the effect. They did not say that you proved your case, that you did not have the intent to discriminate.

Mr. BRINSON. Mrs. Schroeder, let me also get into the—it's almost a question of semantics, but what is effect. I think there is a big argument on what is retrogressive effect. I think you will hear from other witnesses about that. There are different interpretations of what is a discriminatory effect. I know the committee has probably considered already, or will consider, whether or not, the at-large voting system for instance, is indeed detrimental to minorities. I think there is a legitimate argument on both sides.

What is effect, and that is one of the problems that we in the covered jurisdictions find to be somewhat troublesome. That is dealing, first of all, with the Attorney General's Office. We must accept the political orthodoxy of that office in our dealings with them because there is no adversary proceeding. There is no confrontation. There is nothing but that office's argument on what is a discriminatory effect and we may disagree. And that effect may vary from jurisdiction to jursidiction, as I think it did in Rome.

Mrs. SCHROEDER. I cannot imagine any jurisdiction coming in and saying, oops, you're right, you caught us. I would think any jursidiction would probably disagree on effect.

Mr. BRINSON. You would like to think also that the jurisdiction would have considered it before the passage. They would have said, look, we are passing this; it is for the good of all, and it is not discriminatory in either purpose or effect. I would like to see that predisposition about the South, about also, that yes, whatever we are doing, I'm not up here testifying so that we can all go back to some kind of discriminatory practice.

Mrs. SCHROEDER. I understand what you're saying. I think we all wish that were happening everywhere. Sometimes wishes don't come true.

Thank you.

Mr. EDWARDS. The gentleman from California.

Mr. LUNGREN. I have no questions.

Mr. EDWARDS. Mr. Brinson, if the committee went to the city of Rome and had a hearing and invited the leaders of the black community of Rome, how would they testify?

Mr. BRINSON. Well, as a matter of fact, Mr. Edwards, let me suggest this. First of all I would tell you that I think there would be the perception on about 50 percent of the black community, a feeling that they could not be elected under any system in the city of Rome because it is only 15 percent black voters.

I think 80 or 95 percent of them, however, would tell you that the city of Rome's government has been extremely responsive to

the interest of the black community. I think the impossibility of elections has been disproven in the most recent election of the city commissioners. Mr. Fielder, who received not just enough votes to win in the election which we had after the decision of the court, but he received the highest number in the city, and he had been appointed by the city of Rome upon a vacancy prior to this election, so he was an incumbent. However, his appointment was brought about when a vacancy occurred on the city commission, and the city commission asked the leaders of the black community to submit a list of names from which they would like to see someone appointed, and he was on the list, and he was appointed.

I think he would tell you that black voting does not exist and with respect to staggered terms, I spoke with him last night and, incidentally, Floyd County, which is the county in which the city of Rome lies, recently passed an act in the general assembly allowing for staggered terms, and it is before the Justice Department now.

Some member of the Justice Department called Mr. Fielder and he spoke with me about it and he said I told them that I thought it is the greatest thing in the world. I don't think it is discriminatory. It is something that is needed because we don't need a bunch of greenhorns in the government every time that an election comes around.

So Mr. Fielder recognizes the value of staggered terms, for instance, and does not feel it is discriminatory in Floyd County. So that I hope would answer your question as to how the minorities would feel.

Mr. EDWARDS. Did you change your system from plurality to majority votes for election of commissioners? The commission from at large?

Mr. BRINSON. That's correct.

Mr. EDWARDS. And they have to get a majority vote?

Mr. BRINSON. They do not know. As of the Supreme Court's decision it is a plurality vote.

Mr. EDWARDS. The city tried to require a majority vote?

Mr. BRINSON. Yes, sir.

Mr. EDWARDS. Don't you think that is open and shut discriminatory?

Mr. BRINSON. No, sir, I don't, and let me suggest something to you, Mr. Chairman. I do not think that everybody recognized that, everybody that should. It is now recognized as possibly a discriminatory feature. But that has come about in later years, and not when the Voting Rights Act was passed, and I'll give you an example of that.

In 1968 the Georgia municipal election code was passed by the State of Georgia which was a statewide act controlling electoral procedures for municipalities. In that act there was a majority vote provision, numbered post provision and a staggered term provision. And that act was submitted by the Georgia Attorney General to the Justice Department in about 1969. It received preclearance. I do not think that, quite frankly, that at the time that it was recognized that that was the kind of device that the Voting Rights Act was designed to prohibit. I think that it is imperative that this committee, with respect to the history of the progress of the enforcement of the Voting Rights Act, get it into perspective, and

when we talk about not submitting and having gone for 6 years without submitting, even though the law requires it, the truth of the matter is that no one knew that it needed to be submitted.

Mr. EDWARDS. Mr. Brinson, are you really suggesting that for a city that you claim has a good record, like Rome, that there should be a bailout provision in the Voting Rights Act, isn't that what you really think should happen? Or do you——

Mr. BRINSON. That would be my fallback position. I think that the preclearance provision is too much of a trivial burdensome administrative provision as the Justice of the Supreme Court has said, and if you impose sanctions as far as I'm concerned, if there is discrimination against voters, put the officials in jail, but don't make us submit every little time we annex somebody's house into the city limits. Every time we change from an area called Popsco to Scant's Corner—for a polling area. I submit that it's too much to impose on every little school district in every city in every county in the covered States.

Mr. EDWARDS. But speaking as a representative of the city of Rome, you would like to see a system whereby Rome could bailout?

Mr. BRINSON. Yes, sir. If section 5 is to exist.

Mr. EDWARDS. Why do you go further then and speak for all of Georgia and all of Louisiana and all of Mississippi?

Mr. BRINSON. I just personally had—my perception of those areas is that it is not the violations and the existence of racism and the existence of racial bloc voting. It is as widespread as might be perceived here. I think yes, there are definitely some bad places there. There are some bad apples. There are some areas that need Federal examiners as far as that is concerned, Federal inspectors, Federal overseers, but my city should not be held hostage because of those transgressions of those areas.

Mr. EDWARDS. Why isn't your testimony just that you think there ought to be a bailout for cities like Rome rather than—you're going the quantum step in saying that all of the South and all of the covered jurisdictions including parts of California, New York, should be relieved. That's what you're really saying.

Mr. BRINSON. If a county in California is subject to the Voting Rights Act, why can't just a county in Georgia be subject to the preclearance provision rather than the whole State?

Mr. EDWARDS. That's not your testimony.

Mr. BRINSON. Again I'm saying that, as a fallback situation, if there are areas that you can identify there is this problem, certainly apply all of the sanctions that need to be applied. Certainly I would be all for that.

Mr. EDWARDS. Thank you very much. Do counsel have questions.

Mr. HYDE. I'm confused about the black population of Rome. You make a statement like that which we expect to receive shortly from Mr. Bond, I guess 30 percent black population is a correct figure. He has piped in 40 but the staff told me that is a misprint. It should be 30. You have said 15 percent. Now, which is it?

Mr. BRINSON. It is about 23 percent the population. The voting, registered voters, is about 15.5 percent. The voting age population is 20 percent.

Mr. HYDE. Is the voting—is that people of voting age or registered voters?

Mr. BRINSON. Voting age is 20 percent. Anywhere from 16 to 18 to 19 percent registered voters.

Mr. HYDE. Of the 20 percent.

Mr. BRINSON. No, all total. As the Court found of all the registered voters, it varies between 16 or 18 percent, very high registration rate as the Court found. And the city of Rome's registration rate, it remained high from 1964 through 1973.

Mr. HYDE. Thank you. Thank you, counsel.

Ms. GONZALES. Mr. Brinson, I have a number of followup questions based on the discussion that has occurred here. First off, you mentioned the election schemes that had been precleared at the State level by the Georgia municipal code. Wasn't that code basically saying that local governments could enact any of the following procedures such as staggered terms, or whatever? It was authorizing legislation, is that not so?

Mr. BRINSON. It did both, I believe, Ms. Gonzales. I believe the way the language read was that it said that any city that now has or may in the future may have a majority vote requirement shall do so and so and so and so.

So in effect what it was, it appeared to be an enablement statute, but also endorsed the present existing charters that require a majority vote.

Ms. GONZALES. My understanding was when the Department of Justice precleared that, and this is true whenever they preclear any other State enabling legislation, they precleared in the abstract because nobody is saying that staggered terms in these kinds of election procedures in and of themselves are discriminatory. The question is to see what the impact of particular election schemes will be when they are enacted in a particular locality, so they have to be looked at in totality. That is the reason why they have to be submitted once a local jurisdiction enacts that kind of legislation.

Mr. BRINSON. Again putting it into perspective, I would say yes, that is now the interpretation. I am not sure that was the interpretation in 1973-74.

Ms. GONZALES. Counsel, you're saying that is your reason for not sending in—because you doubted whether in fact it was necesssary to do it—not you personally because you said you weren't there—those kinds of electoral changes.

Mr. BRINSON. That's correct. And the idea of the election change was having dual registration requirements and items such as that, literacy tests, poll taxes, that sort of thing is what was deemed at the time to be the kind of device that was discriminatory, and I think it was—I don't think it was perceived even by the Justice Department or any other organization that majority vote was really a discriminatory device because at the time the Voting Rights Act was passed, the emphasis was on registration, and the act of voting, not on holding office, not on running for office. And that has been an evolved concept.

Ms. GONZALES. The last point I would make on this is, when Congress passed the Voting Rights Act, it is true that the poll taxes and other things you talked about were taken care of. But then they enacted section 5 because they knew that other unknown election schemes might be devised, and might have a discriminatory intent or

effect, which is what section 5's standard of proof is, is that not correct?

Mr. BRINSON. That's true.

Ms. GONZALES. You mentioned earlier in the discussion with Congresswoman Schroeder that although it is hard to prove a motive behind an act such as reapportionment that there are other ways of proving that circumstantially. Is that correct?

Mr. BRINSON. I think that's correct.

Ms. GONZALES. Could you maybe give us some example of how that could be done in light of the *Mobile* decision. It would seem that in fact a lot of the factors that one could introduce to try to prove circumstantially that there was a discriminatory intent are no longer sufficient under the *Mobile* decision. Maybe you can help us on that.

Mr. BRINSON. That's true. The *Mobile* decision did gut the Zimmer standard. The panoply of factors is no longer available to circumstantially prove discriminatory intent. So yes, indeed, it is a difficult burden of proof. I would say this: If you go, if the discriminatory effect is there, and it can be proven, then the place to do it is in court, and not administratively, subject to differing political orthodoxies.

Ms. GONZALES. So you would support Mr. Rodino's legislation to include intent or effect under section 2 to clarify that that is the burden of proof—because it is so difficult to prove intent, as the way *Mobile* says it, that effect—if it is going to be only a court situation, then it should be effect as well as intent that is looked at, because it is so difficult to prove intent.

Mr. BRINSON. No; I would not. And if you want a reason, I will give it to you. I would not support that type of thing for several reasons. One, and again, you get off into a tangential problem, and that again is what is effect, discriminatory effect, over which there are differing opinions.

And two, the determination should not be made, certainly, administratively. It certainly should be made in an adversary proceeding, if there is some legitimate argument to the contrary.

And three, if you talk about a flood of litigation, that particular provision would certainly bring on a flood of litigation. As I say, another tangential problem is what—which has to do with the discriminatory effect, arguably, is what are you looking for in the bottom line. Is it group representation?

Ms. GONZALES. Let me ask you, on that point, because you mention that in your statement, to your knowledge, has any—has there been any litigation where plaintiffs have sought or where the courts in fact have said anything about the fact that goals under the Voting Rights Act, goals, in fact, are permissible?

Haven't the courts in fact said that goals are not permissible?

Mr. BRINSON. Goals?

Ms. GONZALES. The Voting Rights Act guarantees access to the political system. So in fact, nobody is asking for proportional representation under the Voting Rights Act. That is not what it is meant to do.

Mr. BRINSON. That is not the way it is articulated, but that is the bottom line, and seems to be the result. It would appear that

actually what is being looked for, what is the result sought is a quota, so that the group will be proportionally represented.

Ms. GONZALES. But that is your conclusion.

Mr. BRINSON. I think there is argument to that effect; yes.

Ms. GONZALES. The last issue is—my time is up, so I want a quick question, and that is—that the recent black commissioner that you pointed out had recently been elected, was elected under the system that was in effect prior to your changes; is that not correct? In other words, during the time that you had a majority runoff system, no blacks were elected; is that correct?

Mr. BRINSON. That is correct.

Ms. GONZALES. After the court required——

Mr. BRINSON. Only one ran, also.

Ms. GONZALES. And in fact, when that one ran, didn't he—wasn't that Rev. Clyde Hill who in fact got the most votes? He ran against three whites, and he got the most votes of all of them, but once he had to face the majority runoff situation, he in fact lost to the white candidate; is that correct?

Mr. BRINSON. That is correct, Ms. Gonzales; however, may I point this out? In connection with that, one of our present white city commissioners ran four times before he was elected. And also, Reverend Hill was a newcomer to Rome. He had never run before. He had been in Rome only 2 years. And third, even though he had all of those disadvantages, he garnered 45 percent of the vote in a city where only 15 percent of the voters are black.

So I would suggest to you that under natural circumstances, if he ran again, he probably would have been elected on the majority-vote system.

Mr. EDWARDS. Mr. Boyd?

Mr. BOYD. Thank you, Mr. Chairman.

Mr. Brinson, you have agreed with majority counsel to the effect that existing law does not suggest the need for future proportional representation for covered minorities; is that correct?

Mr. BRINSON. I'm sorry, sir; I did not hear you.

Mr. BOYD. You have agreed with majority counsel to the effect that existing law does not require proportional representation, applied to covered minorities under the act?

Mr. BRINSON. I don't think it's articulated that way. I think that's the way it is enforced.

Mr. BOYD. It's the language in title II of Chairman Rodino's bill, H.R. 3112. Were it to be enacted into law, amending section 2, would it not require, perhaps at the very least, quotas at all levels of government?

Mr. BRINSON. Yes, I think it would.

Mr. EDWARDS. Are there questions from others of the members?

[No response.]

Mr. EDWARDS. Mr. Brinson, we thank you for your helpful testimony.

Mr. BRINSON. Thank you, Mr. Chairman.

Mr. EDWARDS. We are pleased to have a panel composed of Hon. Julian Bond, State senator from Georgia; and Commissioner James Clyburn, who is a South Carolina Human Affairs Commissioner.

TESTIMONY OF HON. JULIAN BOND, STATE SENATOR FROM GEORGIA, ACCOMPANIED BY BARBARA PHILLIPS, LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW; AND JAMES CLYBURN, COMMISSIONER, SOUTH CAROLINA HUMAN AFFAIRS COMMISSION, ACCOMPANIED BY JAMES RION, STAFF ATTORNEY, SOUTH CAROLINA HUMAN AFFAIRS COMMISSION

Mr. EDWARDS. We welcome you, Senator Bond and Commissioner Clyburn. Would you please introduce and identify your colleagues, and proceed?

Mr. BOND. On my right is Ms. Barbara Phillips of the Lawyers Committee for Civil Rights Under Law.

Mr. CLYBURN. Attorney Jim Rion is with me, staff attorney for the State Human Affairs Commission.

Mr. BOND. Thank you for the invitation to appear before this subcommittee to urge you and the Nation to reaffirm our historic commitment to opportunity for all citizens. This commitment is stated most succinctly in the Constitution, which declares that the right of citizens of the United States to vote shall not be denied or abridged by the United States nor any State on account of race, color, or previous condition of servitude. There is no more basic right provided than the right to vote. The Voting Rights Act is the most powerful mechanism black Americans have guaranteeing this most basic right.

As John Lewis, the former head of the Voter Education Project and a fellow Georgian, has said, "The Voting Rights Act is the last blood of black political progress." As much as any other black elected official in Georgia, I understand the meaning of the statement.

Between 1965 and 1967, I suffered much affront to myself, my family, and was continually under attack by the almost all-white Georgia General Assembly.

For those of you who may not recall, let me refresh your recollection. In 1965, I was elected as a representative from District 126 to the Georgia General Assembly. Because of my opposition to the racist war being waged in Southeast Asia, the assembly refused to allow me to take my seat. I appealed the action by the white-controlled Georgia General Assembly all the way to the U.S. Supreme Court. It was not until 1967, after the Court had ruled in my favor—and after I had been reelected twice—that I was finally allowed to take my seat and exercise my constitutional rights.

I would be pleased today, Mr. Chairman, if I could state that both the 15th amendment to the Constitution and the Voting Rights Act had achieved their goals, and as such did not require the continuous attention of this distinguished body; however, the evidence does not support such a conclusion, neither in my home State of Georgia nor elsewhere in the South.

There has been progress since the *Brown* decision and since the passage of the Voting Rights Act in 1965. There are abundant facts to prove this progress. But despite some impressive figures, the evidence shows that many white Georgians continue to frustrate efforts by blacks to exercise effectively the franchise, just as they frustrated my right to serve as an elected official.

I would like to introduce into the record, Mr. Chairman, a series of articles which appeared in the Atlanta Constitution in December

of 1980, detailing the experiences of blacks in Georgia in their attempt to exercise the right to vote.

Mr. EDWARDS. Without objection, they will be received. (See pp. 279-301.)

Mr. BOND. The tactics discussed show that many white Georgians intend to continue to prevent full participation in the political process by minority citizens.

In case you doubt this intent, let me remind you of Georgia's redistricting controversy in 1970. As you may recall, the Georgia General Assembly submitted a plan that was further resolved in court. The initial plan was fashioned in such a manner to prevent the predominantly black metropolitan Atlanta area from choosing a Congressman that would be a reflection of that area's social, economic, and racial composition. In addition, the plan called for multimember State legislative districts. This type of redistricting has historically precluded full participation by minorities in the political process.

It was only after several interventions by the Justice Department, through use of the preclearance provisions of the Voting Rights Act, and ultimately the courts, that the Georgia redistricting plan was finally completed. As a result, former U.N. Ambassador Andrew Young was elected to this distinguished body, the first black Congressman from Georgia since Reconstruction. Georgia added seven black representatives to the State House.

Since 1965, the State of Georgia and its political subdivisions have continued to subvert both the spirit and the letter of the Voting Rights Act. In Georgia alone, there have been nearly 400 nonsubmissions of State acts that had the effect of diluting black voting strength. In addition, we are just now beginning to discover untold numbers of local ordinances and enactments which have never been submitted for preclearance.

For example, enactment applying to the city of Mulltree, Georgia, has passed, mandating a majority vote requirement that clearly diluted minority voting strength. This was never submitted for preclearance, in spite of large protests from blacks in the county, NAACP, and eventually, on May 10, 1977, a district court three-judge panel enjoined for failure of the city to comply with section 5 of the Voting Rights Act.

This nonsubmission process is not limited just to the State of Georgia. According to a 1978 study by the General Accounting Office, this same pattern of nonsubmissions is true in the other covered jurisdictions, and particularly in the Southern States.

I want to emphasize that many examples of nonsubmissions that will be cited in my testimony have occurred since this act was last renewed. There have been nearly 400 documented nonsubmissions of State acts that affect minority voting rights in Georgia.

According to court rulings, it was the intent of Congress that all electoral changes be precleared as a determination of the impact on minority voters. It appears that many jurisdictions in the State of Georgia and Alabama arbitrarily and illegally exempted their jurisdictions from compliance. Many of the changes that were not submitted were in fact the kind of electoral schemes that seriously diluted the black voting strength. Many of these nonsubmissions have had a dramatic effect on minority voting.

The changes most often not submitted are in the areas of annexation, changes in electoral schemes including staggered terms, numbered posts, majority voting requirements, and converting from district to at-large election schemes. Let me cite a few examples in some of the counties in Georgia. Morgan, Early, Clay, Miller, Pike, Dooly, and Calhoun Counties—to name just a few—changed election procedures but failed to submit these to the Justice Department.

In five of these seven counties, blacks constitute 40 percent or more of the population. Prior to enactment of the Voting Rights Act these jurisdictions maintained district elections, and a low black registration rate. After passage of the act, and after increased black registration, county officials converted to at-large elections for all county commission and board of education posts.

Not one of the counties submitted these changes for preclearance. It was only after litigation was initiated by private citizens that these jurisdictions were forced to revert to their pre-1965 election procedures and comply with Federal law.

In Terrell County, the members of the board of education had historically been appointed by the grand jury system. After passage of the act in 1965, the system of selecting board members was changed to at-large elections. This resulted in a seven-member board, all of whom were white. None had children in the public schools, and the superintendent and one school board member sent their children to all-white private schools.

A lawsuit was initiated under section 5, which resulted in a return to the grand jury appointment system. Eventually, two black residents were appointed to the county board of education.

Terrell is a county where 91 percent of the pupils are black; 60 percent of the residents are minorities. This school board's success can be directly attributable to the use of the preclearance provisions of the act. Incidentally, the Terrell County grand jury had to be integrated, through another court order.

In Henry County of Georgia, the county commission and school board switched to at-large elections after the passage of the act. Blacks ran for both boards on several occasions, but consistently lost to white block voting. Neither of the at-large election changes were submitted for preclearance until 14 years later, and then only because lawsuits were initiated by blacks against both the county commission and the board of education in December of 1979 to force county officials to comply with the preclearance provisions of section 5.

As a result of two consent orders in the consolidated case, single-member district plans were adopted, and one of the newly created districts had a majority black population. In the 1980 elections, a black was elected to the school board for the first time, and a black candidate narrowly lost a seat on the county commission, by less than 100 votes.

In Pike County, Ga., county officials utilized district election schemes until a black candidate sought office and made it into the runoff. Following the minor success, the local legislative delegation, all white, proposed and had passed by the Georgia General Assembly as a local bill an at-large election scheme. There was no submission of this legislation to either the Justice Department or the

U.S. District Court for the District of Columbia, as required and mandated by the Voting Rights Act. This county conducted illegal at-large election in 1972, 1974, and in 1976.

In February 1978, the Justice Department requested the submissions of the at-large change. The county conducted elections illegally under the scheme in August 1978, despite the request from Justice for submission. The response to the request was not made until 1979. The Justice Department then entered a timely objection to the at-large election change.

In Albany, Ga., city officials annexed seven tracts of land to the corporate limits without submitting the change. Investigations by local black officials found that 90 percent of the people living in the annexed area were white. The local NAACP objected to the annexation under the preclearance provision. They further charged that the action would dilute the voting strength of black citizens in Albany.

Beyond the court challenges, nonsubmissions, objections by the Justice Department, there are other means utilized to intentionally prevent minorities from exercising their full franchise.

For example, in Taliaferro County, Ga., the birthplace of Alexander Stephens, Vice President of the Confederacy, county officials employed a unique method of absentee voting. Generally, candidates running for office, or their campaign helpers, bring along applications for absentee ballots on visits to households. Potential voters are asked whether they would like the candidate or the candidate's assistant to deliver the ballot later. The form is then filled out so that the absentee ballot is mailed, not to the voter, but to the candidate or the campaign worker. The candidate or campaign worker takes the ballot to the voter, often waiting while it is filled out, and if necessary assisting illiterate voters.

Miss Lois Richard is the white chairwoman of the Taliaferro County Commission, and has said publicly that if you don't play this game in Taliaferro County, you might as well not get in the race.

Another interesting aspect is the number of absentee votes that appeared after the passage of the act and after a major black voter registration drive spearheaded by Dr. Martin Luther King, Jr., and former U.N. Ambassador Young. Taliaferro County at its most recent election had 500 absentee ballots cast. The official 1980 census lists the total population of the county as 2,132. In 1980 the county had 1,746 registered voters, or 85 percent of the total population.

In an election turnout last August, 1,545 persons participated. This meant a turnout of better than 90 percent. Statewide the Georgia voter turnout was about 42 percent. Interestingly enough, Taliaferro County is a county in which blacks constitute over 64 percent of the total population and have yet to elect a black to public office.

The lack of true minority representation in governing bodies at all levels frustrates efforts to register blacks to enable us to fully participate in the electoral process in a meaningful manner. As one local black citizen, Mr. Roy Hughley, states in a series of articles in the Atlanta Constitution: I am 42 years old. This voting rights

abuse has been going on all of my life. If it has not changed now, maybe there will not be any change.

To support Mr. Hughley's contention, let me cite you some facts about the real progress in Georgia in guaranteeing voting equity for all citizens, the most recent renewal of the Voting Rights Act.

In 1975, the year of the act's renewal, blacks represented 2.3 percent of the total number of elected officials in Georgia. In 1981 we represent 3.7 percent, slightly more than a 1-percent increase in 6 years.

In 1975 there were 2 black State senators, 19 representatives in the Georgia House. In 1981 there are still 2 black State senators, both from Atlanta, and only 20 representatives, a grand increase of 1 representative in 6 years. All but one of these come from major metropolitan areas. One is from Albany. His election stemmed entirely from an objection by the Justice Department to Georgia's redistricting plans for the Albany county area. I may remind you that Georgia no longer even has 1 black Congressman among its 12-member congressional delegation. This, in a State where the official 1980 census figures show that blacks make up over one-quarter of the population.

After knowing these facts, members of the committee, how can Congress even consider trusting white elected officials in Georgia to uphold the rights of blacks to effectively participate in the electoral process when they have continually violated Federal law? The lawlessness on the part of my fellow elected officials in my home State has continued unabated since the Civil War, in spite of efforts by the Congress to guarantee the basic right to vote.

Mr. Chairman, distinguished members of this panel, let us not forget that most of the progress we have achieved for minorities has come only after vigorous court challenges or by actions of the Federal Government.

Let me turn to Rome, Ga., a city that has been held out before you as free of racial discrimination; as such, one which should be permitted to bail out from from section 5 coverage. The real Rome, its surrounding jurisdictions, have a long history of racial discrimination and resistance to efforts to bring about true racial equality. This city has a 27-percent black population, according to the 1980 census. It elected its first black elected official only a few months ago.

Mr. Fielder, the newly elected black commissioner, was only elected after he was appointed by the all-white city commission to complete an unexpired term. In addition, the city resisted all efforts to desegregate their public schools until it became apparent that continued procrastination would not be tolerated.

Coincidentally, after passage of the Voting Rights Act, the city implemented a litany of electoral changes that would, in any reasonable person's view, dilute the strength of black voters in the jurisdiction. The changes included reducing the number of wards from nine to three, converting from single districts to at-large numbered posts, implementing majority vote requirement, imposing staggered terms. Similar changes were implemented for the city's board of education.

It is not coincidental that none of these changes were submitted for preclearance. Rather, after the department learned of massive

changes, the city officials coincidentally filed suit to bail out from section 5 coverage.

As elected officials, members of the committee, we are sworn to uphold the laws of the land and to faithfully execute those laws in an equitable and fair manner. A failure by public officials to uphold the trust bestowed upon us by the citizenry invites lawlessness and anarchy.

The city officials in Rome, Ga., knew full well the requirements of the Voting Rights Act. As such, they were and are obligated by law to comply with all of its provisions. The Supreme Court has already upheld the constitutionality of section 5. The Court held that section 5, with certain other provisions of the act, is an appropriate means for carrying out Congress constitutional responsibilities.

If Rome officials were acting in good faith, they would have completed the necessary submissions and convinced the Justice Department or the District of Columbia Court here in Washington, that changes were not discriminatory nor dilutive. Instead they waited 8 years later to seek preclearance, and then only after the changes had been discovered by the Justice Department.

The nonsubmissions, in fact, were solely responsible for the defeat of a popular black minister who attempted, in 1970, to become the first black elected official in the city's history. The 1970 race for school board seat, Rev. Clyde Hill came out ahead of three white candidates, but his total effort fell short of a majority. In the run-off election he was squarely defeated.

Had the city maintained its plurality vote requirement, rather than an illegal majority vote requirement, Reverend Hill would have become the first black to get elected to a city post. As it turned out, an additional 10 years passed before a black was elected to office.

It can be argued further that Rome is a prime example to demonstrate the effectiveness of the remedies provided to the Voting Rights Act. Section 5 provisions were able to halt the illegal electoral changes that had been enacted by the general assembly and implemented by the city, without preclearance at the request of the local delegation.

In conclusion, members of the committee, let me express my appreciation for the opportunity to share my views and some pertinent facts with you. I urge you not only to continue the act, but to strengthen and clarify all of its provisions.

I refer to section 2, whose applications as it regards intent has recently been challenged through action in *Mobile* v. *Bolden.* I urge you to make your intentions that relate to that provision perfectly clear by adopting the effects standard, as proposed by the distinguished chairman of this committee, Congressman Peter Rodino.

I also urge you to steadfastly support the retention of section 5 as it is presently implemented. To retreat from the full protections provided by section 5 would be a step backward, particularly in the State of Georgia. The substitutions offered by—the substitute offered by Congressman Henry Hyde is not sufficient to protect the gains registered by blacks in the last 16 years, and will abort the progress made to date.

The Congressman's bill would eliminate section 5, as well as the section 4 triggering mechanism, and in their place provide for judicial remedy with the discretion of local district court judges. I am absolutely convinced that if a judicial remedy were substituted for the more effective administrative remedy, local officials in Georgia and elsewhere would immediately implement the nonsubmissions that private citizens and their attorneys have successfully forced jurisdictions to abandon.

I urge you not to compromise on a right as basic as the right to vote. In regard to those who call for total coverage of all 50 States, I can only say that the act already has national application. According to the Government Accounting Study, Voting Rights Act enforcement at least some parts of 30 of the 50 States are subjected to some provisions of the act. The Justice Department can initiate suits under the Voting Rights Act in any of these States.

It is within these covered jurisdictions where its implementation has been most needed, in order to guarantee the inalienable right of all citizens to vote. It is no coincidence that since the passage of the act in 1965, a significant number of counties and municipalities that had district elections and plurality vote requirements suddenly changed to at-large and majority-vote requirements. It is also not coincidental that most of the changes were not submitted for preclearance, and a substantial number of these changes occurred in jurisdictions with large minority populations.

I submit, Mr. Chairman, that my home State is not now prepared to fully guarantee and protect the rights of its minority population, a near third of Georgia's total citizenry. I see little effort by elected officials to encourage blacks to register and participate in the electoral process. In fact, in 1980 in many of the counties in Georgia, double registration was still required to participate in city and county elections. It poses an additional burden on working-class blacks and whites to register twice in the same county in order to participate in both municipal and county elections.

Please rest assured, members of the committee, that when I call for the renewal of the act, I am not asking for myself. I will not in this period of history and beyond be denied that right, nor will the members of this distinguished body, not even those minorities like Congressman Leland of Texas and Garcia of New York. None of us will have that franchise threatened.

When I call for the renewal of the Voting Rights Act, I call for it so that Mr. Roy Hewley of Pike County, Ga., Mr. Calvin Turner and Dr. Marilyn Stewart of Taliaferro County, Mr. George Latt of Sparta, as well as Senator Sam Nunn and Mack Mattingly will be guaranteed their right to vote and their right to full participation in the American political process.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Senator Bond; and without objection, all of the material in the entire statement will be made a part of the record.

[The complete statement follows:]

TESTIMONY OF SENATOR JULIAN BOND, MEMBER OF GEORGIA LEGISLATIVE BLACK CAUCUS, AND PRESIDENT OF THE ATLANTA BRANCH NAACP, AND A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL NAACP AND THE VOTER EDUCATION PROJECT

Thank you Mr. Chairman for the invitation to appear before this subcommittee to urge you and other distinguished members of this panel to reaffirm this nation's commitment to equality of opportunity to all its citizens. This commitment, stated most succinctly in the Constitution, declared that "the right of citizens of the United States to vote shall not denied or abridged by the United States or by any state on account of race, color or previous condition of servitude."

There is no more basic right provided by the Constitution than the right to vote. And the Voting Rights Act (VRA) is the most powerful mechanism black folks have for guaranteeing this most basic right. As John Lewis, the former head of the Voter Education Project and a fellow Georgian pointed out, "The VRA is the lifeblood of black political progress . . ." [1]

Perhaps I, as much as any Black elected official in Georgia understand the meaning of John Lewis' statement. For between 1965 and 1967 I suffered much affront to myself, my family, and was continuously under attack by the almost all-white Georgia General Assembly. For those of you who may not know, let me refresh your memory.

In 1965, I was duly elected as a representative from District 126 to the Georgia General Assembly. However, because of my opposition to the racist war being raged in Southeast Asia, the Assembly refused to allow me to take my seat. I appealed the action by the white-controlled Georgia General Assembly—all the way to the U.S. Supreme Court. But it was not until 1967, after the court had ruled in my favor, that I was finally allowed to take my seat and exercise my constitutional rights.

I would be extremely happy today if I could state that both the 15th Amendment to the U.S. Constitution and the Voting Rights Act had achieved their goals, and, as such, do not require the continuous attention of this distinguished body. However, the evidence does not support such a conclusion in my home state of Georgia or elsewhere in the South. I know there has been progress since the *Brown* decision, and since the passage of the VRA in 1965. There are facts to prove that progress—the elimination of the literacy tests; the increase in the number of black elected officials (from less than 40 prior to 1970 to 250 in Georgia in 1981); and a large increase in the number of Georgians registered to vote (from less than 300,000 in 1966 to approximately 450,000 in 1981).[2]

Despite these impressive figures, the evidence shows that many white Georgians continue to frustrate efforts by blacks to effectively exercise the franchise, just as they frustrated my right to serve as an elected official. I would like to introduce into the official record of this hearing a series of articles that appeared in the Atlanta Constitution detailing the experiences of Blacks in Georgia in their attempts to exercise their constitutional right to vote. I truly believe that the tactics discussed in this series show clearly that many white Georgians intend to continue to prevent full participation in the political process by minority citizens. In case you doubt this intent, let me remind you of the 1970 Georgia redistricting controversy.

As you may remember, the Georgia General Assembly submitted a redistricting plan that was further resolved in court. The initial plan was fashioned in such a manner to prevent the predominantly black metropolitan Atlanta area from choosing a congressman that would be a reflection of that area's socio-economic and racial composition. In addition, the plan called for multi-member state legislative districts. This type of redistricting has historically precluded full participation by minorities in the political process. It was only after several interventions by the Justice Department, through use of the preclearance provisions of the Voting Rights Act, and ultimately the courts, that the Georgia redistricting plan was finally completed. As a result former United Nations Ambassador Andrew Young was elected to this distinguished body (the first Black congressman since Reconstruction), and Georgia also added seven Black representatives to the state House. As you know, this was a precedent setting case, which made it clear that redistricting plans would also have to be precleared under the Voting Rights Act (*Georgia* v. *United States*, 411 U.S. 526 (1973)).

Since 1965 the state of Georgia and its political subdivisions have continued to subvert both the "spirit and the letter" of the Voting Rights Act. For example, in

[1] Quote by John Lewis from a series of articles in the Atlanta Constitution on Voting Rights Abuses in Georgia, dated December 11, 1980.

[2] Voter Registration figures obtained from two reports compiled by the Voter Education Project, Atlanta, Georgia. These reports are: (a) Negro-White Voter Registration in the South, Summer, 1966. (b) Voter Education Project Press Release, December 12, 1980.

Georgia alone, there have been nearly 400 non-submissions of state acts that had the effect of diluting Black voting strength. In addition we are just beginning to discover untold numbers of local ordinances and enactments which have never been submitted for preclearance. For example, an enactment applying to the county of Moultrie, Georgia has passed mandating a majority vote requirement that clearly diluted minority voting strength. This change was later submitted for preclearance in spite of a loud protest from blacks in the county. Eventually on May 10, 1977, a district court three-judge panel enjoined the use of the majority voting requirement for failure of the city to comply with Section 5 of the Voting Rights Act.

This non-submission process is not just limited to the state of Georgia. According to a 1978 study by the General Accounting Office, this same pattern of non-submissions is true in the other covered jurisdictions, but especially in the Southern states. I also want to re-emphasize that many examples of non-submissions that will be cited in my testimony have occurred since the last renewal effort.

NONSUBMISSIONS

As previously indicated there have been nearly 400 documented non-submissions of state acts that affect minority voting rights in the state of Georgia. Pursuant to Section 5 of the Voting Rights Act, covered jurisdictions are required to submit to the Justice Department or the United States District Court for the District of Columbia any changes that affect voting including the following:

Any changes in qualifications or eligibility in voting; any changes concerning registration, balloting, and the counting of votes and any changes concerning publicity for assistance in registration or voting; any changes with respect to the use of language other than English in any aspect of the electoral process; any changes in boundaries of voting precincts or in the location of polling place; and any change in the constituency of any official or the boundaries of a voting unit (e.g. redistricting, reapportionment, changing to at-large elections from district elections or from at-large to district, to name a few.)

This provision was placed in the original legislation to reach jurisdictions that continuously devised new schemes to effectively disenfranchise minority voters. Section 5, when implemented effectively freezes all electoral procedures in covered jurisdictions until new changes have been precleared.

According to court rulings, it was the intent of Congress that all electoral changes be precleared for a determination of its impact on minority voters. It appears that many jurisdictions in the state of Georgia and Alabama arbitrarily exempted their jurisdictions from compliance. Many of the changes that were not submitted, were in fact, the kind of electoral schemes that seriously diluted Black voting strength.

Many of these non-submissions have had a dramatic impact on minority voting. The changes that are most often not submitted are in the areas of: 1. annexation; 2. changes in electoral schemes, including: (a) staggered terms; (b) numbered posts; (c) majority voting requirement; and (d) converting from district to at-large election schemes.

Let me cite a few examples in some of the counties in Georgia, Morgan, Early, Clay, Miller, Pike, Dooly, and Calhoun counties, to name a few, changed election procedures, but failed to submit these to the Justice Department. In five of the seven counties Blacks constitute 40 percent or more of the population.

Prior to the enactment of the VRA, these jurisdicions maintained district elections, and a low Black voter registration rate. After passage of the VRA, and after increased Black registration, county officials converted to at-large elections for all county commission and board of education posts. None of these counties submitted these changes for preclearance. It was only after litigation was initiated by private citizens that these jurisdictions were forced to revert to their pre-1965 election procedures, and comply with federal law.

In Terrell County, which is located in the middle of Georgia's "Black Belt", the members of the board of education had historically been appointed by the grand jury system. However, after passage of the VRA in 1965, the system of selecting school board members was changed to at-large elections. This resulted in a seven member school board, all of whom were white. None had children attending the public schools; and the superintendent and one of the school board members sent their children to all-white private schools.

A lawsuit was initiated under Section 5 of the VRA which resulted in a return to the grand jury appointment system. Eventually, two black residents were appointed to the county board of education. Terrell, by the way is a county where 91 percent of the pupils are black and 60 percent of the residents are minorities. This school board success can be directly attributed to the use of the preclearance provision of the VRA. Incidentally, gentlemen, you should also know that even the Terrell County Grand Jury had to be integrated through a court order.

In Henry County, Georgia, the county commission and school board went to at-large elections after the passage of the Voting Rights Act. Blacks ran for both boards on several occasions, but consistently lost. Neither of the at-large election changes were submitted for preclearance until 14 years later. This, gentlemen, was because lawsuits were initiated by Blacks against both the county commission and the board of education in December, 1979, to force the county officials to comply with the preclearance provisions of Section 5. As a result of the two consent orders in the consolidated cases, single member district plans were adopted, and one of the newly created districts had a majority black population. In the 1980 elections, a Black was elected to the school board for the first time, and a Black candidate narrowly lost a seat on the county commission by less than a hundred votes.

In Pike County, Georgia, county officials utilized district election schemes until a Black candidate sought office and made it to the runoff. Following this minor success, the local legislative delegation (all-white) proposed, and had passed by the Georgia General Assembly as a local bill, an at-large election scheme. There was no submission of this legislation to either the Justice Department, or the United States District Court for the District of Columbia, as required and mandated by the VRA. The county conducted illegal at-large elections in 1972, 1974, and in 1976. In February, 1978, the Justice Department requested the submission of the at-large change. The county conducted elections under the illegal scheme in August, 1978, despite the request from Justice for submission. The response to the request for submission was not made until 1979. The Justice Department then entered a timely objection to the at-large election change.

Members of the committee, there are numerous other types of nonsubmissions such as annexation and staggered terms that have been employed in Georgia since the 1975 renewal, and these changes have had a dramatic impact on Black political participation in our state.

In Albany, Georgia, city officials annexed seven tracts of land to the corporate limits (without submitting the changes). Investigations by local Black officials found that 90 percent of the people living in the annexed area were white. The local NAACP objected to the annexation under the preclearance provision of the VRA. They further charge that this action will dilute the voting strength of Black citizens in Albany.

Beyond the court challenges, nonsubmissions, and objections by the Justice Department, there are other means utilized to intentionally prevent minorities from exercising their full franchise.

For example, in Taliaferro County, Georgia, the birthplace of Alexander Stephens, Vice President of the Confederacy, county officials employ a unique method of absentee voting. Generally, candidates running for office, or their campaign helpers, bring along applications for absentee ballots on visits to households. Potential voters are asked whether they would like the candidate (or their assistants) to deliver the ballot later. The form is then filled out so that the absentee ballot is mailed, not to the voter, but to the candidate or their campaign worker. The candidate (or campaign worker) takes the ballot to the voter, often waiting while it is filled out, and if necessary, assist illiterate voters. Mrs. Lois Richards, the white chairwoman of the Taliaferro County Commission has said publicly (and in print) that if you don't play this game in Taliaferro County, Georgia, "You might as well not get in the race." [3]

Another interesting aspect of absentee voting in Taliaferro County is the large number of absentee votes which began appearing after the passage of the VRA (and after a major Black voter registration drive spearheaded by Dr. Martin Luther King, Jr. and former U.N. Ambassador Andrew Young). For instance, at its most recent election, Taliaferro had over 500 absentee ballots cast. The official 1980 census lists the total population of the county as 2,032. In 1980, the county had 1,746 registered voters, or 85 percent of the total population.

In recent election (August, 1980) 1,545 persons participated. This meant a turnout of better than 90 percent. Statewide, the Georgia voter turnout was about 42 percent. Interestingly enough, gentlemen, Taliaferro is a county in which Blacks constitute over 64 percent of the total population, and have yet to elect a Black official.

If Georgia counties had maintained their pre-voting rights Act election procedure, as mandated by law (or submitted the new procedures for preclearance), it can be argued that by 1981 Black citizens of Georgia would have increased their participation in the local and state political process, including increased numbers of Blacks running for office and increased Black voter registration. More importantly, electoral victories for Blacks might have been greater and more representative of the

[3] Quote by Mrs. Lois Richards from a series of articles in the Atlanta Constitution on Voting Rights Abuses in Georgia, dated December 9, 1980.

racial make-up of Georgia. The lack of the true minority representation in governing bodies at all levels frustrates efforts to register Blacks and enable them to fully participate in the electoral process in a meaningful manner. As one local Black citizen (Mr. Roy Hughley of Pike County) states in a series of articles on voting rights abuses carried in the Atlanta Constitution. I am 42 years old, this (voting rights abuses) has been going on all my life. If it hasn't changed now, maybe there isn't going to be any change.[4]

To support Mr. Hughley's contention, let me cite you some facts about the real progress in Georgia in regard to voting equity for all citizens since the most recent renewal of the Voting Rights Act. In 1975, the year of the act's renewal, Blacks represented 2.3 percent of the total number of elected officials in Georgia. In 1981, they represent 3.7 percent, slightly more than a 1 percent increase in six years. In 1975 there were two Black state senators, and 19 representatives in the Georgia General Assembly. In 1981, there are still two Black state senators (both from the city of Atlanta) and only 20 representatives. A grand increase of one representative in six years. All but one of these representatives come from the major metropolitan areas such as Macon, Augusta, Columbus, Savannah, and Atlanta. The lone rural representative is from Albany, Georgia. His election stemmed from an objection by the Justice Department to Georgia's redistricting plan for the Albany-Daugherty County area. And may I remind you gentlemen that Georgia no longer even has one Black congressman among its 12-member congressional delegation. This is in a state where the official 1980 census figures show that Blacks make up over one-quarter of the state population.

In addition, if we look at voter registration figures for the state, we find only a minimal percentage increase since passage of the Voting Rights Act in 1965. In 1966, 47.2 percent of the Black voting age population was registered to vote. In 1980 only 51 percent of Blacks were registered, less than a 4 percent increase over 15 years.[5] And even though Blacks now represent over 26 percent of the Georgia population, they continue to be underrepresented in the halls of the General Assembly, the City Halls, the County Courthouses, and the Judicial Chambers of our state. In fact in the 22 counties where Blacks represent the majority of the voting age population, only seven have any Black elected officials.

After knowing these facts, how can Congress even consider trusting white elected officials in Georgia to uphold the rights of Blacks to effectively participate in the electoral process, when they have continually violated federal laws. This lawlessness on the part of my fellow elected officials in my home state has continued, unabated, since the Civil War, in spite of the efforts by the Congress to guarantee the basic right to vote to all citizens. For, Mr. Chairman and this distinguished panel, let us not forget the fact that most of the progress we have achieved for minorities has come only after vigorous court challenges, or by actions of the Federal Government.

I want to turn your attention to Rome, Georgia—city that has been held out as free of racial discrimination and as such, should be permitted to bail out from under Section 5 coverage. Well, the real Rome City and its surrounding jurisdictions have a long history of racial discrimination and resistence to efforts to bring about true racial equality. The city has nearly a 40 percent Black population, and elected its first Black elected official only a few months ago. However, Mr. Felder, the newly elected Black Commissioner was only elected after he was hand-picked and appointed by the all-white city commission to complete an unexpired term. In addition, the City resisted all efforts to desegregate their public schools until it became apparent that continued procrastination would not be tolerated. Coincidentally, after passage of the Voting Rights Act, the City implemented a litany of electoral changes, that would in any reasonable person's view, dilute the strength of the Black voters in the jurisdiction. The changes included reducing the number of wards from nine to three; converting from single districts to at-large and numbered posts; implementing a majority vote requirement, and imposing staggered terms. Similar changes were implemented for the city's board of education. It is not coincidental that none of these changes were submitted for preclearance. Rather, after the Justice Department learned of the massive changes, the city officials coincidentally filed suit to "bail-out" of Section 5 coverage.

As elected officials, members of the Committee, we are sworn to uphold the laws of the land the faithfully execute those laws in an equitable and fair manner. A failure by public officials to uphold the trust bestowed us by our citizenry invites lawlessness and anarchy. The city officials in Rome City, Georgia knew full well the

---

[4] Quote by Mr. Roy Hughley from the series of articles cited in footnotes 1, 3. Quote dated December 10, 1980.

[5] Voter Registration Percentages obtained from two reports compiled by the Voter Education Project, Atlanta, Georgia, reports are: (a) Negro-White Registration in the South, Summer 1966. (b) Voter Education Project Press Release, December 12, 1980.

requirements of the Voting Rights Act, and as such are obligated by law to comply with its provisions.

The U.S. Supreme Court has already upheld the constitutionality of Section 5 and other provisions of the Act in *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966). The Court held that Section 5, together with certain other provisions of the Act, is an appropriate means for carrying out Congress' constitutional responsibilities. It appears that if Rome officials were acting in good faith, they would have completed the necessary submissions and convinced the Justice Department or the Court that changes were not discriminatory nor dilutive. Instead, the City waited until eight years later to seek preclearance, and then, only after the changes had been discovered by the Justice Department.

The non-submissions, in fact were solely responsible for the defeat of a popular Black minister who attempted in 1970 to become the first Black elected official in the city's history. In the 1970 race for a school board seat, Rev. Clyde Hill came out ahead of three white candidates, but his total fell short of a majority. In the run-off election, he was squarely defeated. Had the City maintained its plurality vote requirement, rather than an illegal majority vote requirement, Rev. Hill would have become the first Black to get elected to a city post. As it turned out, an additional 10 years passed before a Black was elected to office.

It can be argued further that Rome, Georgia is a prime example to demonstrate the effectiveness of the "remedies" provided through the VRA. The Section 5 provisions were able to halt the illegal electorial changes that had been enacted by the Georgia General Assembly and implemented by the city without preclearance at the request of the local delegation.

In conclusion, Gentlemen, let me begin by expressing my appreciation to this distinguished body for the opportunity to share my views, and facts with you regarding the Voting Rights Act. I urge you not only to continue the Act, but to strengthen and clarify all of its provisions. I refer to Section 2, whose application as it regards intent, has recently been challenged through action in *Mobile* v. *Bolden* 100 S.Ct. 1490 (1980). Gentlemen, I urge you to make your intentions that relate to that provision perfectly clear by adopting the effect standards as proposed by the distinguished chairman of this committee, Congressman Peter Rodino. I also urge you to steadfastly support the retention of Section 5, as it is presently implemented. To retreat from the full protections provided by Section 5 would be a step backward, particularly in the state of Georgia. The substitute offered by Congressman Henry Hyde is not sufficient to protect the gains registered by Blacks over the past 16 years, and will abort the progress made to date.

The congressman's bill would eliminate Section 5, as well as the Section 4 triggering mechanism and in their place, provide for judicial remedy with the discretion of local district court judges. I am absolutely convinced that if a judicial remedy was substituted for the more effective administrative remedy, local officials in Georgia and elsewhere would immediately implement the non-submissions that private citizens and their attorneys have successfully forced jurisdiction to abandon. I urge you not to compromise on a right as basic as the right to vote.

In regard to those who call for total coverage for all fifty states, I can only say that the Act already has nationwide application. According to a GAO study of Voting Rights Act enforcement, at least some parts of 30 of the 50 states are subjected to some provision of the Act. The Justice Department can initiate suits under the Voting Rights Act in any of the states.

Because it is within these jurisdictions where its implementation has been most needed in order to guarantee the unalienable right of all citizens to vote. It is no coincidence that since the passage of the Voting Rights Act in 1965, a significant number of counties and municipalities that had district elections and plurality vote requirement suddenly changed to at-large and majority vote requirement.

It is also not coincidental that most of these changes were not submitted for preclearance, and a substantial number of the changes occurred in jurisdiction with large minority population. I often wonder aloud why none of these jurisdictions changed voluntarily from at-large to district elections, or from majority vote requirement to a simple plurality. I submit Mr. Chairman, that my home state is not now prepared to fully guarantee and protect the rights of its minority population, a near third of Georgia's total population. Except in urban areas like Atlanta, I see no effort by our elected officials to encourage Blacks to register and participate in the electoral process. In fact, in many of the counties in Georgia, double registration is still required to participate in city and county elections. It poses an additional burden on the working class Blacks and whites to register twice in the same county in order to participate in both municipal and county elections.

Gentlemen, rest assured that when I call for the renewal of the Voting Rights Act, I am not asking for myself. I will not in this period of history and beyond, be

denied that right. Nor will you gentlemen of this distinguished body, not even those who are minorities like Mickey Leland of Texas and Bob Garcia of New York . . . none of us will have that franchise threatened. When I call for the renewal of the Voting Rights Act, I call for it so that Mr. Roy Hughley of Pike County, Georgia, Mr. Calvin Turner and Dr. Merolyn Steward of Taliaferro County, Mr. George Lott of Sparta (as well as Senators Sam Nunn and Mack Mattingly) will be guaranteed their right to vote, and their right to full participation in the American political process.

Mr. EDWARDS. We will now hear from Mr. James Clyburn, South Carolina Human Affairs Commissioner. Pleased to have you here.

Mr. CLYBURN. Thank you.

Mr. EDWARDS. Without objection, your full statement will be made a part of the record.

[The complete statement follows:]

STATEMENT OF JAMES E. CLYBURN, SOUTH CAROLINA HUMAN AFFAIRS COMMISSIONER

Good afternoon, ladies and gentlemen.

I appreciate the opportunity to appear before you today to discuss the 1965 Voting Rights Act and its future.

My name is Jim Clyburn, and I come before you as a representative from several areas. First, I am South Carolina's Human Affairs Commissioner, which means I oversee the state's investigations of alleged civil rights violations. Second, I am president of the National Association of Human Rights Workers, an organization of professionals from most of our 50 states and Canada, who work with civil and human rights issues and enforcement. Also, I am a black man who has twice attempted to serve my state further in elective office. And, perhaps most importantly, I come to you as a father who has spent the majority of his life attempting to ensure that my children will not be denied the guarantees of their country because of incidence of birth.

I come to express my strongest support of the Rodino Bill, for extending Section 5 with its pre-clearance requirements, for conforming the dates of coverage concerning bilingual provisions, and for encouraging the Congress to clarify its will on the Voting Rights Act in light of *City of Mobile* v. *Bolden*.

In our recent past, we have learned that our battles for equality can take place in courtrooms, and board rooms, and hearing rooms such as this one because you, as representatives of our government, as our elected officials, and as our leaders, have promised us that these are our best avenues for redress. We believe you, and that, too, is why we are here. For, as we are all aware, the doors to these rooms have not always been open as wide as you make them today.

It was only some 20 years ago that I, like so many of my contemporaries, found myself in a camped jail cell for attempting to exercise Constitutionally guaranteed prerogatives. The specific target of our sit-in that day was not voting rights, but to send signals to Washington, and to our home states, that denying black Americans their civil or Constitutional rights would no longer be tolerated.

In that jail cell, amid sweat and fear, I made a promise to my yet unborn children that they would never need to repeat those experiences if it were in my power to prevent it.

I had hoped that such battles were behind us. It would be a grave disappointment to me and to others of that era if it becomes necessary to turn to our brothers and sisters and echo the words of Dr. Martin Luther King, Jr., who, in a reverse context, after the passage of a Civil Rights Law, said, "Where do we go from here?".

Today it seems that, if I were forced to answer that question, my response, with remorse, would be: "It appears we go back to square one".

Today, and in the days that follow, we consider how to further mold a law that affects every American, from who will be a representative on a school board to who will be our President. We have been taught that in a democratic republic, we have the right to elect those who best reflect our conscience and purposes. Yet, if we erect barriers, of if we remove guardrails to the effective exercise of the right to vote, then we threaten the principle that is basic to the proper or just functioning of our democratic government.

You, as our elected officials, are sending signals today, just as we did 20 years ago. And those signals are being received by various segments of society in very different ways. Your signals indicate to closet or passive racists that now is the time to return to the public eye, to come out in force, in visible, sometimes violent ways. This tension cannot be missed in Atlanta, in Buffalo, in North and South Carolina,

or in increasingly publicized Ku Klux Klan para-military training throughtout the South. Yet those of us who have trusted and depended upon a government promising hope, opportunity and, above all, justice, perceive your signals as a threat to the ground we have gained, and the erection of further barriers to our hopes for the future.

But this battle involves different issues than those revealed by its surface arguments. For what is really operating here is some 300 years of oppression, centuries of attitudinal development, deceptions, subversions and, in some instances, downright racism. And, what frightens me most, is that these attitudes are acceptable today when they were not acceptable even a year ago. Many of our elected officials are beginning to dance to the tunes of pied-piping reactionaries.

It is therefore imperative that this Congress see through those loud voices of the reactionary few and search out the silent cries of the recently enfrancished many. You must exhibit some of the same far-sightedness that allowed us first to fly, and then to conquer space; first to split the atom, and then to harness its strength; first to develop a democracy for some, and then, hopefully, to perfect it for all.

This country, since its birth, has shone as a beacon of strength and light for the oppressed, the downtrodden, the abused and the maligned. If you, through your actions now, send signals from that beacon indicating regression, backtracking, or broken promises, then we not only seriously disrupt our relationships with each other, but also with our neighbors at home and abroad.

We are at a crossroads and, quite frankly, we are confused, frustrated, threatened and saddened. We are confused because we thought we'd already fought this battle. We are frustrated because we never perceived our government to break faith with the people it serves. We are threatened because some are attempting to change the rules in the middle of the game. And we are saddened because history has taught us to be. For this year marks the 100th anniversary of the parade of states, led by Tennessee playing the tune of states' rights, but marching to the drum beat of Jim Crow laws. With that drum roll, the good deeds of the past were undone, and we ushered in almost 100 years of unabashed racism and separate but unequal treatment, discord broken only in the 1960's with the passage of legislation such as the Voting Rights Act.

I subscribe to the theory that for every action there is an equal and like reaction. If you, too, subscribe to that theory, then you must understand the implications of your actions.

I have read with interest the comments of some current and former elected officials indicating that the continuation of this Act means that state and local governments must come to Washington "hat in hand" asking for pre-clearance. I find it somewhat ironic that those states affected by pre-clearnace are the same states that continue to devise racially motivated methods that force minority candidates to go to a traditionally insensitive voter with "hat in hand". And history reveals that we usually come away empty.

Last November, nearly every political observer in Charleston County believed William Saunders would become South Carolina's first black state Senator since Reconstruction. His campaign had raised more than $60,000 in contributions and secured another $40,000 in a signature loans from the largest bank in the state. He picked up endorsements from both counties' legislative delegations; from mayors across the districts; from a former and current governor; and from an impressive company of business, civic and professional leaders in the community. All of these groups were predominantly, almost exclusively, white. This visible support in the white community was coupled with an extensive "get out the vote" campaign in black precincts, and the results seemed certain to guarantee Bill Saunders' victory.

How did one of the most expensive, most widely endorsed Senatorial campaigns in the history of Charleston and Georgetown counties fail?

Some say it was the result of the November 4 Republican avalanche in all parts of the country. But in Richland, Chester and Fairfield counties, a black Republican, Isaac Washington, received similar endorsements from Republican bigwigs, but was soundly defeated. The conclusion to be reached is obvious.

And so the state's Senate remains lily white without the benefit of even one person who reflects the black experience.

The effective enforcement of the Voting Rights Act has been complicated by a portion of Section 5 which allows the Justice Department to stage its own form of a sit-in. It can sit on the most valid complaint for 60 days, for any or no reason, thereby denying the complaining party any administrative avenue for redress. Conversely, if Justice does interpose an objection, those charged with violations do have a "second bite at the apple", the opportunity to appeal.

While we would have to admit some form of naiveté to ignore the political nature of any administrative body, we would be remiss here to fail to point that, even with

the current protections of the Act's pre-clearance requirements, some persons will go to any lengths to circumvent it while people such as myself, who seek to serve and vote effectively, must endure the abuses of power.

Some 11 years ago, I first tossed my political hat into the ring and ran for a South Carolina House seat. My first hurdle was to compete with 22 candidates to be one of 11 representatives. Although I went to bed that night a victor, I woke up in the morning a loser. It was full-slate voting in its most invidious hour.

And, less than three years ago, I fell victim to an election method rarely seen outside the South—the majority run-off requirement or 50 percent plus one rule. I ran for the Democratic Party's nomination for Secretary of State and, although I led the field with 43 percent of the vote, this discriminatory device forced me into a runoff election which I ultimately lost. Even though my support came both from the traditional white power structure and from others of my own race who wished to see a black in a statewide office, I lost. I cannot help but believe that those who devised this election method envisioned the inevitable result of a black facing a white head to head, and the resulting racially split vote.

But Mr. Saunders, Mr. Washington and I are not the only black candidates so affected in South Carolina. The invidious devices of numbered seats, multi-county or multi-member districts, at-large elections and scores of other restrictive requirements have but one end, purpose and effect, and that is to ensure that, in a state where the black population exceed 30 percent, there is not one black member of the state Senate, and only 15 of its 124 House members are black.

The point where I become most concerned, though, is at the local level. There are only approximately 100 blacks holding positions ranging from school board members to county council members to sheriffs. We have found that, in many instances where the state's minorities have become the majority in a political subdivision, former elective officers now are appointed instead of elected, again achieving the purpose and result of denying that basic right of an effective vote for responsive representation.

The traumas do not stop here.

In Edgefield County, where the population is nearly 70 percent black, there is no black county council member. I challenge the opposition to find any jurisdiction in this county that is 70 percent white, but has no white elected representative.

I realize that Edgefield County has been discussed extensively at these hearings, so let me describe what us happening a little farther down on the iceburg, for Edgefield is only one of our many horror stories.

Counties with a high percentage of minority voters are invariably grouped with counties that have a high percentage of white voters for purposes of electing our state Senators. Again, the obvious purpose is to dilute the effect of the black vote. Fairfield is combined with Richland; Williamsburg and Marion with Florence and Horry; Georgetown with Charleston; Dillon with Chesterfield and Marlboro; Clarendon with Sumter; Edgefield and Allendale with Aiken and Lexington; and Calhoun and Orangeburg with Dorchester. To add insult to injury, the Senate representatives are elected by numbered seats within multi-member/multi-county districts, thereby ensuring the continuation of an all-white Senatorial body. This dilution, as we have stated, is further compounded by grouping counties which often have very little in common demographically, thus the status quo is maintained at all costs.

Almost any politically astute South Carolinian knows that the legislature's intent in Senate redistricting has been to gerrymand so as to assure an all-white Senate; but proving this reading of the legislators' minds is another thing entirely. There can be no question that the effects of this racial gerrymandering has been to dilute or nullify blacks' votes.

Nowhere is this attitude better exemplified than when the Speaker Pro Tem of the South Carolina Senate insisted that there was no need to begin studying reapportionment until 1983, just one year prior to the next Senate election and one year after the current expiration date of the pre-clearance requirement. Such an attitude is not only postponing the inevitable, but it is also ignoring the obvious, looking back to those days when the will of a few governed all, and the political strength of minorities was misused and abused.

When the tendencies exist at even the most local level to develop devious methods of circumvention, if you were to compound that problem by allowing Section 5 to expire, I fear we will see a reversion to discriminatory tactics not unlike those which took place when the federal government withdrew its supervision from this all-important effort some 100 years ago. The effects of that withdrawal are a matter of history, and I need not dwell upon them today.

Thomas Jefferson said, and I still believe, that our form of government is the only one "which is not eternally at open or secret war with the rights of mankind". We must all ponder those words, for we cannot allow this era of transition in our

nation's political life to lead either to an open or secret war on the rights which have been so dearly and recently won.

Nothing is so essential to our democracy as the free and full exercise of the right to vote. Government and law must not only be fair, but they also must be perceived to be fair. The actions of governmental leaders, especially Congress, do send signals. And I believe it is time for us to look at how and by whom those signals are received. For perceptions can be destructive to millions of Americans who are only just beginning to feel any benefit from the legislative, administrative and judicial efforts of the recent past. To call a halt now to a key instrument of human and democratic progress would be an obvious betrayal of the faith and hope created in these Americans.

Already we see an erosion of the effectiveness and thus the trust placed in the Voting Rights Act. The Justice Department recently withdrew from South Carolina's suit addressing this issue because of the intent requirement enunciated in *City of Mobile* v. *Bolden*. Secondly, a federal judge upheld the City of Columbia's method of selecting its councilmen, even though the result of that selection process has been an all white, all male council, virtually all of whom come from one small area of the city. And, finally, Judge Chapman, again using *Mobile* as a foundation, rescinded a decision involving Edgefield County in which he had originally ruled for the offended voters.

To paraphrase Paul Simon, there must be 50 ways to cheat your neighbor—out of his vote. Although there'd be no need to name all of them here, especially since some of them have not yet been released from the imagination of creative manipulators, let me name a few.

There is gerrymandering and multi-member districts and numbered seats and at-large voting and majority runoff requirements and increasing filing fees and extending the terms of incumbent office holders and re-registering and withholding information on qualifications for office seekers and changing voter registration hours and removing registrars from outreach registration and changing polling places and staggering terms and, so the last shall be first, threatening to remove the most feasible access minorities have for seeking relief—that is, diluting the Voting Rights Act.

In South Carolina, there have been some 50 objections considered by the Justice Department, and this, in my opinion, does not begin to cover the number of complaints, much less the number of violations.

The arguments for diluting the Voting Rights Act are transparently pretextual. Some say pre-clearance coverage should be extended to all 50 states, but we know this would effectively kill enforcement because of a lack of sufficient budget commitments, but, more importantly, when there is no compelling need to do so, the Supreme Court probably would find such extension unconstitutional. Also, there is the idea of requiring private individuals to bring suit in district court. But we are aware of the extraordinary time, financial impositions, and court burdens this would consume. And there is the argument that pre-clearance is burdensome, but that argument falls to the one outstanding candidate, black or brown, who loses his or her chance for selection because the government that is required to protect the rights of the people instead decides to ignore those rights.

One or more of the "50 ways to cheat your neighbor" could be chiseled on the political epitaph of a host of black people in South Carolina. There were Virgil Dimery, S. T. Vandross, Ferdinand Burns, George Payton, Chris King, Hemphill Pride, Rodney Albert, Samuel T. Sanders, Bill Saunders and Isaac Washington to name only a few of those who, over the past 12 years, have attempted to add a little color to our state Senate.

Also falling victim to one or more of the "50 ways" were House of Representatives candidates Herbert Fielding, Jim Felder, I.S. Leevy Johnson, Hayes Samuel, Sam Foster, Joe Wilson, George Brightharp, Juanita White, Frank Gilbert, John Smalls, Hyland Davis, Rayshaw Gaddy, Theo Mitchell, and many others.

Then there are great numbers who have attempted to get elected to city and county councils, school boards, sheriffs and magisterial positions; William O'Neil, Franchot Brown, Moses Clarkson, E. W. Cromartie, Leslie McIver, Bobby Jenkins, Bill Grant, Bill McBride, Maggie McGill and Isaiah Bennett. Also, John Roy Harper, Richard Jackson, Ed Day, J. S. Hunter, Ray Kenner, J. W. Sanders, Donald Robinson, and a great many others.

Many of the above were lawyers, some were businessmen, and others were social workers. All were imminently qualified, seasoned and prepared to assume the responsibility of elective office. Yet their political demise was grounded in the vestiges of discrimination, to which we look to the Voting Rights Act for protection.

So we admit that the Act has not worked perfectly. There is, however, a group of people who fell once and stood again, and were successful. Theo Mitchell, Juanita

White, Jim Felder, I.S. Leevy Johnson, Ulysses DeWitt, James Frazier, and others, all of whom came from defeat to victory after full-slate and at-large voting requirements were objected to, and single-member districts were insisted upon by the Justice Department.

The Greenville and Florence City Cuncils now have two blacks, each as a result of their changing to a combination single-member districts and at-large election method. Charleston City Council finally has fair representation for its 50 percent minority population.

Just two weeks ago, Florence County School District 1 elected a black to the school board after numbered seats were removed and school board members were allowed to be elected at large without a majority runoff requirement. The local newspaper editorialized following the election, saying that, "All in all, this gives District 1 a strong board. There is probably a broader cross section of citizens and greater diversity of views represented on the new board than any other previous board."

These are a few of the positive signals indicating to all that black, brown and white can live side by side in such a way that, hopefully, we will approach a day that consideration of a political candidate can be made on the merits of that person's proposals and his or her qualifications. It is within your power to send the same kinds of signals today.

I believe the most positive, reassuring signal of good faith and hope you could send to Americans would be to support the Rodino Bill, assuring that the progress made in Charleston and Greenville and Florence and Horry is not the end of the dream.

I hope that your actions will guard against any results that could return us to the nightmarish conditions which were first codified in 1881 and from under which we have just recently begun to emerge.

After all, the provisions of the Voting Rights Act are present, one court said, to ensure that effective voting, "is a matter of right, not a function of grace".

Thank you.

Mr. CLYBURN. I appreciate the opportunity to appear before you today to discuss the 1965 Voting Rights Act and its future. My name is Jim Clyburn and I come before you as a representative of several areas. First, I am South Carolina's Human Affairs Commissioner, which means that I oversee the State's investigations of alleged civil rights violations. Second, I am president of the National Association of Human Rights Workers, an organization of professionals from most of the 50 States and Canada, who work with civil and human rights issues and enforcement.

Also I am a black man who has twice attempted to serve my State further in elected office. And finally, and perhaps most importantly, I come to you as a father who has spent the majority of his life attempting to insure that my children will not be denied the guarantees of their country because of incidence of birth.

I come to express my strongest support for the Rodino bill, for extending section 5 with its preclearance requirements, for conforming the dates of coverage concerning bilingual sections, and for encouraging the Congress to clarify its will in the Voting Right Act in light of *City of Mobile* v. *Bolden*. In our recent past, we have learned that our battles for equality can take place in courtrooms and in boardrooms, and in hearing rooms such as this one, because you, as our Government, as our elected officials, as our leaders, have promised us that these are our best avenues for redress. We believe you, and that, too, is why we are here.

We are aware that the doors to those rooms have not always been open as wide as you make them today. About 20 years ago, I, like so many of my contemporaries, found myself in a jail cell for attempting to exercise constitutionally guaranteed prerogatives. The specific target of our sit-in that day was not voting rights, but to send signals to Washington and to our home States that denying

black Americans their civil or constitutional rights would no longer be tolerated.

In that jail cell, amid sweat and fear, I made a promise to my yet-unborn children that they would never need to repeat those experiences if it were within my power to prevent it. I would hope that such battles were behind us. It would be a grave disappointment to me and others of that era if it becomes necessary to turn to our brothers and sisters and echo the words of Dr. Martin Luther King, Jr., who, in a reverse context, after the passage of the Civil Rights law, said: "Where do we go from here?"

Today it seems that, if I were forced to answer that question, my response, with remorse, would be: It appears we go back to square one.

Today and in the days that follow we consider how to further a law that affects every American, from who will be the representative on the school board to who will be our president.

We have been taught that in a democratic republic we have the right to elect those who best reflect our consciences and purposes. Yet, if we erect barriers, or if we remove guardrails to the effective exercise of the right to vote, then we threaten the principle that is basic to the proper, just functioning of our democratic government.

You, as our elected officials are sending signals today just as we did 20 years ago. Those signals are being received by various segments of society in many different ways. Those signals indicate to closet or passive racists that now is the time to return to the public eye, to come out in force, in visible, sometimes violent ways. This tension cannot be missed in Atlanta, in Buffalo, in North and South Carolina, or an increasingly publicized Ku Klux Klan paramilitary training camps that are being established throughout the south.

Yet, those of us who have trusted and depended upon a government promising hope, opportunity, and above all, justice, receive your signals as a threat to the ground we have gained and the erection of further barriers to our hopes for the future. But this battle involves different issues than those revealed by its surface argument. For what is really operating here is some 300 years of oppression, centuries of attitudinal development, deceptions, subversions, and in some instances, downright racism.

What frightens me most is that these attitudes are acceptable today, when they were not acceptable even a year ago. Many of our elected officials are beginning to dance to the tunes of pied-piping reactionaries. It is therefore imperative that this Congress see through those voices of the reactionary few, and search out the silent cries of the recently enfranchised many.

You must exhibit some of the same farsightedness that allowed us first to fly, and then to conquer space; first to split the atom, and then to harness its strength; first to develop a democracy for some, and then, hopefully, to perfect it for all.

This country has shone as a beacon of light for the oppressed, the downtrodden, the abused, and the maligned.

If you, through actions now, send signals from that beacon indicating regression, backtracking, or broken promises, then we not only seriously disrupt our relationships with each other, but with our neighbors at home and abroad.

We are at a crossroad and, quite frankly, we are confused, frustrated, threatened, and saddened. We are confused because we thought we had already fought this battle. We are frustrated because we had never perceived our government to break faith with the people it serves. We are threatened because some are attempting to change the rules in the middle of the game. We are saddened because history has taught us that we should be.

This year marks the 100th anniversary of the parade of States, led by Tennessee, playing the tunes of States rights, but marching to the drum beat of Jim Crow laws. With that drum roll the good deeds of the past were undone, and we ushered in almost 100 years of unabashed racism and separate-but-unequal treatment, a discord broken only in the 1960's with the passage of legislation such as the Voting Rights Act.

I read with interest the comments of some current and former elected officials, indicating that the continuation of this act means that State and local governments must come to Washington hat in hand, asking for preclearance.

I find it somewhat ironic that those States affected by preclearance are the same States that continue to devise racially motivated methods that force minority candidates to go to an insensitive voter with hat in hand; and history reveals that we usually come away empty.

Last November, nearly every political observer in Charleston County, S.C., believed that William Saunders would become South Carolina's first black State senator since reconstruction. His campaign had raised over $60,000 in contributions, and secured another $40,000 in signature loans.

He picked up endorsements from both counties' legislative delegations, from mayors across the district, from a former and present Governor, and from an impressive company of business, civic, and professional leaders throughout the community. All of these groups were predominately, almost exclusively, white.

This visible support in the white community was coupled with an extensive get-out-the-vote campaign in black precincts, and the results seemed certain to guarantee Bill Saunders a victory.

But he lost. How did one of the most expensive, most widely endorsed senatorial campaigns in the history of Charleston County fail?

Some say it was the result of the November 4, 1980, Republican avalanche in all parts of the State. But in Richland, Chester, and Fairfield Counties, a black Republican, Isaac Washington of Columbia, received similar endorsements from Republican bigwigs, but was soundly defeated in the November elections.

The conclusion to be drawn is obvious. And so, the State senate remains lily white, without the benefit of even one person, irrespective of political persuasion, who reflects the black experience.

The effective enforcement of the Voting Rights Act has been complicated by a portion of section 5, which allows the Justice Department to stage its own form of a sit-in. It can sit on the most valid complaint for 60 days, for any or no reason, thereby denying the complainant party any administrative avenue for redress.

Conversely, if the Justice Department does impose an injunction, those charged with violations do have the opportunity to appeal—a second bite at the apple.

While we would have to admit some form of naivete to ignore the political nature of any administrative body, we would be remiss here to fail to point out that, even with the present protections of the act's preclearance requirement, some persons will go to any lengths to circumvent it; while people, such as myself, who seek to serve and vote effectively, must endure the abuses of power.

Some 11 years ago, I first tossed my political hat into the ring and ran for a South Carolina house seat. My first hurdle was to compete with 22 candidates, to be one of the 11 representatives. Although I went to bed that night a victor, I woke up in the morning a loser.

It was full slate voting in its most invidious hour.

Less than 3 years ago, I fell victim to an election method rarely seen outside the South, the majority runoff requirement—or the 50 percent plus one rule.

I ran for the Democratic Party's nomination for Secretary of State, and although I led the field of three candidates, with 43 percent of the vote, this discriminatory device forced me into a runoff election, which I ultimately lost. Even though my support came both from the traditional white power structure and from others of my own race who wished to see a black in a statewide office, I lost.

I cannot, help but believe that those who devised this election method envisioned the inevitable result of a black facing a white head to head, and the resulting racially determined vote.

Mr. Saunders, Mr. Washington, and I are not the only black candidates so affected in South Carolina. The invidious devices of numbered seats, multicounty or multimember districts, at-large elections, and scores of other restrictive requirements have but one end, purpose, and effect: to insure that in a State where the black population exceeds 30 percent, there is not one black member of the State senate, and only 15 of its 124 house members are black.

I might add that those house members are elected from single-member districts.

The point where I become most concerned, though, is at the local level.

In Edgefield County, where the population is nearly 70 percent black, there are no black council members. I challenge the opposition to find any jurisdiction in this country that is 70 percent white and has no white elected representative.

I realize that Edgefield County has already been discussed in these hearings—but let me state, away from my prepared statement, a few things about Edgefield County.

Edgefield County has maintained its dubious achievement by circumventing or ignoring the Voting Rights Act. In 1966, the county switched to an at-large election, without notifying the Justice Department, as section 5 required. In 1976, it made further modifications.

After the Justice Department twice asked for these modifications to be submitted, Edgefield County submitted them in 1978. The

Justice Department objected to them within the requisite 60 days. Edgefield County again ignored the law.

The at-large system was challenged and a South Carolina judge issued a preliminary ruling that he had reached the inevitable conclusion that the system was unconstitutional and must be changed.

And with the committee's indulgence, Mr. Chairman, I would like to submit for the record two orders by Judge Chapman; one, the original order declaring that this election method was unconstitutional; and the second is an order that was issued after the *City of Mobile* v. *Bolden,* rescinding the original order, and declaring that, in light of the *City of Mobile* v. *Bolden,* that it was OK to conduct those elections.

Mr. EDWARDS. It will be made a part of the record. (See pp. 302-326.)

Mr. CLYBURN. I also want to offer into the record a newspaper article printed in this past Sunday's State newspaper, which claims to be our largest and most influential newspaper.

Mr. EDWARDS. Without objection, it will be made part of the record.

Mr. CLYBURN. Let me describe what is happening a little further down on the iceberg. Edgefield County is only one of our horror stories.

Counties with a high percentage of minority voters are invariably grouped with counties that have a high percentage of white voters, for purposes of electing our State senators.

Again, the obvious purpose is to dilute the effect of the black vote. Fairfield County is combined with Richland; Williamsburg and Marion with Florence and Harry; Georgetown with Charleston; Billing with Chesterfield; Clarendon with Sumter; Edgefield and Allendale with Aiken, and Lexington, Calhoun and Orangeburg with Dorchester.

And to add insult to injury, the senate representatives are elected by numbered seats within multimember, multicounty districts, thereby insuring the continuation of an all-white senatorial body.

This dilution, as we have stated, is further compounded by grouping counties which often have very little in common demographically. Thus, the status quo is maintained at any and all costs.

Almost any politically astute South Carolinian knows that the legislature's intent in the redistricting has been to gerrymander to insure an all-white senate, but proving this reading of the legislators' minds is another thing entirely. The effect has been to dilute and nullify blacks' votes.

Nowhere is the attitude better exemplified than when the speaker pro tempore of the South Carolina Senate insisted that there was no need to begin studying reapportionment of the State senate until 1983, just 1 year prior to the next senate election but also 1 year after the expiration date of the current preclearance requirement.

Such an attitude is not only postponing the inevitable, but it's ignoring the obvious; going back to those days when the will of a few governed all, and the political strength of minorities was abused and misused.

Thomas Jefferson said, and I still believe, that our form of government is the only one "which is not eternally at open or secret war with the rights of mankind." We must all ponder those words.

We cannot allow this era of transition in our Nation's political life to lead either to an open or secret war on the rights that have been so dearly and recently won. Nothing is so essential to our democracy as the free and full exercise of the right to vote.

Government and law must not only be fair, but they must be perceived to be fair. The actions of governmental leaders, especially Congress, do send signals. I believe it is time for us to look at how and by whom those signals are received. Perceptions can be destructive to millions of Americans who are only just beginning to feel any benefits from the legislative, administrative, and judicial efforts of the recent past.

To call a halt now to a key instrument of human and democratic progress will be an obvious betrayal of the faith and hope created in these Americans.

Already we have seen an erosion of the effectiveness, and thus the trust, placed in the Voting Rights Act. The Justice Department recently withdrew from a South Carolina suit addressing this issue because of the intent requirement enunciated in *City of Mobile* v. *Bolden.*

Second, a Federal judge upheld the city of Columbia's method of selecting its councilmen, even though the result of that selection process has been an all-white, all-male council, virtually all of whom come from one small area of the city.

And finally, Judge Chapman, using Mobile as a foundation, rescinded his decision involving Edgefield County.

To paraphrase Paul Simon, there must be 50 ways to cheat your neighbor out of his vote.

Now, Senator Bond has already named most of the ones that I am aware of, but I point out to this committee today that I am sure that there are many more that have not yet been released from the imaginations of creative manipulators. And I would like to let my statement stand, as to the ones that I am aware of.

In South Carolina, there have been some 50 objections considered by the Justice Department. This, in my opinion, does not begin to cover the number of complaints, much less the number of violations.

The arguments for diluting the Voting Rights Act are transparently a pretext. Some say the preclearance coverage should be extended to all 50 States, but we know that this would effectively kill enforcement because of a lack of sufficient budget commitments.

More importantly, when there is no clear need to do so, the Supreme Court probably would find such a requirement unconstitutional. And there is the idea of requiring private individuals to bring suit in district courts, but we are aware of the extraordinary time, financial impositions, and court burdens that this would consume.

And there is the argument that preclearance is burdensome, but that argument falls to the one outstanding candidate, black or brown, who loses his or her chance for selection because the Gov-

ernment, when it is required to protect the rights of the people, instead decides to ignore those rights.

One of the 50 ways to cheat your neighbor could be chiseled on the political epitaph of a host of South Carolinians. There were 12 or more blacks who attempted to serve in the State senate who, over the past few years, have been defeated because of one or more of those requirements.

Many of them apply to people who offered for the House of Representatives, and I might add that those who offered for the House, various county council, city council, and school boards, some of them were resurrected some years later, but only after the Justice Department decided that it would not go along with South Carolina's full slate laws or would they approve a plan for electing Members of the House except by single Member districts.

In closing I would like to point out that the Greenville and Florence City Councils now have two blacks each as a result of their changing to a combination of the single member district and at large election methods. Charleston City Council finally has fair representation for the 50-percent minority population. And just 2 weeks ago Florence County School District No. 1 elected a black to the school board after the numbered seats were removed and the school board members were allowed to be elected at large without a majority runoff requirement.

The local newspaper in Florence following the elections stated that "all in all this gives District No. 1 a strong board. There is probably a broader cross section of citizens and greater diversity of views represented on the new board than any other previous board."

These are but a few of the positive signals indicating to all that black, brown, and white can live side by side in such a way that hopefully we will approach a day when consideration of a political candidate can be made on the merits of the proposals and his or her qualifications.

It is within your power to send the same kind of signals today. I believe the most positive, reassuring signal of good faith and hope that you can send to Americans would be to support the Rodino bill, assuring that the progress made in Charleston and Greenville and Florence and Horry is not the end of the dream.

I hope that your actions will guard against any results that could return us to the nightmarish conditions which were first codified in 1881 and from under which we have just recently begun to emerge.

After all, the provisions of the Voting Rights Act are present, one court said, to insure that effective voting is a matter of right, not a function of grace.

Thank you.

Mr. EDWARDS. Thank you very much, Commissioner, for a very excellent testimony, as was Senator Bond's.

The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. I want to thank the Senator also, Mr. Bond, my good friend, and Mr. Clyburn, whom I have had the pleasure of meeting, for his testimony which more than refutes what we heard prior to today.

Senator Bond, Mr. Brinson held up Mr. Fielder as exhibit number one to ostensibly demonstrate that all is quiet in Rome,

Ga., and that black folks down there are more than satisfied with the state of things as worked out by the officials in Georgia, and I presume that's Mr. Brinson. Would you comment on what to me might well be a total misconception?

Mr. BOND. Mr. Washington, I am not not familiar with all of the citizens of the city of Rome. I have been there on more than one occasion and I found that as in other municipalities in Georgia, and indeed others throughout the South, there is a high level of discontent with the level of city services being offered.

You will note that in his statement Mr. Brinson said the court had found that some black neighborhoods were being upgraded. One would assume that the fact that some had to be upgraded would mean that they had been ill-treated in the past, at least in the immediate past, by the city fathers of that community.

Mr. WASHINGTON. Mr. Brinson makes his argument, I assume to support his conclusion or his final request, that they be permitted to opt out.

Mr. BOND. He made this same argument before the Supreme Court of the United States. He lost 6 to 3. Now he brings it to this committee. He lost there. I hope he loses here.

Mr. WASHINGTON. He is rearguing his case here, and we do not have the benefit of all of the facts that the Supreme Court had. That's what bothers me. I have a feeling that there are some gaps that need to be filled in. Could you supply some of them?

Mr. BOND. There are some gaps. Most pertinent is the original language of the act which Mr. Brinson probably could have obtained had he inquired. It tells clearly what had to be submitted and when and where. May I quote. "Shall enact or seek to administer any voting qualification or prerequisite to voting or standard practice or procedure with respect to voting different from that in force or effect on November 1st, 1964."

It seems to me, Mr. Washington, that that covered the 60 annexations the city of Rome illegally accomplished without submitting them for preclearance by the Department of Justice. It seems to me that a man in his position ought to have known about this, and, of course, I cannot read his intent but I do know what the effect of those rulings were. The Court agreed with the opponents and dismissed his complaint, turned him down 6 to 3.

Mr. WASHINGTON. And it is true that even after attention was specifically brought to that section of the act by the Justice Department, even after that certain annexations were not reported to the Justice Department.

Mr. BOND. That's correct.

Mr. WASHINGTON. Was I fair then in saying that the city of Rome did not have clean hands?

Mr. BOND. Exactly so, Mr. Washington.

Mr. WASHINGTON. Neither there nor here.

Mr. BOND. Exactly.

Mr. EDWARDS. Mr. Lungren.

Mr. LUNGREN. Thank you, Mr. Chairman. I appreciate the testimony of both of you this afternoon. I think it does help us certainly establish a record as we attempt to work with this. I would say, although I was not in Congress at the time, it strikes me that the 1965 Voting Rights Act probably was politically difficult or tough

to be passed, but intellectually or logically there was not much difficulty. By that I mean I think that no doubt there was a widespread pattern and practice of discrimination with respect to voting rights affecting minorities in those areas which were covered at that time.

I would suggest, however, that now I think it is a slightly different job which we have. I think, to be fair, we have to look at the situation anew and see whether in fact there have been any real accomplishments in some of those areas to see whether in fact the same requirements of the law should be applied, and that is why I am somewhat saddened by the suggestion of some who have testified before us that any consideration of a change necessarily represents a retreat. I would hope we would be able to honestly look at this without presuming that if we make any changes we are doing so because there is a retreat, and I in fact am rather sympathetic to your position.

I have got to be convinced, though, if I am going to vote for any change that that is what should be done based on the record.

There is also something which has appeared in several instances in the testimony suggesting that somehow racism and discrimination is more acceptable today. It almost seems to be an attempt to connect that feeling with the conservative mood of this country, and I hope that we disabuse ourselves of that.

I am proud of the fact that in my State of California a Republican with as conservative a record as anybody has in the State of California, Clair Bergner, when the Democratic Party had the misfortune of a Ku Klux Klan member being their nominee for Congress, knowing that he would win overwhelmingly still campaigned as hard as he possibly could because he said, publicly and privately, he felt it was necessary to show people the danger of the Ku Klux Klan and he was going to make sure that this person got the fewest votes he possibly could so that people would understand what we were talking about. And he did so at some peril to himself. For the last 3 or 4 weeks of the campaign he had to hire armed bodyguards to respond to threats to him and members of his family.

I hope we would not just try and say that because there is a conservative mood in the country that necessarily those of us who happen to be conservative feel that it is all right to have Ku Klux Klan members running around. I don't, and other members of my party who share my political persuasion do not.

I would like to hope that we could address the issues that are before us.

I just have to say one thing, Senator Bond, with respect to something you said. We are dealing with a very difficult issue here, the question of racism, a question of where it is involved in the electoral conduct in this country. To make a blanket statement that we had a racist war upsets me and concerns me because I have a district that probably has as many Southeast Asians who had to flee the effects of that war as anybody in this country. And when I talk to them they do not complain to me about the racist war of the United States. They complain to me about the fact that as Mung tribesmen they are being exterminated by Communist forces in Southeast Asia. As Cambodians, half of their population

has been destroyed by the wonderful deliverers following the United States, Pol Pot and others there, and Vietnamese who still have members of their family there who are still living have not suggested to me that they felt that they were bearing the brunt of a racist war by the United States, and I hope that we can isolate that issue out and not talk about that. But I had to respond.

Let me suggest why I need your testimony on these things. I come from an area of the country that is not covered by the Voting Rights Act. I am about your same age. I think a little younger. I grew up watching on television the terrible scenes of what was happening in the South when blacks were attempting to exercise their right to vote. So I am one of the products of a generation that grew up very sympathetic toward this and supported it in whatever way I could, being a schoolchild out in California, the efforts that were going on there. Yet some of the testimony I hear today suggests that because you go to a majority election, for instance, or a citywide election, there is necessarily a racist effect content.

In my hometown of Long Beach we went from a citywide system, where those people who were being elected to city council would be nominated by district, but then the overall vote, final vote of the top two would be citywide, to a districtwide one because I thought there was better representation there. I am not convinced that it has not worked that way.

So many people are interested in their own sector, the city has to go to hell in a hand basket.

I'm feeling that maybe we ought to move back to the other way. I don't see in the movement many of us have an intention to discriminate against any particular group.

The city of Los Angeles has a system whereby the mayor has to be elected by majority vote. Tom Bradley was just elected the second time around by going through that system, although he failed the first time. He was seated the second time and then had an overwhelming vote.

So in some ways those don't strike me as necessarily having a racial impact.

Now with that background, where do you suggest I look to see as to whether we should have the intent standard or the effects standards if we are dealing with areas that have had a background of discrimination in the past but say for the last 17 years have had a fairly good record?

Mr. BOND. Congressman, I think you have heard it said before how difficult it is to prove intent. If you were to leave this building and someone were to put a pistol in your side and relieve you of your wallet and that person were to be caught, if you had to prove in court that his intent was to relieve you of your wallet rather than just produce the effect, the wallet in his hand, the witness who saw him with the gun, the fact that you had the wallet and now don't have it, if you had to prove his intent I don't think you would ever claim your wallet.

Mr. LUNGREN. It would be proved to my satisfaction.

Mr. BOND. I don't think you could prove it in a court of law.

Mr. LUNGREN. I understand.

Mr. BOND. I think you and the other members of this committee ought simply to look at the record and I think you will find that

the covered jurisdictions, particularly those in the Southeastern part of the United States, if not in those, and sections of California, New York, Arizona, Alaska, I think you will discover consistent patterns of intent to evade the purposes of the act. You will find records of nonsubmission. So I think you will find covered jurisdictions which immediately after the act became effective in 1965 immediately changed their election schemes from one form to another. I think you will see, if you examine the Justice Department records from 1965 to date, that an enormous number of submissions were rejected right after the renewal of the act.

I think the record will demonstrate that coldly and objectively that this section of the country persists in its attempts to deny minorities meaningful access to the political process.

Based on that conclusion I hope you will support the legislation introduced by Chairman Rodino.

Mr. LUNGREN. What if we found an area in a covered State that in fact is clean. Would you suggest that if we set up a mechanism where there could be such a judicial determination they ought to be allowed out?

Mr. BOND. I don't think they ought to be. I can't tell from what Mr. Brinson said. He said at first it was a severe burden on Rome. And then he said it was a trivial burden. I don't know which burden it happens to be for his community. As I am given to understand, it is a matter of an 18-cent stamp today and a letter to the Department of Justice, and I cannot imagine that to be an onerous burden on any town or city or municipality however small, however impoverished or however clean its record might be.

Mr. LUNGREN. I am not looking for devils or angels. I recognize we are dealing with human beings. Some may have acted as devils in the past and that required some legislation that we did impose.

I just wonder whether we ought to require the continuing stigma. It is a stigma. It is a prejudgment that people cannot be trusted to come up with their own rules and regulations based on the pattern or practice of discrimination that was the basis for starting the coverage in the first place.

My point is, if there is such an area, should not they have some means to relieve themselves of that stigma?

Mr. BOND. There is another stigma that has attached to a large portion of the population of this country for almost 400 years. It is a stigma that has been attached to me for my 41 years, and it is a stigma that has not erased itself in my State in the past 16 years since this act became law.

I cannot imagine the covered of this act, the covered jurisdictions, those that may be as pure as the driven snow, face any onerous burden or difficult burden or burden of any kind. If they are interested in escaping this stigma, then let them be sure that every electoral change they send to the Department of Justice in Washington is one which the Department of Justice will clear, clear immediately, clear speedily and by that method let them be known by their good works.

Mr. LUNGREN. Do you suggest that the Rodino language, that goes to an effects test more than intents test, would not be subject to interpretation by courts to construct an effect based on the

percentage of representation in an elected body of a covered minority.

Mr. BOND. I am not an attorney, but I have been given to understand that the court, to date, has forbidden the establishment of such quotas in adjudicating these cases.

Mr. LUNGREN. What I am saying is we would be changing the language to say an effects test, we would making it explicit. It would be an effects test.

And knowing the ingenuity of court judges, I just wonder if, in fact, that would not bring us to that situation? I am not sure that is what any of us want.

Mr. BOND. I cannot say what the courts may do.

Mr. LUNGREN. Would you support that type of an analysis under an effects test?

Mr. BOND. There has not been any requirement to date that such quotas be employed. The real incentive comes from the Federal District Court here in the District of Columbia—have not, to date, asked for such a remedy. I cannot imagine one being asked for in the future.

Mr. LUNGREN. My question was: Would you support that kind of an analysis under an effects test?

Mr. BOND. I may. I should have to hear the arguments, Congressman, and the particular circumstances. But I cannot imagine it occurring.

Mr. LUNGREN. Thank you very much.

Mr. EDWARDS. My first question is to the commissioner.

How did you get appointed commissioner?

Mr. CLYBURN. I was appointed by Governor West in 1974.

Mr. EDWARDS. And the Governor understood your views on this issue?

Mr. CLYBURN. Sure. Of course, he's no longer Governor.

My views on this issue and all other issues relating to civil and human rights are pretty much known throughout the State of South Carolina, I would hope, and those I come in contact with throughout the United States of America.

Mr. EDWARDS. I think you witnesses can see what the dialogue is going to be over the next few months, about a bailout, requiring that the act be made effective on a national basis.

I think the big danger is going to be, from my point of view—and your point of view, actually—the big danger will be that there will be offered and approved some sort of halfway measure, like the 1968 housing bill, that really is not worth the paper it is written on because of the retreat that is implicit in it, while people will be able to go all over the country and say, "Yes, I voted for a continuation of the Voting Rights Act."

Well, somebody will say, "You didn't."

And they will say, "Yes, I did," without mentioning that they also voted for a version of it that is ineffective.

Don't you really think that without section 5 we might as well forget the bill? The permanent portions of the law are there anyway, and they provide for all of the other things that people are talking about extending. Do you agree?

Mr. CLYBURN. Yes, Mr. Chairman.

I would like to say that for any right-thinking American to look at the South Carolina Senate composition—46 counties, I think 16 senatorial districts—when you look at the deliberate attempt, the Z's and X's that are drawn in order to lump high population black counties with high population white counties and number the seats, and force at-large elections in the Senate, in some instances with districts that are twice the size of our congressional districts—some of our congressional districts, and to say that that is not an intent on the part of the legislature to maintain a system of white only senate, is beyond me.

I think it is clear there.

I think when you look at the County of Edgefield, which we have talked about, almost 70 percent black population, and to this day they cannot get a black person elected to county council. And they have all of these devices, devices that were clearly ruled unconstitutional on one day; but because the Supreme Court applied an intent test, ruled constitutional the next day.

That indicates to me that the effects test is something that must be—as well as in section 5, in view of what the—what the South Carolina Legislature is doing, and the mere fact that we have decided that we are not going to reapportion until after the expiration date of section 5 leads me to believe that there is something going on in the heads of those who proposed that. That has nothing to do with the effect, but intent.

Mr. EDWARDS. Senator Bond, let's assume the Rodino-Kennedy bill passes and the law is extended to 1992. And then we would look it again. And if then the covered States came in and brought out a lot of evidence to the effect of what had happened in their States in the past 10 years, 1982 to 1992, and they brought in evidence of affirmative action programs, school desegregation, describing major efforts everywhere to distribute public services fairly, and all the things that we try to take for granted in America, at least where I come from, then don't you think at that time it might be appropriate to take a look at the act?

I don't know if we're going to get that kind of evidence. What we're going to get—the kind of evidence we are going to get, the statements that are going to be made is: "Look, we have suffered long enough. We are being discriminated against. And we want to be released from the coverage of this act."

And then we have to prove to the members of the House and Senate what will happen if the bill is not passed, if the extension is not approved. We are going to have to prove something in the future. To do that, we have to have very strong evidence of what will happen. The best evidence, of course, is what they are trying now. And both of your testimonies are valuable. But we have to be very specific on that, this circumvention of the law that is going on now, the various attempts to discriminate.

Mr. BOND. Mr. Chairman, I think if the covered jurisdictions could come back before you in 1992 and if they can demonstrate beyond the shadow of doubt that the shameful record many of them have enjoyed until this present day is really a thing of the past and the attempts of equivocation and delay, dodging about the law, disobeying the law, failure to obey the law, then they might have an argument to make.

But at the present time, they simply don't.

Mr. CLYBURN. Mr. Chairman, if I may, I do think that what this committee must do in this particular instance is not only look at section 5, but section 2.

In South Carolina, all of the schemes that we presently have, what section 5 does is prevent them from coming out with anything new. What we have already in place is preventing us from doing anything in the State senate in Edgefield County and everything else.

So, if we allow the status quo to exist for another 10 years, under the present law, I would still be here before this or some other committee, saying that something has to be done, because if things stay as they are, we still will not get anybody elected in Edgefield County nor will we get anybody elected to the State senate, even with preclearance, under section 5.

Mr. EDWARDS. The *Mobile* decision does great damage and makes ineffective the rest of the statute.

Mr. CLYBURN. That's exactly right.

Mr. EDWARDS. Thank you very much.

Counsel.

Ms. GONZALES. One question for both of you, really: One of the concerns that has been raised by people in the discussions that we have had so far is that the act doesn't really deal effectively with voter fraud and the like in places outside of covered jurisdictions.

The question has been put that voter fraud in places outside of covered jurisdictions—such as Chicago, for example—is as much of a problem as absentee ballot problems that have been cited. How would you both respond to that concern?

Mr. BOND. I would respond that present criminal law, it seems to me, ought to be adequate if there is vigorous prosecution on the local level. I should not think that any additional legislation would be required to enforce charges of vote fraud, whether they occurred in Chicago or Chattanooga.

Mr. CLYBURN. I would say, Madam Counsel, that, even with preclearance, section 5, in South Carolina we still have to pursue accusation of voter fraud through the criminal courts.

We have just had—and I would like, if it would help any, to submit for the record this past Sunday's newspaper article, concerning voter fraud. We just sentenced two dozen people to jail for voter fraud in Dillon County, South Carolina. There is testimony given that I think would help along this line. So we pursue it through the criminal code in South Carolina.

Ms. GONZALES. What you are both saying is that the Voting Rights Act is not the end-all dealing with voting issues, there are other laws that apply and should be used?

Mr. BOND. Exactly.

Ms. GONZALES. Thank you.

Mr. BOYD. Before he left, Mr. Hyde requested that since Mr. Bond's statement makes some serious charges with regard to Pike County, Henry County, Terrell County, Taliaferro County, the subcommittee address relevant portions of his statement to the appropriate public officials of those counties and insert their responses into the record with regard to the points made by Mr. Bond.

Mr. EDWARDS. Without objection, so ordered.

Mr. BOYD. Mr. Bond, with regard to Taliaferro County, the circumstances you outline in your statement involve the use of campaign helpers to convey absentee ballots to voters and then help the voters to fill them out and then take custody of the ballots themselves; is that correct?

Mr. BOND. Yes.

Mr. BOYD. Was that tactic employed equally with black as well as white?

Mr. BOND. The county is so overwhelmingly black it would be difficult to state it in quite that fashion. A candidate employs this technique with the largest number of voters he or she believes is sufficient to gain a victory.

I would say that the Georgia General Assembly in 1981 has made some efforts at making it difficult for this to happen in the future.

Mr. BOYD. It was declared a violation of State law by the State attorney general; was it not?

Mr. BOND. Yes.

Mr. BOYD. On that portion of your statement regarding Rome, Ga.—I think it is on page 12—you make reference to at least an implication that the Rome officials were not acting in good faith.

Mr. Brinson has alluded to the decision of the District Court for the District of Columbia, to the effect that no discriminatory purpose was present. Don't you think that that decision would tend to refute, at least to some degree, your contention that bad faith existed?

Mr. BOND. I would think that good faith would have been shown by timely submission of the electoral changes that the city of Rome engaged in following the passage of the act of 1965, that that would have been a demonstration of good faith.

Mr. BOYD. You disagree with the holding of the district court?

Mr. BOND. I disagree with your characterization of my statement, that the officials in Rome demonstrated good faith and that good faith was validated by the district court.

Mr. BOYD. Thank you.

With regard to the election in Rome, which took place in 1970, did not—the candidate in that election ultimately lost; didn't he receive 45 percent of the vote?

Mr. BOND. Yes.

Mr. BOYD. Doesn't that represent considerable crossover white vote?

Mr. BOND. Yes; it does. It also demonstrates that had the election been held under the old system, that the candidate would have been successful.

Mr. BOYD. But the white crossover vote is present in those numbers; is that correct?

Mr. BOND. Yes; it is.

Mr. BOYD. Thank you.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much.

Our final witness today is Dr. James Loewen, who is a professor at the department of sociology, the University of Vermont.

He is accompanied by Attorney William Taylor from Catholic Law School—Catholic University Law School, and a long-time friend of the subcommittee.

Mr. EDWARDS. Your statement will be made part of the record.

[The complete statement follows:]

Statement of

Dr. James W. Loewen

Associate Professor of Sociology

University of Vermont

Burlington, Vermont 05405

and

Research Associate

Center for National Policy Review

School of Law, Catholic University of America

Washington, D.C. 20064

on

Proposed Bills to Extend the Voting Rights Act

to the

Subcommittee on Civil and Constitutional Rights

Committee on the Judiciary

House of Representatives

May 19, 1981

1. Introduction and Qualifications.

I began analyzing elections, using then-new statistical techniques such as overlapping percentages and ecological correlation, while a graduate student in sociology at Harvard University in 1966. When I moved back to Mississippi in 1968, my interests focussed on racial bloc voting: its extent, its causes, and its effects. Since then I have analyzed about 150 different elections and have presented the results of those analyses in more than a dozen court cases, mostly involving the Voting Rights Act, especially Section Five. This constitutes a broader empirical base in this area than that of any other social scientist I've encountered. Appendix A, my vita, lists these cases and also presents my educational background and experience more generally. Race relations and political sociology are two of my three substantive areas of specialization within sociology; both bear on this issue. Let me add that I was engaged by the Justice Department last year to teach a seven-hour workshop to some of their attorneys on the use of statistics and social science expertise in litigation, and I am now completing a book on that subject, Social Science in the Courtroom, for D. C. Heath. My work in this area earned me the First Annual Spivack Award of the American Sociological Association and helped me win a Fulbright Fellowship to Australia in race relations and the law.

This statement first presents my findings on the extent of racial bloc voting in the four states where I have done most of my research: South Carolina, Georgia, Alabama, and Mississippi. Then I offer comments as to the degree to which black voters can effectively participate in the political process, given the extent of white bloc voting that obtains, and

depending on various election practices. Finally I note differences in the socioeconomic positions of the black and white communities in the South, differences that explain some of the voting statistics.

2. Racial Bloc Voting in Four Southern States.

Three statistical techniques -- correlation, overlapping percentages, and ecological regression -- allow a social scientist or statistician to calculate rather accurately (depending on how many precincts or counties are involved) just how members of each race voted in an election, even though the social scientist was not inside the pollbooth with anyone.

This statement surprises some people who are unfamiliar with the analyses; hence let me show quickly how the simplest of the techniques, overlapping percentages analysis, is done. (The other techniques are described in Appendix B.) Overlapping percentages consists of identifying precincts that are extremely high in the first variable (% white in the population), assuming that all cross-racial balloting that could have occurred did occur, and calculating the resulting minimum percentage of whites who must have voted white for the votes to have come out as they did.

Table 1 shows the population of each precinct, by race, for Floyd County, Georgia, including Rome, 1970, supplied me by the Justice Department in 1978, when I was preparing to be an expert witness in Rome, et al., v. U.S. Since overlapping percentages analysis is appropriately applied only to heavily white or heavily black precincts, only 90% white (or whiter) precincts are included in the table; there are no 90% black precincts.

Table 1. Population and Election Outcome, Floyd County, Georgia.

(Election: Democratic Primary between Maynard Jackson (black) and Herman Talmadge (white), United States Senate, 1968.)

Precinct	% White in Population	% Votes for Talmadge	Minimum % of Whites Who Had to Have Voted White
Armuchee	97.8%	84.4	84.0%
Barkers	96.0	88.1	87.6%
Etowah	91.2	91.8	91.0
Everett Springs	94.4	97.8	97.7
Floyd Springs	94.4	93.9	93.5
Glenwood	98.7	95.5	95.4
Howells	97.1	92.3	92.1
Lindale	94.2	88.1	87.4
Alto Park	99.1	87.9	87.8
Garden Lakes	99.1	86.1	86.0
Mount Alto	94.4	87.7	87.0
North Carolina	97.3	89.8	89.5
Texas Valley	98.5	95.5	95.4
Watters	97.3	92.2	92.0

To illustrate, Everett Springs is 94.4% white, 5.6% black, in population. In this precinct, 97.8% of the votes went for the white candidate, 2.2% for the black. We assume that all votes for Maynard Jackson were cast by white voters. (This assumption is unlikely; we make it because we wish to calculate the minimum amount of white bloc voting that must have occurred.) Then a maximum of 2.2% of the population was white and voted black. Since 94.4% of the population was white, if we subtract 2.2% we obtain 92.2%, the minimum percentage of the population that was white and had to have voted white. The fraction of the white population that had to have voted white is 92.2%/94.4% or 97.7%. It is important to recognize that this percentage is not an estimate, but a minimum. I can therefore state with certainty that the percentage of whites voting white in Everett Springs in this election is 97.7% or more.

All of these precincts shows racial bloc voting, according to the most stringent definitions commonly applied. A better statistic can also be calculated, based on all the precincts at once, not just one, and including those precincts that are interracial, using ecological regression. For Floyd County as a whole in this election, that analysis indicates that 92.0% of the whites voted for Herman Talmadge. A confidence limit can be placed around this figure, providing a band within which I am 99% certain that the true figure lies: for these data, this interval is 88.9% to 95.1%. In short, I am quite confident that between 88.9% and 95.1% of the whites in Floyd County voted white. (Incidentally, about 76.2% of the blacks voted black, a high proportion but substantially lower than the bloc voting level found among the whites.)

Using this kind of analysis, along with correlation and multiple regression, I surveyed some 42 elections in South Carolina, including two statewide contests (6/13/78, Secretary of State, Democratic primary; 6/27/78 runoff); seven Democratic Primaries for State Senate (1972 to 1976); and 33 countywide local contests (1972 through 1978). I found the following proportions of intraracial voting:

Table 2. Intraracial Voting, South Carolina, 1972-1978.

Election(s)	Percentage of Whites Voting White	Percentage of Blacks Voting Black
6/13/78, statewide	77%	93%
6/27/78, statewide	73%	90%
Ten counties, seven elections, Senate Districts, 1972 through 1976	93%	65%

Table 2, cont.

33 county level elections (See Appendix C for list.)	92%	88%

These data from across the state of South Carolina show racial bloc voting by both whites and blacks.

In Georgia, I have surveyed one election in Floyd County and nine elections in Charlton County, 1968 through 1978. I found the following:

Table 3. Intraracial Voting, Georgia, 1968-1978.

Election(s)	Percentage of Whites Voting White	Percentage of Blacks Voting Black
Democratic Primary, U. S. Senate, 1968, Floyd County	92%	76%
Nine Democratic Primaries and Runoffs, 1970 (1), 1974 (2), 1976 (2), 1978 (4), combined for analysis	87%	86%

These elections show racial bloc voting by whites, and generally indicate the same among blacks.

In Alabama, I have analyzed data from eight elections in Hale County, including 1970 general election for probate judge, 1972 general election for U. S. House of Representatives, 1974 Democratic primary runoff for county commissioner (post 4), 1976 Democratic primary runoff for circuit clerk, and four contests in the 1978 Democratic primary and runoff. For

compactness I have grouped the first four (pre-1978) and last four (1978) together.

Table 4. Intraracial Voting, Hale County, Alabama, 1970-1978.

Elections	Percentage of Whites Voting White	Percentage of Blacks Voting Black
Four elections, 1970-1976	98%	80%
Four Elections, 1978	98%	83%

These eight elections show racial bloc voting by both races, overwhelmingly so by whites.

In Mississippi I have analyzed 2 statewide black/white elections (1971 Governor, 1978 U.S. Senate), one district wide U.S. House of Representatives election (1975 Democratic primary), 2 referenda (regarding at-large commission form of government vs. mayor-council form, Jackson, 1977, and Hattiesburg, 1979), and at least 40 county-level contests (1968 through 1980), in these counties: Alcorn, Bolivar, Coahoma, Forrest, George, Hinds, Humphreys, Itawamba, Madison, Marshall, Noxubee, Prentiss, Sunflower, Tishomingo, Union, and Warren. Table 5 shows most of these elections. A high level of racial bloc voting is evident among blacks and a still higher rate among whites.

Table 5. Intraracial Voting, Mississippi, 1968-1980.

Elections	Percentage of Whites Voting White	Percentage of Blacks Voting Black
1971 Governor, statewide	99%	84%
1978 Senate, statewide	99%	83%
1975, Southwest Mississippi, State Senate	99%	93%
1968-1979, 8 elections for the Mississippi Legislature (averaged)	98%	87%
1968-1980, 16 county-level elections (averaged)	93%	91%

The two referenda showed considerable racial bloc voting as well, even though white and black candidates did not oppose each other. Combining the results, 78% of all white voters in the two cities supported the commission form, while 91% of all black voters supported the mayor-council form. Thus these referenda showed voting polarized along racial lines.

In order to determine if racial bloc voting is increasing, decreasing, or remaining constant, I divided all of the candidate elections from all four states into two categories, 1968-1974 and 1976-1980. (I omitted any 1975 elections, as being in the middle of the two time periods.) Based on 30 different elections in four states, 1968-74, I found the average level of intraracial bloc voting to be 94.0% among whites, 83.4% among blacks. In the later period, 1976-80, based on 37 different elections, I found the average level of bloc voting to be 92.0% among whites, 88.9% among blacks. This is a very slight change, of course, and still represents extremely strong racial bloc voting in both groups.

Some people have asserted that racial bloc voting is decreasing in the Southern and Border states, to the point where it no longer holds; there are cities such as Smyrna, Delaware and Chapel Hill where this may have occurred. It has not occurred in any of the areas where I have done my research. There is still a tendency on the part of many whites and many older blacks to take for granted that whites will always rule, "must" rule, and although that belief has been shaken by the Voting Rights Act of 1965 and the massive school desegregation of 1969-70, it persists strongly. It will be 1993 before half of the South's population will have been born after the passage of the Voting Rights Act, even longer before most elected officials will have been born after its passage. Old attitudes die hard, and because many whites still believe that whites must rule, there is a form of "racial patriotism" that underlies their sometimes strenuous efforts to bloc vote and to maintain all-white control through various kinds of manipulations of election laws and practices.

3. Black Political Participation, Given White Bloc Voting.

Black political leaders are very aware of the likelihood of white bloc voting against them. So are political analysts: as one put it, "Black mobilization in Mississippi should proceed as quietly and inconspicuously as possible."[1] In many of the elections I have analyzed, those contests in which the black candidate received the highest proportion of his/her own race's votes were precisely the elections marked by the greatest white bloc voting! This is contrary to common sense, which would tell us that the black candidate with the greatest black support was probably the most qualified, the candidate who had organized the most visible campaign, and the best known. Hence we might expect that s/he would also receive the greatest proportion

of white support, if whites are supporting candidates because of their qualifications, campaign visibility, etc. Not so. In many instances it is precisely the viable black candidate who suffers the greatest amount of white bloc opposition.

This means that black political leaders face something of a double bind. They need to be more active than white candidates in order to mobilize their constituencies, for we shall see that black Southerners are less likely than whites, on average, to register, turn out at the polls, and vote intraracially. Yet as black candidates mobilize, they build greater white backlash. The full-slate requirement makes this dilemma for black leaders much more acute, where it exists. For if blacks run a full slate, they thereby signal whites that a black takeover, rather than a sharing of power, is intended and looms. Nothing is more effective in mobilizing white turnout and bloc voting. But if they run a partial slate, then they themselves inadvertently must supply a part of the "white" vote totals that will defeat their own candidate(s).

At-large elections similarly work against minority candidates. First, my research has shown that a Southern community needs to be 65% to 72% black in order that black candidates will have an even chance to be elected.[2] A county that is 65% black in total population is probably only 60% black in Voting Age Population (VAP), because of continuing black outmigration from a majority of Southern counties. In registration it is probably only about 55% black and in turnout at the polls, perhaps 52% black, owing to a host of socioeconomic factors, such as type of job and income level. Then in bloc voting at the polls, blacks are "inferior" to whites, causing probable defeat for a black candidate from a 65% black total population. Not many

counties or cities are 65% to 72% black, as entities, so not many such entities have much chance of electing black officials when elections are conducted at-large.

Second, at-large elections disadvantage black campaigners and advantage majority office-seekers. Blacks campaign differently from whites, in most of the jurisdictions I've studied. They are more likely to rely on personal contacts, speaking at churches and organizational meetings, and door-to-door canvassing. While whites use these methods, they also use mass mailings, radio and TV ads, and other techniques of the mass media. Obviously black methods are ineffective in reaching a large area, in which several at-large candidates compete. And to the extent that the black candidate might switch to "white" style, using the mass media, he risks stimulating white turnout and bloc voting against him/her.

I have not mentioned gerrymandering, practices of white poll workers, and other methods of insuring white victory at the polls. Black would-be candidates are aware of these factors too. In conjunction with at-large elections, white bloc voting, and inadequate population majorities, these factors cause a chilling effect upon black candidates and upon voters' support for them. Thus they affect black registration and turnout in a circular process, giving rise to charges of "apathy". But my research indicates that black registration and turnout are higher in districts where they have an even chance of electing someone, showing that realism, not apathy, lies behind some of the low registration and turnout figures.

4. Socioeconomic Differences and the Need for Black Elected Officials.

Also underlying the lower black registration and turnout figures are

vast differences between the white and black populations in the South. We urgently need 1980 Census data to update these differences, and there is no doubt that they have lessened moderately. But a gulf remains. Table 6 shows the gulf in one county, chosen more or less at random from those I have studied. Warren County, Mississippi, includes Vicksburg, adjoins Jackson and Hinds County, and is one of the more urban and progressive counties in the Deep South; I did not pick a "backward" county to make my point.

Table 6. Comparison of Basic Socioeconomic Position by Race, Warren County, Mississippi (1970 Census Data).

Part 1. Education.

Median education among the adult population (25 and older):

White males	10.4 years
Black males	7.0 years
White females	10.2 years
Black females	8.4 years

Illiteracy and semi-literacy among the adult population (proportion of each race, 25 and older, with 0-4 years of education):

Whites	4.1%
Blacks	27.3%

Number of college graduates:

Whites	2009
Blacks	313

Part 2. Occupation and unemployment.

Proportion blue collar and white collar by race:

Whites	60.2%	white collar (professional, technical, and kindred; managers, administrators; farm managers and owners; clerical; sales)
	39.8%	blue collar (craftsmen, foremen; operatives; transport; laborers and farm labor; service workers; domestic workers)
	100.0%	
Blacks	18.0%	white collar
	82.0%	blue collar
	100.0%	

Unemployment, proportion of civilian labor force, by race:

Whites	2.9%
Blacks	7.2%

Table 6. Cont.

Part 3. Income.

Median income (families and unrelated individuals):

Whites	$9782
Blacks	$3794

Proportion of each race below poverty line (families):

Whites	7.3%
Blacks	49.0%

Part 4. Housing.

Proportion of dwelling units lacking some or all plumbing:

Whites	8.2%
Blacks	44.1%

Proportion with more than 1.0 persons/room:

Whites	6.6%
Blacks	26.6%

Proportion of families occupying rental housing:

Whites	24.8%
Blacks	53.3%

Proportion of rental housing lacking some or all plumbing:

Whites	6.3%
Blacks	56.2%

Table 6 shows a major difference in education, and since most of these 1970 adults are still alive, we may presume that most of this gap persists, even if strides are being made educationally for minority Americans. College graduates are a scarce commodity in the black community. In terms of employment category, the "blue collar" designation denotes employees on wages, not salary; such employees face somewhat greater difficulty in leaving work to register and to vote. The racial difference here is overwhelming. So is the difference in median income. To the extent the political participation demands money — to campaign, to subscribe to a newspaper, to own a TV set, to hire a babysitter -- blacks are clearly disad-

vantaged, and the literature in political sociology and political science consistently points to income as a determinant of participation.

Table 6 also indicates one reason why blacks cannot rely on white officials to represent them: white voters have very different needs and interests than black voters, because they face very different socioeconomic positions. Clearly the black population needs to have an enforced housing code, since among black renters, 56% live in homes deficient in plumbing; only a handful of white renters face this problem. Whites, conversely, are much more likely to own their own homes (and to own blacks' homes). Hence white and black interests here diverge. It is a truism in politics that officials are more responsive to those who elected them than to those who did not. A white official is more likely to listen to his supporters (whites) than his past opponents (blacks), even if he or she is trying to court the latter, when the two groups have opposing interests.

It might be argued that with at-large balloting, blacks could play a "balance of power" role over a number of candidates, instead of electing 1 or 2 of their own to minority positions on a board. This is not the position of black leaders with whom I have talked. They would rather have someone, even if only a minority of the officials, "in on" the political process during the four-year term of office, than play a role at the outset and then perhaps be forgotten. And these Census statistics help show why it is difficult for even the white official elected with black support to be able to do much for the black community without alienating his/her white supporters.

MAJOR CONCLUSIONS OF TESTIMONY, JAMES W. LOEWEN, 5/19/81

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

1. Whether or not racial bloc voting exists is an empirical question. It is relatively easy to determine what percent of whites voted for white candidates and what percent of blacks voted for black candidates. Applying the "160% rule" then gives a straightforward definition as to whether racial bloc voting obtains.

2. Racial bloc voting did characterize all of the areas in the South that I have analyzed. Whites bloc vote overwhelmingly, usually between 90% and 99+%. Blacks bloc vote strongly, ranging from 80% to 95%, depending perhaps on the candidate, qualifications, etc.

3. Race determines most whites' votes in elections where white and black candidates run against each other. It isn't education, income, or some other variable. Race alone accounts for more than 80% of the outcome; correlations of .9 and even .95 and .99 are common, where 1.00 represents a completely perfect relationship between race of voters and outcome of election. This is an astonishingly strong relationship: whites are much more likely to vote white in these Southern jurisdictions than Democrats are to vote Democratic, or than whites are to vote white in many elections in the North.

4. White bloc voting is important first of all because it indicates still-polarized white attitudes toward blacks and toward the possibility of their meaningful participation in the electoral process. In many areas, whites maintain a furious determination to deny blacks even a minority representation on elected boards.

5. White bloc voting has an additional numerical implication for black participation in conjunction with certain election practices, such as at-large elections or gerrymandering. Blacks may be effectively shut out of meaningful participation in the political process unless they total 65% to 71% of the population.

6. White bloc voting and the polarized attitudes it represents are finally important because they are both cause and result of the racially polarized social structure that still marks the South, as a legacy from the era of segregation. Black needs and interests still differ markedly from white needs and interests, because blacks face dramatically different problems relating to income, housing, and education. So long as voting is racially polarized, white elected officials will find it difficult to be responsive to their black constituents without alienating white support. Thus, black voters need a full opportunity to elect black officials.

TESTIMONY OF DR. JAMES H. LOEWEN, DEPARTMENT OF SOCIOLOGY, UNIVERSITY OF VERMONT, ACCOMPANIED BY WILLIAM TAYLOR, CATHOLIC UNIVERSITY LAW SCHOOL

Dr. LOEWEN. Thank you, Mr. Chairman.

I have a prepared statement and also a one-page list of six major conclusions of my testimony that I would hope could become part of the record.

Mr. EDWARDS. Without objection, they will be made a part of the record.

Dr. LOEWEN. My written statement provides my experience. I have testified as an expert at a number of lawsuits in which the courts have found that dilution of minority voting strength is unlawful, it violates the guarantees of the Voting Rights Act of 1965.

In my oral remarks today I want to emphasize several conclusions about racial bloc voting in the South and its implications for black participation in the political process.

Racial bloc voting—its presence or absence—is an empirical question. That means it is a question answered by the data.

Part two of my statement describes briefly one way of measuring racial bloc voting and mentions two other methods. By means of these methods, the data can be analyzed quite precisely, so we know how the whites voted, how the blacks voted, even though we were not in the polling booth with anyone.

I might add that in the Floyd County election that I used for my example, which was the same election mentioned by Mr. Brinson, I did find white bloc voting in Floyd County and in Rome, not just in Floyd County, outside Rome, which might perhaps be misinferred from Mr. Brinson's remarks.

The question then becomes one of theory. Does a given level of white votes for white candidates merit the term "white bloc voting"?

My answer generally is to use the 160-percent rule. If 80 percent of the whites are voting for the white candidate, while 80 percent of the blacks support the black candidate, then I would agree we have found strong evidence of racial bloc voting. That is an arbitrary rule, but you have to be arbitrary at some point, and I believe this is the most scientifically defensible point.

The reason both sides figure into this definition is this. Sometimes a nonviable black candidate has run, perhaps putting out only a token campaign effort and getting, say, 40 percent of the black vote and no noticeable white support. Should we describe whites as a racial bloc because more than 99 percent of them voted white? Under those circumstances, I think not. And the 160-percent rule would not make that error.

Having defined "bloc voting" and having established three ways to analyze for it, what are the results of my analysis?

My written statement details them by State. My basic conclusion is that generally, in election after election, from 1968 through 1980, in the jurisdictions I have analyzed in four States, whites vote as a racial bloc. The correlation between percent white and votes for the white candidate is typically 0.85, often 0.95, and even 0.99.

Now, a correlation that great indicates almost a perfect relationship, because a correlation of zero means no relationship between race and outcome at all, while 1 is perfection, a total relationship.

These are astonishingly strong results. Whites will vote white more than Democrats will vote Democratic or than whites would vote Democratic in Northern elections. Bloc voting is not diminishing, or if it is, only at a glacial rate. By State, that includes a division of pre-1975 elections versus post-1975 elections across the South, I found that the proportion of whites voting white decreased from 94 percent to 92 percent, hardly much movement.

Now we have analyzed elections and found racial bloc voting. One claim which I have sometimes heard is that it is not race that determines the white bloc vote but something else: income, perhaps, or education or some other variable. This is not so. First, this approach is wrong in theory. If it is claimed, for instance, that whites have higher incomes, so they respond to a white candidate whose positions on the issues are more favorable to higher income residents, we must note that lower income is part and parcel of what being black means in the areas I have studied.

I would refer you to table 6 on page 11 for an example. It makes little sense to me to partial out some of the effect of income, thus leaving less effect due to race. Moreover, this approach is wrong, factually. In South Carolina, I did just the analysis we need to test this claim. I examined three variables in addition to race: income, education, and percent rural or urban, surely the three most likely candidates might be suggested to explain voting, other than race, in the South.

I found that none of these three had anything like the strong effect or race on voting. Correlations were zero to .5, rather than the nearly .9 correlation between race and income. When I looked at the effect of each of the three, while eliminating any effect from race, even these small correlations decreased to zero or became negative.

Finally, in contest after individual contest, characteristics of the candidates seemed to make little difference to white voters. For instance, I analyzed two contests in a Mississippi county, both were black versus white contests, both for the State legislature. In one case, the black candidate was not a high school graduate. He lived in a rather different part of the district than the county that I was analyzing, and he ran a lackluster campaign in this county, garnering perhaps 55 percent of the black vote. He received less than 1 percent of the white vote. The other candidate, also black, for the other position, was a college graduate and a college teacher. He was the incumbent, the only black at that time in the entire Mississippi Legislature. He lived near this county and campaigned extensively in it. He won more than 90 percent of the black votes in the county, but again he received less than 1 percent of the white vote.

Among whites then, race typically determines election outcome, nothing but race.

Now having shown the prevalence of racial bloc voting, what is its relevance to the Voting Rights Act? I think it has three points of importance, and these are the three final points of my list of major conclusions. First, white bloc voting indicates something about white attitudes. An election is like a huge opinion poll, after all, of the entire community, at least of its voting members.

A polarized election shows a still polarized community. Changes like school desegregation and the end of the exclusion of black Americans from motels and restaurants have been extremely important, but they have not yet led to desegregated attitudes, particularly where political power is concerned. I might point out that greater changes than these took place in the South a century ago in the 1870's, and yet those gains on the behalf of black citizenship were then lost in the 1880's.

Regarding political participation today, the situation is analogous to the school desegregation before the massive desegregation of about 1969 or 1970. During the 1960's in the Deep South whites were still in their "never" frame of mind segregating schools at every turn. After the massive integration of 1969-70, most white southerners have come to accept desegregated schooling. They no longer feel that civilization will come to an end if blacks and whites attend school together. But no such change has taken place in politics. There whites still manifest a furious determination to deny blacks even minority representation on elective boards in many areas.

With regard to politics white attitudes are still segregated and white bloc voting shows this.

The second reason I focus on the presence or absence particularly of white bloc voting is because if whites bloc vote, then in combination with certain election practices, blacks can find themselves virtually deprived of a chance to participate meaningfully in the political process. Owing to a host of socioeconomic factors mentioned in my statement, in order to have a roughly equal chance to elect a candidate, blacks must comprise between 65 percent to 71 percent of the total population. There are not many cities or counties where this is the case. When elections are held countywide or citywide at large, blacks, therefore, lose. When counties are divided in unusual ways, rather than divided into compact, contiguous areas, so that black areas become split into several majoritywide districts, then again blacks lose, owing to white bloc voting.

Black candidates and voters know this, so white bloc voting has a chilling effect on black political mobilization and on would-be black candidates.

It might be interesting that so few candidates ran in Floyd County before the successful objection to the majority vote requirement, and so many are running now.

The final element of white bloc voting relates to an additional legacy of segregation, like the attitudinal links. This is the socioeconomic position of blacks, which is markedly different than that of whites. The statistics in table 6 of my prepared statement are from the 1970 census, to be sure, and some change may have occurred since then. We need the 1980 census. But most of the illiterate and semiliterate adults counted in 1970 are still alive in 1980 and are probably still undereducated.

Blacks still rent disproportionally compared to whites, and so forth. So this socioeconomic difference, a legacy of past segregation, helps to explain the dropoff in percent black at the polls compared to their percentage among registered voters, with a dropoff in percent black in the voting age population compared to their percentage in the total population. It also helps to explain why it is

difficult for white officials to serve black interests. For black interests often diverge from white interests.

Black residents of this county, for instance, in Mississippi, have an interest in renter's provisions or in strict enforcement of code requirements regarding plumbing. Whites do not.

The continuation of white bloc voting worries me then regarding the future participation of blacks in the political process in the South. The 1980 census worries me, for instance, because it may trigger a flood of county level redistrictings and state reapportionment to confirm to the one man, one vote requirement. Without the protection of the Voting Rights Act, including section 5, many counties are likely to move to at large elections or gerrymandered districts that will keep incumbents in office and keep boards all white.

By 1991 I hope that white bloc voting is decreased, so that blacks are not shut out by such policies, and so that we can infer that whites no longer oppose the possibility of black political power with such unanimity. I think there is potential for such a finding at that time, but the factual situation today is quite different. Even the most recent white voting statistics show the need then for the continuation of the act.

Thank you.

Mr. EDWARDS. Well, thank you. That is a very scholarly study.

Mr. Taylor.

Mr. TAYLOR. I have no statement, Mr. Chairman.

Mr. EDWARDS. I'm sure you have a few observations.

Mr. TAYLOR. Since you have given me the opportunity, and although the hour is late, I do think that one of the things that is pointed out by Dr. Loewen's statement, is that it is not simply proportional representation on numbers that is the gage, that it is representation of one's interest as well, and I do think that the question of proportional representation is something of a red herring.

I spoke briefly to Congressman Lungren outside after he asked this question, and the point I made, which he asked me to make on the record as well, is that we do have an effects test now under section 5, and that effects test has not been construed in the courts, and so far as I know it has not been urged in the courts, that it be construed to require proportional representation. That simply is not what it's all about.

The question is more one of fairness. We also talked briefly about the question of whether election devices that may have a perfectly neutral meaning when they're used in jurisdictions without a history of voting discrimination, take on some added significance when they are used in those districts. And again I think Dr. Loewen's testimomy points out the answer, and that is things that may be reformer's devices when used in California or Wisconsin or elsewhere, have had a special meaning in the South.

I am a person, as you know, Mr. Chairman, who is urging in housing, education and employment, that the discriminatory practices that exist in the North really are not very different from the practices that exist in the South, and I think that is true, but I also think it is perfectly consistent to say that what we have had in the covered areas is a long history of special use of techniques of

disfranchisement in ways that made the Voting Rights Act of 1965 necessary, and that they do not apply with equal validity to other areas of the country.

I think the evidence you are taking here is demonstrating the need for continuation of those protections and also indicating some of the answers to the question of when we may be in a position to have laws that are no difference for the whole country.

Thank you very much.

Mr. EDWARDS. Thank you, Mr. Taylor. Anybody who has been to Italy and seen how proportional representation does not work, would not want to have it in the United States. One of the great protests of the younger people is that proportional representation brings out the same old hacks. One party is entitled to 4 percent, and the same old people show up, because that particular group, that particular political party gets 4 percent. And so they have two people, and they are always the same people, and they stay there for 30 years. And so it is some kind of a problem.

We're not really talking about that here. I would like to ask Dr. Loewen, didn't school desegregation work a little better in the South than it did, let's say, in Los Angeles, Chicago, Cleveland, and so forth?

Dr. LOEWEN. Yes, it did. In the State of Mississippi the results of white pullout were exaggerated to begin with, and there has been considerable collapse of some of the white schools. The overwhelming majority of whites are in school, public school, with black children. School desegregation is functioning. The schools in Mississippi were among the worst in the Nation before desegregation, and they still are, but they are somewhat improved. It did work.

Now I think the relevance of that to voting rights issue is that upon the election of a significant number of blacks to important public office, at least to participation in countywide boards and even perhaps positions of which there are only one, like sheriff, I think after that happens, I think that counties and white people in those counties will come to realize that the sun still rises in the East, sets in the West, that the blacks are fulfilling the offices perhaps to the same level of mediocrity or excellence that their predecessors did.

I think acceptance of desegregation in politics will follow. But the attitudes as shown by the racial bloc voting statistics have not yet changed in the area of politics, as I believe they have in the area of education.

Mr. EDWARDS. Well, the city of Los Angeles, third or fourth largest city in the United States, has a black mayor, elected by white people. And California has had its share of racism, I assure you, historically. Tell me the answer to that.

Dr. LOEWEN. That's not the only one. I was in Massachusetts when Mr. Brooke won his first campaign for the U.S. Senate, and he had a vast majority of white support to win that position, and there are many others, I think. But the special characteristic of the South has been the segregation imposed by the 1890 constitution in Mississippi, which was then followed by every other Southern State between 1890 and 1907, which set up politics as a white preserve. And it was considered outrageous and unthinkable and was totally impossible for a black person to be elected to any political office in

any interracial district or town or county in any part of Mississippi and most of the rest of the South for at least 50 years, and in most cases right up to 1965.

Now there is a tendency, perhaps, in civic life for us to believe that what is being done is the way it must be and is correct, and I think many, many whites who now live and vote and participate as adult citizens in the South, grew up and were socialized under this situation in which politics and governing was a white preserve and they viewed that as correct, and I think some significant attitudinal change has to take place before that will change.

I do not think that that segregated system existed in Los Angeles or Massachusetts or even areas of the North that are marked by heavy amounts of discrimination. I don't think they were marked by an explicit and even legal system of segregation.

Mr. TAYLOR. I find the education and voting analogy to be an interesting one. There are some things that may be saying a word on behalf of the North, but the fact of the matter is school desegregation as a requirement was only imposed on Northern school districts in 1973, whereas in the South it goes back to 1954, so it may not be too surprising that with the intensive effort that took place during the 1960s in the South, that the South has come along a little better than the North.

I think with some enforcement in the North we can bring the North up to where the South is, but I think I do agree with the larger point that Dr. Loewen makes that it was in the South that disfranchisement was used to keep the blacks in a particular status, and that makes the use different from the North despite the fact that there are racial attitudes, negative racial attitudes in both places.

Mr. EDWARDS. Well, from the testimony today even with the Voting Rights Act being in existence all these years, the black people in the covered jurisdictions really have done very well.

Dr. LOEWEN. That they have?

Mr. EDWARDS. That they have not.

Dr. LOEWEN. In politics. Someone will say, or if they won't, I will, that there are something like 380 elected black officials in Mississippi. That may sound like a little or a lot, it depends on your background. That is more than any other State. That is also something like 3 percent of all of the elected public officials in the State, and this is a State that is almost 40 percent black.

Furthermore, the 380 include an awful lot of very minor local officials, and include the mayor of Pace, a town of 600; the mayor of Winstonville; they do not include the mayor of Meridian or the mayor of Vicksburg. So there is certainly a lot of truth to that.

Black are far from being empowered in Mississippi. I suppose you could view that as an example of the failure of the Voting Rights Act, but the Voting Rights Act, as has already been pointed out, does not contain any guarantee of electing anyone. I think it is a demonstration of the continued need for the Voting Rights Act. Black citizens in the State are not yet in a position of political empowerment and could slide backward easily given the propensity of whites to vote as a racial bloc and given their propensity in the past to slip in various kinds of election practices that make voting as a bloc equivalent to election.

Mr. EDWARDS. Counsel, Ms. Gonzales.

Ms. GONZALES. Dr. Loewen, many people claim that there is no longer any racial discrimination in the South with respect to voting. Do your statistics support that? I'm particularly interested since you have been looking at racial bloc voting in the covered jurisdictions. Since 1968 has there been an improvement in that area?

Dr. LOEWEN. Let me answer the first question and then I will speak to the improvement.

The massive discrimination in the South that has existed in the past still exists in the socioeconomic position of blacks, and it results in the startling income statistics that are referred to from a relatively positive or progressive counting. The startling difference in literacy rates, the startling differences in proportion below the poverty line and so forth, and we have 49 percent of black below the poverty line and only 7 percent of whites below the poverty line—this affects voting. It is much more difficult for a black working class or poor citizen to, first of all take off from work to register, and then to take off and vote at a time when the polls are not jammed with people.

It is more difficult for such person to own a television set, subscribe to newspapers, and be otherwise subjected to the kinds of things that cause participation in the political process. It is this legacy of discrimination, continuing discrimination, that you see in socioeconomic terms. That then influences not only voting, but also other aspects of political participation.

Has that improved? Well, I think so. I think there is some improvement. I would look for the 1980 census statistics on these matters to show some modest improvement. 1970 shows some compared to 1960. At the same time I think there is going to be a day and night difference still between white figures and black figures.

With regard to voting specifically, I think there are still many jurisdictions where the black guarantee of voting is, to a large extent, contingent on the Voting Rights Act.

Ms. GONZALES. Another question I have has to do with the figures in your testimony indicating that in most cases racial bloc voting, as you indicated, is very high and on a consistent basis, yet the figures seem to indicate that for blacks racial bloc voting is very high in some areas and in other areas it is not quite so high. Am I right in concluding that it is less consistent and if so, why is it?

Dr. LOEWEN. Even within the same area, looking in the same country, blacks will vote as high 99 percent for a black candidate, and then in another election will vote, let's say only 80 percent for a black candidate or even only 70 or 50 percent for a black candidate. In that situation I think what is happening is that the blacks are going by qualifications, incumbency, well-knownness on the part of both the black and white candidates. That indicates that a substantial part of the black population is not routinely bloc voting. And, of course, I argue conversely that the white population, which does not usually show this kind of variation, thereby does show that race is the only factor that makes a difference to them.

I will say one other thing. There are many, many areas in the South, particularly in Mississippi and Alabama, where the propor-

tion of blacks who vote black has never approached the proportion of whites who vote white. And I think what is going on there is not only the positive willingness to look at qualifications and other things, but I think there is also some intimidation, some fear, some identification with whites who are above them in the social structure. And I think we will see that as conditions slowly improve in the South, that the proportion of blacks in those areas who bloc vote will grow, and ironically that will show an improvement rather than the unimprovement that such racial polarization might otherwise indicate.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. Mr. Taylor, since you've raised the effects test of section 5, I would like to pursue that for a moment if I might. The effects test is prospective and has to do with future enactments only.

Mr. TAYLOR. With enactments submitted after 1965, that's correct.

Mr. BOYD. That is not the standard in the Rodino bill.

Mr. TAYLOR. Title II would apply to any current enactment, to any current practice regardless of when it was originally enacted, that's correct.

Mr. BOYD. That is far broader than section 5?

Mr. TAYLOR. That's correct, but the question went to proportional representation.

Mr. BOYD. Are you prepared to say that that is not a likelihood? That a court could not interpret title II of the Rodino bill to require proportional representation?

Mr. TAYLOR. Yes; I am prepared to say that.

Mr. BOYD. Dr. Loewen, have you made any studies, completed any studies outside the South which examine the white bloc voting tendencies elsewhere in the country?

Dr. LOEWEN. I have read some in the literature. The only study that I personally conducted was in Cairo, Ill.

Mr. BOYD. What was the result?

Dr. LOEWEN. The result was that Cairo is an extremely racially polarized town, and was throughout the 1960's. I once drove through and noticed all of the displays of teargas and blackjacks for sale in local service stations, and I had never seen that before in a filling station. They are ready.

Anyway, Cairo manifested racial bloc voting to a level greater than that I have ever seen in South Carolina or Georgia. It was exactly on a par with Mississippi, so it did certainly show racial bloc voting on a very high level.

Mr. BOYD. Your statement attacks levels of criticism at at-large voting as a tactic or device. Do you believe that it is discriminatory generally in its application to minorities?

Dr. LOEWEN. I think so, I don't know that it is always intended that way. I do make some statements in my written statement that the—that at large elections usually would make it more difficult for minorities to be elected. Those are in my Southern experience, in my specific first-hand experience.

But I would think that they would also hold true in Philadelphia or in Northern jurisdictions, so I think at large elections are unfortunate. I think that they remove government from some immedi-

acy with the people and I think they do so particularly with regard to minorities where those minorities are living in distinct areas.

Mr. BOYD. Mr. Chairman, some time ago Dr. Abigail Thernstrom of Harvard University spoke before an American Bar Association committee studying the Voting Rights Act and submitted a paper which deals, to some degree, with at large voting as a tactic. This is the same paper referred to earlier by Robert Brinson, City Attorney for Rome, Ga. With your permission I would like to make that part of the record. (See pp. 327-354.)

Mr. BOYD. I have no further questions. Thank you.

Mr. EDWARDS. I have no further questions. Your testimony is very valuable. If we have any questions we will write them to you. Thank you very much, Dr. Loewen, and Mr. Taylor.

[Whereupon, at 5:02 p.m., the hearing was adjourned.]

[Additional materials submitted by today's witnesses follow:]

ADDITIONAL MATERIAL

Submitted by Senator Julian Bond

[From the Atlanta Constitution, Vol. 31, No. 58, Dec. 7, 1980]

WHO GOVERNS MAJORITY BLACK COUNTIES

County	Population	Percent Black	Governing officials	Blacks
Baker	3,875	53.0	5	0
Burke	18,255	60.2	5	0
Calhoun	6,606	63.1	5	0
Clay	3,636	61.7	5	0
Crawford	5,743	53.2	3	0
Dooly	10,404	50.1	3	0
Greene	10,212	51.8	5	1
Hancock	9,019	73.8	3	3
Jefferson	17,174	54.5	3	0
Macon	12,933	61.0	5	0
Marion	5,099	52.4	3	0
Peach	15,990	57.1	5	2
Quitman	2,180	60.1	5	1
Randolph	8,734	55.7	5	0
Steward	6,511	64.4	1	0
Talbot	6,625	67.8	3	1
Taliaferro	2,423	63.6	3	0
Terrell	11,416	59.5	5	1
Twiggs	8,222	56.3	5	1
Warren	6,669	59.1	3	0
Washington	17,480	53.6	3	0
Webster	2,362	58.4	1	0
Total			84	10

Sources: Population figures from 1970 U.S. Census; governing body statistics reflect 1980 elections.

[From the Atlanta Constitution, Dec. 7, 1980]

In Southern Voting, It's Still "White Only"

VOTING; A RIGHT STILL DENIED

This is the first part of a series researched and written by Atlanta Constitution staff writer Chester Goolrick, Paul Lieberman and Ken Willis. The series continues Monday in The Constitution.

Fifteen years after the passage of the Voting Rights Act of 1965, its promise of equal participation for blacks in the electoral process is still unfulfilled in large parts of Georgia and the South. Especially in rural areas, discrimination against blacks in the electoral process is widespread—and effective.

Just as many communities in the South and elsewhere have found ways to circumvent the impact of laws and court rulings in another major area of the civil rights era—school desegregation—so have they successfully developed campaign techniques and legislative measures to sidestep the thrust of the Voting Rights Act.

While blacks have acheived indisputable electoral power in some urban areas, such as Atlanta, the continuing success of discriminatory practices elsewhere is reflected vividly in one statistic: Of 22 Georgia counties with majority black populations, 15 still have no blacks on their elected county commissions.

83-679 O - 82 - 19 (pt.1)

On the occasion of the 15th anniversary of the Voting Rights Act, The Atlanta Constitution investigated voting practices in counties throughout Georgia. Reporters traced several 1980 campaigns in detail, collected voting statistics and court documents reflecting the participation of blacks in elections in Georgia and the region, and reviewed records of the U.S. Justice Department's enforcement of the Voting Rights Act since its enactment.

In a series of case-study reports beginning today, The Constitution will examine how blacks have continued to be kept out of power in counties with majority and near-majority black populations.

IMPACT OF VOTING RIGHTS ACT ON BLACKS ELECTED TO NATIONAL, STATE, COUNTY, AND CITY OFFICES IN GEORGIA

BLACK OFFICIALS IN GEORGIA

Year	Congress	State Legislature	
		Senate	House
1968	0	2	9
1974	1	2	14
1979	0	2	21

COUNTY OFFICES

Governing body	Law enforce (Judicial)	School board	Others
3	0	1	0
8	6	26	3
16	8	42	5

MUNICIPAL OFFICES

Mayor	Council	Others	Total
0	4	2	21
2	69	6	137
6	133	4	237

Examinations of fierce local campaigns show that racial bloc voting, especially whites banding together to vote against black candidates, continues to be the rule in many areas of the South. One expert on voting patterns in the region contends there still is "a race war over voting."

The question of the extent of racial discrimination in the electoral process takes on renewed significance now because of scheduled congressional debate in 1981 on whether to extend the Voting Rights Act. And the act, due to expire in August 1982, apparently is in jeopardy.

Scheduled to become chairman of the Senate Judiciary Committee in January is Strom Thurmond (R-S.C.), onetime standard-bearer of the segregationist States Rights Party and a longtime opponent of the Voting Rights Act. Thurmond, whose committee will hold hearings on the future of the act, has made clear his belief that it is "unconstitutional."

Not long after he became president, Lyndon Johnson bluntly told his attorney general, Nicholas Katzenbach, "I want you to write me the goddamnedest, toughest voting rights bill that you can devise."

Hubert Humphrey, the vice president at the time, later recalled that Johnson considered a law giving blacks electoral equality his most pressing piece of civil rights legislation.

Johnson was adamant. He told Humphrey, "I want all those other things—buses, restaurants, all of that—but the right to vote with no ifs, and or buts, that's the key."

On Aug. 6, 1965, in a ceremony in the President's Room just off the Capitol Rotunda in Washington, Johnson signed the bill he had demanded, The Voting Rights Act of 1965.

In his remarks on the occasion, Johnson noted that 95 years had passed since the adoption of the 15th Amendment to the U.S. Constitution supposedly guaranteed all blacks the right to vote. As the first Southern president since the Civil War, Johnson knew well how literacy tests and other discriminatory devices were still used to deprive blacks in the South of the vote.

"The time for waiting is gone," Johnson said. "The right is one which no American, true to our principles, can deny."

Always a practical politician, Johnson figures that with the vote blacks would have more of their own representatives and also would "have every politician, north and south, east and west . . . begging for support."

The Voting Rights Act prohibited the use of literacy tests in the South as a requirement for voter registration, provided for use of federal monitors of elections, and required federal review of changes in state and local voting laws in seven Southern states—Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia—as well as Alaska and portions of a few other states.

Fifteen years after its enactment, the Voting Rights Act is often credited with having been the most effective of the major pieces of civil rights legislation adopted in the mid-1960's.

Black voters and candidates have achieved enormous gains in most Southern states, capturing hundreds of local and statewide offices and exercising considerable clout in national political elections.

Of the estimated 4,900 black elected officials in the United States in 1980, some 60 percent are in the South. In Georgia, where black elected officials were once oddities, there now are 237 blacks in elective office, and blacks are registered to vote in almost equal proportion to whites.

Before the Voting Rights Act, only 27.4 percent of voting-age blacks were registered in Georgia; within seven years, the registration percentage for blacks in the state was up to 67.8 percent, less than 3 percent below that of whites.

Even in Mississippi, where only 6.7 percent of voting-age blacks were registered in 1965, black registration rose to over 60 percent by 1971.

"Clearly, substantial progress has been made," the U.S. Commission on Civil Rights stated in a report on voting discrimination after the first decade of the Voting Rights Act.

But even as the trend of black political success has continued since 1965, there is clear evidence that blacks in many areas still are far from achieving full political participation. A further look at the voting records of Georgia's 22 counties with majority-black populations provides an illustration:

There are 84 officials on the elected county commissions of Georgia's majority-black counties. Only 10 of them are black.

While 15 of these counties have no blacks on their commissions, only one of the counties has a black majority on its elected commission—Hancock County, which has a 73.8 black population.

Not one of the black-majority counties has a black sheriff, the chief law enforcement official.

The elections examined by The Constitution, and described in the series of reports this week, show a variety of traditions, campaign practices and government actions used to perpetuate white control—even in majority black areas:

In Clay County, a farmer seeking to become his county's first black commissioner goes to sleep the evening of the election thinking he has won, only to learn the next day that a solid bloc of absentee ballots has turned the election to his white opponent. The contest this summer is a reminder of a factor still behind many elections in the South—racial bloc voting.

In Taliaferro County, the county sheriff and his deputy ride around to black households delivering absentee ballots and helping voters file them out. Extensive use of absentee ballots and "assistance" to voters has become a tradition that serves to dilute a black voting majority.

In Pike County, a change in the way school board members are elected makes it all but impossible for a black to be elected. As with many other communities around the South where blacks live in concentrated areas, blacks' chances for election are frustrated by local laws calling for candidates to be elected by countywide—rather than district—votes.

Finally, two reports examine cases in which black candidates win election. In Rome, a black is voted onto the City Commission for the first time only after the U.S. Supreme court rules that changes in local election practices could discriminate against blacks—and the city devises a new election method. In Hancock County, an

overwhelming black majority leads to black electoral victories, but black candidates also show that no race has a monopoly on using dirty campaign methods.

The Voting Rights Act was not intended to guarantee blacks or any other group automatic election. Earlier this year, the Supreme Court reiterated that no group had an automatic right to political representation proportional to its numbers in the population.

What the Voting Rights Act was intended to ensure, however, was racially fair elections after what the Supreme Court called "95 years of pervasive voting discrimination."

"What it is supposed to do is eliminate practices being used to assure that the black community has a non-effective voice," said Paul F. Hancock, chief of the voting section of the U.S. Justice Department in Washington.

And both public officials charged with enforcing the Voting Rights Act and private groups which monitor election practices agree that electoral discrimination in the South remains a fact of life in the 1980s—and is a major factor holding down black representation.

"In spite of the progress, there is still a great deal of difficulty in ensuring that the electoral process is representative of the people it serves," said Bobby Doctor, director of the Southeastern regional office of the U.S. Commission on Civil Rights.

The commission has noted the "ample opportunity for abuse" of election laws covering absentee ballots and voters who need assistance, especially after the abolition of literacy tests added millions of new voters, many of them poorly educated. Georgia Secretary of State David Poythress, who is charged with overseeing elections in the state, said recently that he "is concerned" about such situations where "a person other than the voter may know how he voted."

Included in the Voting Rights Act is the requirement that state and local governments (in the areas covered under the law) submit for review by a division of the Justice Department any changes in voting procedures or voting districts. The government body making the change must demonstrate that the change will not discriminate against black voters and candidates.

Justice Department records show that almost 2,900 proposed changes have been submitted from Georgia. In 78 cases, the Justice Department has objected to the proposed changes as potentially discriminatory. The targets of the objections have ranged from several statewide legislative reapportionment plans to the location of voting booths in a private club which normally barred blacks.

Georgia has drawn more objections than any other state except Texas, which came under the Voting Rights Act of 1975 when the act was amended to extend voting rights to "language minorities," including Spanish-speaking Texans.

But it often is nothing so formal as the drawing of election districts that keeps blacks from equal political participation; traditional Southern community relationships also play a part.

"Black candidates have trouble getting blacks to register because they don't want to get involved in what they perceive to be white man's business," said Chris Coates, an Atlanta lawyer who has handled several voting rights cases in court. "It's a white-only game.

"The thing that strikes me," he said, "is that you find almost no white in a position of power who will acknowledge that the system is exclusive. All people will say is that if 'they,' meaning the blacks, would run a good one, he would be elected."

Sherrill Marcus, director of the Atlanta-based Voter Education Project, has counted a number of ways whites find to discourage black voters: Registration hours set at a county courthouse only during work hours; white bosses instructing their black workers how to vote; black candidates' belief that they will not be welcome campaigning door-to-door in white neighborhoods; and the rarity of blacks serving as poll watchers.

Said 73-year-old Arnett Richardson, who this summer tried to become the first black commissioner in southwest Georgia's Clay County: "I believe that a colored person could get in there and do a good job. But some of the colored people have their brains washed into thinking that the white man is the only one who can do anything."

BLACK OFFICIALS IN SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT

	1968	1974	1979
Alabama	24	149	208
Georgia	21	137	237
Louisiana	37	149	334
Mississippi	29	191	327

BLACK OFFICIALS IN SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT—Continued

	1968	1974	1979
North Carolina	10	158	240
South Carolina	11	116	222
Virginia	24	63	83

Totals include U.S. Senators and Congressmen; state representatives; elected county officials (commissioners, school board officials, etc.) and municipal officers (mayor, council, etc.).

Source is the National Roster of Black Elected Officials prepared by the Joint Center for Political Studies in Washington.

[From the Atlanta Constitution, Dec. 8, 1980]

"RACIAL BLOC VOTING" KEEPS ELECTION RESULTS LILY-WHITE

This is the second part of a series examining electoral practices in Georgia and other sections of the South 15 years after the enactment of the Voting Rights Act of 1965. The articles were researched and written by Atlanta Constitution staff writers Chester Goolrick, Paul Lieberman and Ken Willis. The series continues Tuesday.

FORT GAINES.—When Arnett Richardson, a 73-year-old Clay County farmer, went to bed the night of Aug. 5 he was almost certain he had won that day's Democratic primary for county commissioner in his district. If he won, he knew, he would be the first black commissioner in this rural southwest Georgia county.

The next morning, Richardson got a telephone call from a poll worker who told him that absentee ballots had swung the election for his opponent, Raymon Crozier, the white incumbent. Despite a clear majority black population, the county would still be ruled by an all-white commission.

"Some woman called and told me that I won, but that I lost the absentee ballots," Richardson recalled in a recent interview.

The final tabulation of votes cast at the polls on election day show that Richardson had received 140 votes to Crozier's 133, a seven-vote margin of victory. However, while 44 people had voted by absentee ballot for Crozier, a mere five had voted for Richardson. Richardson, it turned out, had been defeated by absentee ballots cast by a nearly solid bloc of white voters.

Richardson eventually took the results of the election to court, challenging the absentee ballots that swung the election in the favor of his opponent. The suit was dismissed, although the judge found evidence of "irregularities" in some of the ballots and ordered the local probate judge to purge the county rolls of unqualified voters.

The controversy over the primary left bitterness on both sides in Clay County and Fort Gaines, the county seat. Many blacks remain convinced that the election was tainted by corruption, while white officials adamantly protest their innocence. "There's been nothing, absolutely nothing crooked about it," said Mrs. Mickie Shivers, the probate judge. "We have not tried in any way to do anything to the blacks."

Although the citizens of Clay County say they are seeking to resolve their differences, the lesson of the recent election has been disillusioning to many blacks. What they have learned, they say, is that bloc voting—whites voting exclusively for white candidates—has made it nearly impossible for blacks to win office here.

Indeed, racial bloc voting remains a fact of life throughout most of the South—and is a major reason blacks in many communities have yet to achieve the full political participation promised by the Voting Rights Act of 1965.

Fifteen years after passage of the Voting Rights Act, voter studies conducted in the South show that whites, almost without exception, still vote exclusively for white candidates. Blacks, meanwhile, tend to vote heavily for black candidates when they are on the ballot—but usually not in the same solid blocs as whites.

On a practical level, the racial voting patterns serve to keep black representation far below the black proportion of the population. Even in most of the other 21 Georgia counties with majority black populations, white commissioners continue to rule.

In Clay and 14 other black majority counties, the county commissions are all white. Of the 84 commissioners who will serve Georgia's black majority counties in 1981, only 10 are black. In only one county—Hancock, which has a 73.8 percent black population—do blacks hold a majority of commission seats.

More fundamentally, though, voting statistics only underscore what is intuitively known in places such as Clay County.

James Loewen, a University of Vermont political sociologist who has studied voter patterns throughout the South, put the matter bluntly. Georgia, he said, is "full of racial bloc voting. The phrase 'a race war over voting' sounds accurate."

Incidents and statistics from around Georgia have provided steady reminders of the persistence of racial bloc voting over the years:

In the mostly black Louvale district of Stewart County in southwest Georgia (with over 64 percent of its 6,511 residents black, Stewart is another of the state's 22 majority black, counties), David White, a black, ran unopposed in a 1974 primary for the Democratic nomination for the school board seat. Uncontested elections do not usually draw large turnouts and, indeed, only 58 people showed up to vote for David White. When the votes were tallied, however, it was reported that a white candidate received 59 write-in votes to win the election. There were no black poll watchers present during the voting.

While there had been rumors in black neighborhoods of a write-in campaign, the effort was, in essence, a secret withheld from the black community on election day. Eventually, the election was thrown out by the courts because the white candidate had not filed proper advance notice of his write-in candidacy as required by state law. In a new election, the black candidate won by 19 votes.

In 63-percent-black Taliaferro County, 90 miles east of Atlanta, white factions traditionally fight bitterly with each other for elected office. Yet when a black civil rights activist challenged the incumbent white school superintendent, a white county official recalled recently, "the whites just got together, the whites united." Blacks, the official said, "split their vote" and the incumbent was reelected.

Two years ago, a panel of three federal judges had to rule on voting patterns in Wilkes County, Ga., which is 47.3 percent black. White county officials testified that race was not important in . . . that "the evidence in the record requires the conclusion that racial bloc voting exists in the county and that black candidates receive little, if any support from white voters . . . Voting patterns in election contests in which there are black candidates show that black candidates receive about the same number of votes as there are blacks registered to vote, or fewer."

Sociologist Loewen, who has done computer analyses in recent years of voting in Alabama, Mississippi and South Carolina as well as Georgia, said that when his computer shows whites voting over 90 percent against any black candidate it usually is not revealing anything unexpected: "When I testify there is racial bloc voting," he said in a recent interview, "everyone knows that. I'm not telling them anything new. They may deny it, but they know it."

Arnett Richardson had worked hard in his campaign to become the first black commissioner in 61.7-percent-black Clay County. He visited every black residence in Clay County's fifth district, which covers, roughly speaking, the northern end of the sparsely populus county dotted with peanut and other row crop farms. The district has 530 voters.

Despite his age, Richardson said he decided to run for office because he believed that the white incumbent was not doing anything for the constituency. In particular, he said during an interview at his small, comfortable house nine miles north of Fort Gaines, he was worried about the condition of the county's roads. "I didn't see anybody on the commission who was concerned about the problems of the colored people," he said. "Some of the roads out here in this district are so narrow and red, they wash out when it rains and the people who are in town are scared to come home on them, they are so bad."

Richardson knows almost everybody in his district, white or black, but he campaigned almost exclusively in black sections. He believed it was useless to try to approach white voters, although he tried it a couple of times. The few whites he asked for support were non-committal.

"I remember one, and asked him and he said, 'I'll consider it,' " Richardson said. "I still thought I had a good chance of winning."

When his suit contesting the election went to court, Richardson's attorneys challenged a number of absentee ballots filed by white voters. In one case, a former resident had filed an absentee form from Michigan, where she had lived for several years. In another, a man who had lived in Albany, Ga., for seven years had voted in Clay County. In still another, a resident of Eufaula, Ala., voted absentee but forgot to sign the ballot; later he told his mother to sign it for him.

In these cases, presiding Superior Court Judge Marcus Calhoun said that there might have been irregularities and asked the county registrar to "re-examine" the registrations. In a few other instances where votes had been challenged, Judge Calhoun decided in favor of the county.

Although there is no certain way to determine how the races voted in the secret ballot, participants in the contest here assumed that the preponderate numbers of

absentee ballots filed by whites for the white candidate were representative of the pattern.

Richardson, who has the sinewy build of a man who has worked outdoors all his life, disagrees with the court decision, but is determined not to let it discourage him. "I'm afraid that some of them (black voters) will be discouraged," he said. "If I were 10 or 15 years younger I would jump in it again and keep trying. I believe that a colored person could get in there and do a good job. But some of the colored people have been brainwashed into thinking that the white man is the only one who can do anything."

In a written study of voting in Mississippi from 1971 to the present, sociologist Loewen concluded that both white and black candidates are affected by bloc voting.

"Local white candidates . . . must avoid being identified as allied with black interests," he wrote, "so although almost every white candidate makes campaign appearances in black churches, very little in the way of true coalition politics has yet emerged in Mississippi."

Loewen continued: "For black candidates, white bloc voting has a chilling effect. Statewide aspirants know ahead of time that they have no real chance for victory. Local candidates cannot overcome the monolithic white vote unless blacks are in a heavy population majority. Hence they sometimes do not run, or if they do, they may attract little enthusiasm, for the black electorate also knows the odds."

Statistics show that blacks vote overwhelmingly for black candidates, but not as consistently as whites vote for white candidates. Loewen found in Mississippi a pattern of bloc voting among blacks, but "at a rate 7 percent below that in the white population."

"It is at least theoretically possible," he wrote, "that blacks could respond to white bloc voting by bloc voting themselves just as strongly. That doesn't happen."

He speculated that "racial patriotism" might be weaker among blacks, but added, "Intimidation is a factor."

To some degree, tradition plays a part. Blacks—at least in rural areas—are often afraid of the economic dangers of challenging the incumbent. In a city, black voters can expect anonymity in the voting process, but blacks in less populous rural areas often believe their vote is not secret.

And the white candidate may be the black voter's employer or a friend of the boss.

In Clay County, a young black man named Eddie Ricks claimed that he lost his job at the local peanut processing plant after he filed suit on behalf of another black candidate, who also lost after absentee ballots overwhelmingly favored the white incumbent. Ricks lost his suit, just as Richardson did, and has has trouble finding work ever since. He now spends his days standing on the streets waiting for occasional day labor.

"During the day of the election and the day after, people said there was something foul going on," he said. "This was the first time that anybody had challenged it. People were afraid of losing their jobs, you understand."

Fort Gaines is made up of a small collection of live-oak-lined streets and a few small stories. To say that the town has an unhurried air is to understate the case: on any given afternoon, traffic is slow and black men stand on the corners, talking idly among themselves.

It is Ricks' contention that the depressed state of the economy in Clay County can be partially attributed to the all-white rule. White farmers, he said, are reluctant to encourage new industry in the area because the competition for labor might drive up wages. At present, the only jobs to be had are on farms or in the peanut processing factory at the edge of town.

Ricks said he believes that if blacks were elected to office in Clay County they would make a stronger push for industry there. "We as blacks don't really have the power to organize and get help in here," he said. "But if we had a black official a lot of blacks would be aware of certain things before they went up on the bulletin board at the court house."

* * * * * * *

Recent voting surveys show that racial voting patterns seen in the South do not appear as strongly in the North. Dr. Loewen said a black candidate in the North usually can expect to get 15 to 30 percent or more of the white vote.

When the U.S. Commission on Civil Rights reviewed the first decade of the Voting Right Act, its report noted how a device like the absentee ballot could be both evidence of white bloc voting and a tool to keep blacks out of power. "Blacks look suspiciously at the large number of white absentee voters compared to black."

Court and election records from communities around Georgia and the South document political campaigns which ended not unlike Clay County's this summer. In one primary in Madison Parish, Louisiana, blacks came out ahead in all nine

races in votes cast at the polls, only to lose seven of the races to an avalanche of white absentee ballots. In that case, however, the result was thrown out after a court challenge when 62 of the absentee ballots were ruled to be illegal. In an election in Fort Valley, Ga., three black candidates lost run-off elections to whites when 324 absentee ballots—well over twice the total from the earlier general election—tipped the outcome. A suit charged that blacks "were not city officials in obtaining absentee ballots. Similarly to the Clay County case, the court ordered city officials to stop issuing absentee ballots to non-residents but declined to set aside the election.

In Clay County, ruling white officials said they believed the dispute over their election was the doing of just a few disgruntled people, and not a reflection of true race relations in Clay County. Earl Davis, the Clay County tax commissioner and the absentee ballot clerk, refused to be interviewed. But in declining, he commented: "You know what all this is? It's another one of your damn civil rights things."

Tuesday in The Constitution: How whites get the black vote in Taliaferro County.

PROVISIONS OF 1965 VOTING RIGHTS ACT

Here are the major provisions of the Voting Rights Act of 1965, amended by Congress in 1970 and 1975:

Suspends the use of literacy tests and other devices as qualifications for voting in any election in the United States.

Ensures that residency requirements do not prohibit citizens from voting for president and vice president anywhere in the United States.

Provides for federal controls over state and local voting practices in areas with a history of literacy tests and low voter turnout, the grounds used to cover southern states, where many black residents were being prevented from voting. (Covered originally were the entire states of Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia, and 40 of the 100 counties in North Carolina; also covered under the provisions were the state of Alaska, and single counties in Hawaii and Idaho. Some areas have since been dropped from coverage, while others—most notably Texas—have been added.)

Provides for federal examiners to register voters and observers to watch voting in places where there have been allegations of racially-oriented voting irregularities.

Requires federal approval of any changes in state and local laws which may affect voting—such as when election districts are redrawn, polling places are moved, or new land is added to a city changing its voting population—in localities covered by the law.

Requires the use of languages other than English in some localities with significant numbers of people who speak foreign languages.

LBJ CALLED VOTING LAW A TRIUMPH

Excerpts from President Lyndon Johnson's remarks at the signing of the Voting Rights Act on Aug. 6, 1965:

"Today is a triumph for freedom as huge as any victory that's ever been won on any battlefield. Yet to seize the meaning of this day we must recall darker times.

"Three and a half centuries ago the first Negroes arrived at Jamestown. They did not arrive in brave ships in search of a home for freedom. They did not mingle fear and joy in expectation that in this new world anything would be possible to a man strong enough to reach for it.

"They came in darkness and they came in chains. And today we strike away the last major shackle of those fierce and ancient bonds. . . .

"This act flows from a clear and simple wrong. Its only purpose is to right that wrong. Millions of Americans are denied the right to vote because of their color. This law will ensure them the right to vote. The wrong is one which no American in his heart can justify. The right is one which no American, true to our principles, can deny. . . .

"There were those who said smaller and more gradual measures should be tried, but they had been tried.

"For years and years they had been tried and tried and tried and they had failed and failed and failed. And the time for failure is gone.

"There were those who said that this is a many-sided and very complex problem. But however viewed, the denial of the right to vote is still a deadly wrong and the time for injustice is gone. . . .

"This act is not only a victory for Negro leadership; this act is a great challenge which cannot be met simply by protests and demonstrations. It means that dedi-

cated leaders must work around the clock to teach people their rights and their responsibilities and to lead them to exercise those rights and to fulfill those responsibilities and those duties to their country. . . .

"It is difficult to fight for freedom, but I think I also know how difficult it can be to bend long years of habit and custom to grant it. There is no room for injustice anywhere in the American mansion.

"But there is always room for understanding toward those who see the old ways crumbling and to them today I say simply this: It must come.

"It is right that it should come and when it has you will find a burden that has been lifted from your shoulders, too. It is not just a question of guilt, although there is that. It is that men cannot live with a lie and not be stained by it."

VOTING

When the U.S. Commission on Civil Rights reviewed the first decade of the Voting Right Act, its report noted how a device like the absentee ballot could be both evidence of white bloc voting and a tool to keep blacks out of power. "Blacks look suspiciously at the large number of white absentee voters compared to black."

[From the Atlanta Constitution, Dec. 9, 1980]

TROUBLE IN TALIAFERRO: ABSENTEE BALLOT ABUSE KEEPS WHITES IN OFFICE

This is the third part of a series examining electoral practices in Georgia and other sections of the South 15 years after the enactment of the Voting Rights Act of 1965. The articles were researched and written by Atlanta Constitution staff writers Chester Goolrick, Paul Lieberman and Ken Willis. The series continues Wednesday.

CRAWFORD.—One day last summer, the sheriff came to see Arthur Bolton. The 67-year-old black man was not expecting the visit.

Bolton was content to spend his retirement days rocking on the wooden porch of his tin-roofed house in the quiet Taliaferro County countryside. He was not planning to vote for Sheriff Dorsey Combs in the Aug. 5 primary. In fact, he was not planning to vote at all.

But Combs and his unofficial "deputy," Addison Hallford, had come to see Bolton about his vote. Conveniently, they brought a form requesting an absentee ballot.

A week later, Hallford delivered Bolton's ballot. Bolton voted for the sheriff. "He ain't never done nothin' to me," Bolton said later.

Recalling the incident, however, Bolton confided that he was not entirely pleased with his vote. "As long as somebody stays in office as he has and nobody gets near him, something's going on wrong," he said.

On a trip through the black neighborhoods of Crawfordville and the rest of this rural Georgia county 90 miles east of Atlanta, it is easy to find many others whose vote came about similarly to Arthur Bolton's. There are dozens of people like Kathryn Blackmon, a 26-year-old seamstress, who is not certain just who the man was who brought her absentee ballot, or like Garnett Evans, 87, who recalled how two men (not the sheriff and his deputy) got him a ballot and then filled it out for him. "I ain't got much know-how," Evans said.

It was in large part to guarantee that people like Arthur Bolton, Kathryn Blackmon and Garnett Evans would not be deprived of the vote that Congress adopted in the Voting Rights Act in 1965.

Fifteen years later, however, the vote has not meant political power for blacks in Taliaferro County and many places like it throughout Georgia and the South. Despite having a majority black population—71.6 percent, according to state census estimates for 1980—Taliaferro County has yet to have its first black elected to public office.

In this respect, Taliaferro County is no different from many other of the 22 counties in Georgia with majority-black populations. Fourteen of those other majority-black counties also have no blacks on their county commissions.

Just as whites in the South have devoted considerable effort and developed many techniques to get around another great thrust of the civil rights era—school desegregation—so have they worked to circumvent the Voting Rights Act of 1965, often with success.

Here in Taliaferro County, the use—and apparent abuse—of absentee ballots has been the major tool of the dominant white political establishment to dilute the impact of the black vote ever since voter registration drives and the first attempts by blacks to gain public office more than a decade ago.

An investigation by The Atlanta Constitution of the 1980 Taliaferro County primary—the election that counts most in this and other areas where almost everyone is a Democrat—found that coercion and dilution of the black vote were parts of the campaigns run by two slates of white candidates.

As for blacks who had run for office before, they had decided that it was futile to challenge the entrenched white political establishment led by Sheriff Combs and longtime county school Superintendent Lola Williams, both of whom again won re-election this year.

The examination of the election, in which absentee ballots accounted for more than one-third of the 1,545 votes cast, found that:

Candidates, including incumbents who wield considerable local power, regularly hand-deliver absentee ballots to poor and illiterate black voters and stand by the voters while the ballots are filled out. Some of those who obtained absentee ballots admit they could have gone to the polls to vote.

Despite a state law stating that people who move from a county for anything but a temporary period must change their place of voting, people who have not lived in Taliaferro County for many years are allowed to vote by absentee ballot. Among the long-distance voters are the sheriff's grown children, one of whom has not lived in Taliaferro for more than 20 years.

County political activists tell of watermelons being distributed to some voters at election time, and one former school-bus driver admits he passed out liquor in one election to get black voters to support the county school superintendent.

Among the black voters receiving assistance in filling out ballots—a procedure designed for illiterates and the handicapped—is a teacher's aide with a high-school education.

The abuse of the absentee-ballot privilege is nothing new in political races throughout the United States. Indeed, periodic abuses of absentee ballots are as traditional in conventional Georgia politics as the "tombstone" vote, in which the names of dead persons have been used to swell the election totals of unscrupulous candidates.

It was perhaps inevitable that the dirty tricks of conventional politics would be put to new racial use in the wake of adoption of the Voting Rights Act in 1965.

Reviewing the first decade of the Voting Rights Act, the U.S. Commission on Civil Rights noted that an "important problem" developed with the suspension of literacy tests in the South—the question of how blacks previously classified as illiterate would be assisted in voting. At the same time, the commission observed that the frequently complex absentee-ballot process provided "ample opportunity for abuse."

THE HOME OF ALEXANDER STEPHENS

Taliaferro (pronounced *Tolliver*) County was the home of Alexander Hamilton Stephens, the vice president of the Confederacy and a governor of Georiga. He died in 1883, but he left an unmistakable imprint on the landscape of Crawfordville, the county seat, and the surrounding area.

Stephens' rambling two-story, white frame home with its plantation acreage has been turned into a state park. Its crisp, painted and manicured appearance contrasts with the many run-down buildings near the town square.

Crawfordville was once the center of a bustling community with a mixture of industry that included textitles, pulpwood and farming. The county population once was almost 9,000.

The textitle and pulpwood industries left the county, however, and by 1950 the population had declined to 4,515; by 1960 to 3,370; and the 1970 census recorded only 2,426 residents. When other business left, government and other public jobs like teaching became more valuable.

With its heavily black population (63.6 percent according to the 1970 census, but 71.6 percent according to the latest state estimates) and its declining economy, Taliaferro County was a natural target for civil rights demonstrations in 1965 when the five black teachers who were participating in a voter registration drive were fired.

Calvin Turner, one of the teachers, recalled recently the day that school Superintendent Williams told him he was fired. "She told me she had been hearing things about me, but she never said what," he said. To this day, Turner is convinced he was fired because he was leading the registration drive and other civil rights protests.

Mrs. Williams has declined interviews with reporters. News reports in 1965 quoted white residents as saying that the blacks were fired because they were not paying their debts to local merchants.

But Dr. Martin Luther King Jr., who had just won a Nobel Peace Prize for his leadership of the civil rights movement, believed Turner. King and has assistant,

Andrew Young, led a mile-long march on the 100-year-old courthouse. It was a tension-filled night for the town. One reporter wrote: "The Klan rally had ended, but most of the whites remained across the street and hurled hoots and taunts at the Negroes . . . ."

That night, King promised the black residents of Alexander Stephens' hometown: "There will never be peace or tranquility until the Negroes receive justice in Crawfordville. We stand together determined to dramatize the plight of the Negro in the rural South."

The memory of that night is still clear to many of both races here, but the promise is unfulfilled, Merolyn Stewart believes.

She was a 15-year-old black resident of Taliaferro County when Dr. King visited. She would grow up to earn her Ph.D. in education and then return to her hometown in 1976 to run against Mrs. Williams for school superintendent, making Dr. Stewart one of two blacks who have sought office in Taliaferro.

"I was shocked," Dr. Stewart said of the election process. Electioneering, she said, involved "intimidating the vote."

One of Dr. Stewart's most active supporters was Calvin Turner, the fired schoolteacher. Turner, the only other black to have run for office in the county, lost his own race for school superintendent in 1972. Six years before that, in 1966, he had run for County Commission chairman.

Both blacks and whites agree it was these political contests—and a new kind of voter in the wake of the tense demonstrations in Crawfordville—that brought new tactics into the political process in Taliaferro County.

THE CIVIL RIGHTS THING

Lois Richards can smile now about the days "when we had the civil rights thing here," but there still are traces of the resentment that she and the other governing whites felt at the time when, as she says, "the FBI set up headquarters here. . . . People just dreaded them, you know."

MORE TRADITION THAN NECESSITY

Some of the time, the political activists here argue that so many absentee ballots are necessary because residents have to work outside the county. Other times, however, they admit that the absentee ballots are more tradition and politics than necessity—a fact confirmed in conversations with black voters.

Grady Bolton, 36, for one, could have come to the polls on election day. At voting time, "I was here," he recalled, pointing to the porch of his uncle's home, which is in his election district. But Bolton already had voted by absentee ballot. Bolton said Addison Hallford had brought him in application for the absentee ballot and later delivered the ballot. Bolton said he filled it out, sealed it, and gave it back to Hallford.

Larry Rice, who has lived in Wilkes County for a year, said Sheriff Combs came by the Texaco service station in Washington, where Rice works, and brought him an absentee ballot. He said he gladly voted for the sheriff. "I was always into something down there, and he was always helping me out," Rice recalled.

Cora Scott, a black woman who lives in neighboring Greene County, said she voted absentee in Taliaferro County because she once lived there and likes the sheriff. "They'd better keep that old buzzard down there. He don't go sneaking around your back like some young sheriff would do," she said.

Ida Mae Lewis, a black teacher's aide, did not use an absentee ballot but said she was an assisted voter at the polls, although she has a 12th-grade education. She said she requested help of white official at the polls, but the fact that her vote was not secret did not influence it. She said she voted for Mrs. Williams, a "good superintendent."

In the case of 87-year-old Garnett Evans, it was Cleveland Peek and another man who brought an absentee ballot. Evans said he is illiterate, so the men filled out his ballot. "My mother and father were slaves," he said. "They didn't know nothing to teach us but work.

Ozzie Bell, an elderly black woman who lives down the highway from Evans, said that Peek also brought her the absentee forms. But she refused to discuss the matter. "So much is going on with this stuff, it's hard to tell who's wrong and who's right.

MAJOR STIMULUS FOR VOTING ACT

Without knowledge of the background of politics in Taliaferro County, an observer can conclude in light of one statistic that the county has overcome one of the problems that led Congress to enact the Voting Rights Act in 1965. "The extremely

low (voting) participation of blacks in the South was a major stimulus for enactment of the Voting Rights Act," the U.S. Commission on Civil Rights wrote several years ago.

In Taliaferro County, of course, someone sees to it that *everyone* is signed up to vote. As Cleveland Peek noted: "A lot of old heads, they got them and registered them. Everybody that they could, they got them in the county—and out of the county."

Indeed, it seems that there are more people registered to vote in Taliaferro County than there are voting-age residents.

Unofficial 1980 census figures list the total population of the county—including children—at 2,043. At last count, there were 1,746 registered voters, or 85 percent of the total population. Statewide in Georgia, only 42.6 percent of the total population is registered to vote.

There were 1,545 votes in Taliaferro's Aug. 5 primary, a turnout of better than 90 percent.

As much as the statistics reflect an unusually active political community, they also reflect how successfully the county has avoided the intended effects of the Voting Rights Act.

To the extent that whites living outside the county continue to vote there, the black voting majority is diluted. And if whites continue to vote for white candidates in a bloc—which has been a consistent finding of voter studies in the South—any techniques which cut into blacks voting a bloc make it almost impossible for a black candidate to be elected. And everyone here says that white incumbents have been effective at winning black votes by delivering absentee ballots and offering assistance to poor and illiterate voters.

Georgia Secretary of State Poythress said he was generally "concerned" about possible abuse of absentee-ballot and assisted-voter regulations. "These are two areas where a person other than a voter can know how he voted," he said.

Officials charged with enforcing the Voting Rights Act have said repeatedly that the act was intended not to guarantee black victories but to fulfill "the promise of full participation" in elections for all groups.

"The question is whether the black community has been able to elect candidates of their choice, whether the face is black or white," said Paul F. Hancock, chief of litigation for the voting section of the U.S. Justice Department in Washington. "The problem is when the people they want can't get elected."

Sitting behind his home in Taliaferro County, Cleveland Peek said he was doubtful someone of his race could win a local election, even though blacks represent more than 70 percent of the population. "It could happen," he began after a pause. "More black kin than white. If they stayed together. But they won't stay together."

And Bolton Lunceford, the defeated candidate for school superintendent, recalled a question frequently asked of black voters who turn up at the polls. It was, "Who brought you out?"

Mrs. Richards, now chairman of the Taliaferro County Commission and formerly county tax commissioner for 16 years, recalled that politics in these parts was always fierce but that tactics were different before that turbulent period. "Back then, you didn't have anybody who was illiterate who could vote," she said. "If you see the (voting) rolls, you can see the difference."

The Voting Rights Act of 1965 suspended use of literacy tests in the South—later the suspension was extended nationwide—because the tests had been used to exclude blacks from voting. Black college graduates had been known to fail.

Mrs. Richards said such tests were never used to discriminate here—that when her late husband served as the voting registrar he would, in fact, "kind of prompt them along. Hardly anyone was turned down." But she added that the suspension of any tests and the voting registration drives had added many blacks to the list of county voters.

In 1966, Calvin Turner entered the primary for County Commission chairman against two white candidates and finished second, getting 441 votes to winner George Watson's 728 and third-place finisher George Brown's 260.

Mrs. Richards and others around the county recalled as even more divisive Turner's 1972 challenge to school Superintendent Williams, which Mrs. Williams turned back 749-527.

The election drew 12 federal observers—a provision of the Voting Rights Act—to the county, the third time observers had been on hand for a county election since 1968.

WHITES UNITED . . . BLACKS SPLIT VOTE

One white courthouse official recalled that in a county in which groups of whites were used to fighting each other at election time, "the whites just got together. The whites united, and the blacks split their vote."

Mrs. Richards said she doesn't believe whites feared election of a black official. "People just feared taxes," she said.

Taxes, however, inevitably are linked to the public schools, which in Taliaferro—as in many areas of the country—became predominantly black institutions following court-ordered desegregation. Enrollment tumbled from about 800 in 1966 to only about 200 now as the population declined and virtually every white student was sent to private schools or schools outside the county. The county's school millage rate of 5.12 is amont the five lowest in the state and far below the state average of 10.9 mills.

The major worry in this county, Mrs. Richards said, is that "taxes would be higher." And the County Commission chairman advised a Constitution reporter to "look over in Hancock County," a neighboring county that has higher property taxes. Hancock, with a 73.8 percent black population—the highest in the state—has an all-black County Commission.

Mrs. Richards said it was in the context of this "fear of taxes" and traditionally tough local politics that the relatively uneducated black voters added to the rolls since the mid-1960's came to be targeted by candidates of both races. The County Commission chairman was clearly disillusioned with the campaign procedure which developed but accepted it as a fact of life here. "You more or less have to do it," she said.

She said the candidates' attitude toward the new voters as simply, "The first one who gets there, you get them." She said these voters "don't care."

The procedure also is simple: The candidate or a helper brings along applications for absentee ballots on visits to households. Potential voters are asked whether they wouldn't like the candidate or a helper to deliver the ballot later. The form then is filled out so that the absentee ballot is mailed not to the voter, but to the candidates and their helpers. Then the candidate or an aide drives the ballot out to the voter and, if possible, waits while it is filled out—or, in the case of illiterates, offers assistance.

These days, if you don't play this game in Taliaferro County, Mrs. Richards said, "you might as well not get in the race."

Calvin Turner said he noticed another type of absentee ballot appearing in greater numbers after the 1966 election: those from people—mostly whites, he said—living outside the county. "Since then, votes have been coming from everywhere," Turner said.

He has given up trying to run for office himself.

Whites traditionally fight among themselves in Taliaferro County, and the warring political camps among those in power were evident during a visit to the county courthouse this summer. The commission chairman's office is directly across the corridor from the sheriff's office, and the scheduled installation of new glass doors throughout the courthouse provided Mrs. Richards with an opportunity to express here dislike for Sheriff Combs.

Combs, appointed as county sheriff in 1971 and elected three times since, insisted on keeping his old thick wooden door to maintain privacy in his office. "I'm going to chop it down!" the combative Mrs. Richards exclaimed, charging that the sheriff just wanted privacy so he could take naps. "No work and all pay," she muttered.

There were two hotly contested races in the August primary. Sheriff Combs and school Superintendent Williams were up for re-election, and they supported each other. Two opponents, also aligned as a team, were backed by Mrs. Richards, the commission chairman.

The challengers had filed to run at the last possible moment, then moved quickly to be first to reach blacks throughout the countryside with absentee ballot applications. "This year we set out to get these people," Mrs. Richards said.

But the incumbent slate responded with its own absentee ballot campaign—and won both races.

Mrs. Richards complained that the sheriff himself had gone out with ballot applications and that he and Addison Hallford received "over 100 absentee ballots."

In the office across the hall, Sheriff Combs said he had little memory of the recent election. "I didn't keep no notes or nothing like that," he said.

Combs, who is 64, was county roads foreman before becoming sheriff, and a truck driver before that. Most of his work is generated by Interstate 20, which runs for 11 miles through the county, he said. Combs said he is the sort of law enforcement officer who prefers to settle local disputes by negotiation, without making an arrest. "All these family problems, it ain't worth a damn to get a warrant," he said.

Combs said he could not remember taking absentee ballots to voters in the county, although a few ballots from out of the county may have been mailed to him—perhaps those of his own children and mother-in-law, he said.

"Lots of kids move away from here and vote absentee. They come back for weekends," he said.

OLDEST SON LIVES IN ATLANTA

Only one of the Combs' four children lives in Taliaferro County. The oldest son moved away after high school and, at 42, now lives in Atlanta, Combs said.

Georgia law states, "A person shall not be considered to have lost his residence who leaves his home and goes into another state, or county in this state, for temporary purposes only, with the intention of returning . . ."

There is no definition of "temporary" in the law. Georgia Secretary of State David Poythress, charged with overseeing elections in Georgia, said his understanding was that "intent" to live in a county is necessary to qualify to vote there. "If someone moves away and does not have an intent to return, I would say he is not in residence," Poythress said.

Unlike the sheriff, Addison Hallford had no trouble remembering details of absentee voting during the August primary—in fact, a notebook in his pocket listed all the election figures, including the almost 500 absentee ballots tallied. To Hallford, who said this was his first effort at electioneering in Taliaferro after moving to the county 15 years ago, the local rules of the game were rather strange. "I've never heard of anything like it in my life," he said.

He noted that dozens of outsiders vote in the county. "After that school bit in 1965, most of the whites moved out but kept their registration here," he said.

Hallford, a 52-year-old white man, was born in neighboring Wilkes County and moved to Taliaferro when he married Vivian Lunsford, the daughter of the present Taliaferro County registrar, Ruby Lunsford.

Hallford owns a small used-car lot in Wilkes County and has sold many cars to people in Taliaferro County. Many know him not only as the used-car man but also as Sheriff Combs' "helper," or "deputy." In fact, he was sworn in as a deputy two years ago. While Hallford lost that official status last year, he still carries a police radio in his car and helps the sheriff out when needed. "I've been knowing him all my life," Hallford said, as he worked in his shop repainting a used car blue.

Hallford said his electioneering with Sheriff Combs was only a response to the early push by Mrs. Richards and her allies to get a large number of absentee ballots against the sheriff. "They were just going to run over him, a man who worked for the county (and) got shot five times (in an incident several years ago). Somebody had to help him," Hallford said.

In a small community where secrets are hard to keep, Hallford said he had learned that of the first 250 absentee ballots ordered in the county, 200 went to the leaders of the opposition.

So Hallford said he and the sheriff hit the roads. "He was campaigning, and anytime we ran into someone who said they'd be out of the county that day, I fixed them up an absentee," Hallford said.

Georgia law states that a voter can cast an absentee ballot only if he is "required to be absent from his election district during the primary or election he desires to vote in . . . or who because of any physical disability will be unable to be present at the polls on the day of such."

Also under state law, a voter must file his request for an absentee ballot with the county registrar and write on the application the address to which it should be sent. Hallford said he indeed mailed the requests to the registrar and placed his own return address on them.

Hallford said when he later delivered the absentee ballots, 11 of the people asked to keep the ballots for a while, but the rest filled out the ballots while he waited. In "nine, maybe ten" cases, he filled out the ballots for illiterate voters.

State law allows one person to assist up to 10 voters.

Hallford said the sheriff "may have done one or two" assisted ballots, one because the voter was paralyzed.

In all, Hallford calculated that 60 absentee ballots had been sent to his post office box, then distributed. "The sheriff had thrity come to him," he said.

The same went on with the other political faction, Hallford said. "Lois Richards, fifty went to her box," he said.

ANTIQUES AND FORMAL PORTRAITS

Bolton Lunceford and her husband Mell appear out of place in the poor, rural Georgia county. Both are schoolteachers in Warren County 15 miles to the east.

They renovated a large two-story house in Crawfordville and filled it with antiques, crystal, formal portraits, family seals and the like.

Mrs. Lunceford, a red-haired woman who teaches English, drama and latin, was the unsuccessful candidate for school superintendent this year. She said she entered the race for the $21,000-a-year job because of the low quality of county schools—students' standardized test scores were among the lowest in the state—and a suspicion that hundreds of white schoolchildren were slipping across county borders to go to school elsewhere. She said she discovered that "every vote is fought for as if they were all running for president of the United States."

Mrs. Lunceford agreed that both sides in the August election had used some of the same tactics but said she had been told by Mrs. Richard: "If you don't do it, you'll get eaten up."

After the primary, Mrs. Lunceford, who is white, wrote to friends and supporters reporting that she had lost 813 to 676 and charging that some voters had been given liquor or watermelons on election day to vote against her.

She also alleged that voters who had said they would be out of town on election day and had used absentee ballots were seen around the courthouse. In fact, a complaint was made to the FBI, and shortly after the election, agents seized the county's voting records. An investigation is continuing, according to an FBI spokesman.

One of the people who helped campaign for Mrs. Lunceford among Taliaferro blacks this year was Cleveland Peek, a 65-year-old black brick mason and carpenter. Although he has only a fifth-grade education, Peek figures that experience in several campaigns has taught him as well as anyone how politics works in Taliaferro County. "M-O-N-E-Y. That's what turns it," he said not long ago.

In 1976, Peek was driving a school bus and needed two years' more service to qualify for a pension of $55.40 a month. In the contest for school superintendent that year, he backed his boss, Mrs. Williams, rather than the black candidate, Dr. Stewart. His reason: "I was working for Mrs. Williams."

Peek, his white hair coming out from under a blue cap, said in one interview that it was during that campaign that he gave some people liquor to guarantee their vote for Mrs. Williams. "I told them I was going to vote for Mrs. Williams, and they said they were going to vote for her, too, but they would like a little liquor," he said. Peek said he provided them with some of his own stock.

During an interview soon after, Peek said he could no longer recall distributing liquor but spoke of how rival campaigners in the recent election had distributed watermelons. "My side ain't getting nothing," he said.

A talkative man whose construction work has enabled him to know almost everyone in the county, Peek is in demand as a campaigner. He believes his political work in 1978 was costly. He backed a commission candidate disliked by the school administration. The candidate lost, and a few days later, Peek said, he was told that his school bus route was no longer needed.

In 1980, Peek said he helped hand out some absentee ballots for Mrs. Williams' opponent, Mrs. Lunceford. "I said if she put down (ran for office), we'll go for her," Peek recalled, sitting back behind his house, near the pens where he raises chickens and pigs.

[From the Atlanta Constitution, Dec. 10, 1980]

VOTING: A RIGHT STILL DENIED—OFTEN THE RULES CHANGE AND BLACKS LOSE OUT BEFORE FEDS CAN STEP IN

This is the fourth part of a series examining electoral practices in Georgia and other sections of the South 15 years after the enactment of the Voting Rights Act of 1965. The articles were researched and written by Atlanta Constitution staff writers Chester Goolrick, Paul Lieberman and Ken Willis. The series continues Thursday.

ZEBULON.—The first time Robert Curtis ran for the Pike County school board, in 1970, he made it a close race. In his attempt to become the county's first black elected official, Curtis came just a dozen votes short of the white incumbent and made it into a runoff before losing.

Curtis, an insurance salesman during the week and a Baptist preacher on Sunday, was persistent. Four years later he ran again in this rural county 55 miles south of Atlanta. But this time the result was not close. "I lost by a landslide," Curtis recalled recently.

The difference in the two elections reflected not so much a decline in Curtis' popularity as it did a change over those years in the way school board elections

were conducted in Pike County. And the change lessened the chances not only for Curtis, but for any black candidate.

In 1970, Curtis had been able to run in the Zebulon district, which had a substantial black population on whose support he could count.

In 1972, the county abolished the system under which each of five districts—including the Zebulon district in which Curtis ran—elected its own school board member, it adopted, instead, an election system in which each candidate had to run countywide. And since the county as a whole was 60 percent white, Curtis no longer stood much of a chance.

"We knew we couldn't win an election countywide," Curtis said.

To this day, Pike County has no black school board members or commissioners.

The change in election practices in Pike County was the type of action the Voting Rights Act of 1965 was intended to stop—and also the type of action repeated in many Georgia counties.

The feature of the Voting Rights Act with the most immediate impact was the suspension of literacy tests that had been used for decades to keep blacks from registering to vote. After enactment of the law on Aug. 6, 1965, registration drives added more than 1 million blacks to voting rolls in the South.

The most powerful provision of the act, however, was another section of the law which recognized that blacks, even with the vote, could be denied equal participation in politics.

Section Five of the Voting Rights Act requires state and local governments in the South to "pre-clear" with the U.S. Justice Department or a federal court in Washington, D.C., any change in laws or regulations that affect voting.

"Congress knew," the U.S. Commission on Civil Rights explained later, "that seemingly minor changes in electoral law could, in fact, serve to exclude minorities from participation or to minimize the effect of their participation."

Those charged with enforcing the Voting Rights Act have never viewed as a "minor change" a shift from voting by districts—in some of which blacks are likely to be concentrated—to county-wide "at-large" voting. Paul F. Hancock, chief of litigation for the Justice Department's voting section, called such changes by white-controlled governments perhaps the major tool now "used to keep minorities out of office."

The Justice Department's voting section has repeatedly used Section Five to block shifts to at-large elections in the South.

In Pike County, however, the change in school board elections went into effect without any review by the Justice Department or the federal court in Washington. Neither the county nor the state, it turned out, had bothered to file notice of the election change with the U.S. attorney general as required by the Voting Rights Act.

Dr. James Turpin, Pike County's superintendent of schools, said recently that he and other county officials were not aware of the government regulation. They learned of the oversight, Dr. Turpin said, when he received a letter from the federal government early last year reporting that the county was in apparent violation of the law.

Only then—seven years after adoption of countywide voting for school board members—did Pike County officials send notice of the electoral changes to Washington.

A response came in a letter from Drew Days III, the head of the Justice Department's Civil Rights Division: "On the basis of our analysis, we are unable to conclude, as we must under the Voting Rights Act, that this change to at-large elections . . . will not have a racially discriminatory effect on blacks in Pike County."

SCENE REPEATED IN 27 COUNTIES

What happened in Pike County was not an isolated event in Georgia or the South in the years following the adoption of the Voting Rights Act, when mass voter registration drives among blacks and the first campaigns for office by blacks came to many Georgia counties.

A U.S. Commission on Civil Rights study on the first 10 years of the Voting Rights Act reported that no less than 27 other Georgia counties made changes in their method of picking school board members without reporting the change to federal authorities.

In an election change involving a county commission, Dooly County—one of 22 Georgia counties with a majority black population—changed from district to at large voting in 1967. The Justice Department's own records show that it took 13 years—until this past summer—for the department to learn of the change. In a July 31, 1980 letter, federal attorneys finally objected to the voting system.

"Our analysis indicates that a fairly-drawn single-member district system would probably contain at least one district with a population majority of blacks," the letter said. With the observation that voting in Dooly County "generally follows racial lines," the letter indicated that a fair system would have produced black commissioners. However, the letter added that despite just over a 50 per cent black population in Dooly County "no black has ever been elected to the County Commission."

Fourteen more of Georgia's counties with majority black populations also have no blacks on their elected commissions.

President Jimmy Carter's home county is among the Georgia counties whose electoral history illustrates a basic problem in the enforcement of the Voting Rights Act—and the apparent ability of many communities to circumvent the law.

Sumter County, which includes the town of Plains, adopted countywide voting for its seven school board seats in 1973. The countywide voting system followed a court ruling agreeing with a suit filed by, among others, then-Gov. Carter, that districts previously used in school board elections were malapportioned—too unequal in population.

On June 5, 1973, an election was held by a countywide vote.

LETTER COMPLAINS TO SUMTER COUNTY

Records filed with the U.S. Justice Department in Washington show that the next month—on July 13, 1973—the Justice Department wrote to Sumter County complaining that the new electoral system had never been submitted for federal review. The letter then objected to the plan as potentially discriminating against blacks, who comprise 46 percent of Sumter's population, according to the 1970 census.

John McCoon, the attorney who heads the division of the Justice Department in Washington responsible for reviewing election changes in states covered by the Voting Rights Act, said recently that his office normally expects local governments to obey notices as their election systems are improper.

In fact, however, elections requiring a countywide vote for each school board seat have continued in the president's home county. Several of the candidates must live in specified districts, but each is subject to a vote of all the county's citizens, according to Sumter County School Superintendent Ronnie Satterfield. All seven school board members are white.

In a suit filed last spring in the U.S. District Court of the Middle District of Georgia, a group of county residents challenged the Sumter County election procedure. The case is still pending.

In Washington, however, McCoon said his office still was unaware that the Sumter voting had not been modified. "As far as we knew, our objection was going to be honored. No one knew they were going to keep holding elections at large," McCoon said Tuesday. "No one reported that to us."

The government attorney said he would investigate and "consider litigation" in the case.

McCoon added: "People assume the Justice Department must know everything—but we don't."

PIKE OFFICIALS: MEANT NO BIAS

In Pike County, white officials have insisted that no racial discrimination was intended in their change to countywide voting for school board seats. "I think it was felt the change was made to make the board of education more responsive to the people," said Lenorris Pitts who, as Pike County's probate judge, for the past 20 years is charged with overseeing elections here.

Pitts and other officials argue that school board members will be more responsive if they are elected by all the county's voters, and not just those in individual districts.

It was in 1967 that Pike County first elected members of its school board. Before that, board members were appointed by a county grand jury, a system still used in just over one-third of Georgia's school districts.

The change from districts to at-large voting was achieved through a bill passed at the county's urging by the Georgia General Assembly in 1972.

Under the new system, black candidates ran again for school board seats in both 1974 and 1976, but not made a runoff as Robert Curtis had during the district elections in 1970.

When the Justice Department found out about the at-large elections last year and filed its objection to the system, Pike County officials decided to go back to district elections—a system approved by the officials who enforce the Voting Rights Act.

But an issue still remained—how to draw district lines for school board elections in Pike County.

And again, a decision about how to conduct an election became an issue affecting race—or so it was alleged in a hearing in federal court.

DISTRICTING GOES TO U.S. JUDGE

The hearing before U.S. District Court G. Ernest Tidwell began on Sept. 12, 1980. At issue were the five school board districts drawn up by Pike County officials.

County officials insisted that not race, but only population—getting about 1,650 residents in each district to satisfy "one-man, one-vote" election requirements—had been on their minds in drawing district lines.

But a group of black Pike County citizens had sued the county board of education and the probate judge demanding a redistricting that would be "race-conscious," with at least one district in which blacks would be in the majority.

Under a recent U.S. Supreme Court ruling stemming from a challenge to the election system, in Mobile, Ala., the black plaintiffs had the burden of proving that the county's district plan was intentionally discriminatory against them.

Chris Coates, an attorney from the American Civil Liberties Union who represented the black plaintiffs of Pike, argued that the atmosphere in that county was pervasively racist. He said the races still live separately just as they always have, the private white clubs are the center of business and political activity, and that because of longstanding tradition, blacks feel uncomfortable about appearing at the courthouse to register to vote.

Pike County officials who testified denied the allegations that elections in the county discriminated against blacks. Probate Judge Pitts told the court that as far as he knew, no black had ever been denied the right to vote.

While testimony showed that there had never been a black on the board of registrars, Ed Wood, the county registrar, said, "No person has ever been denied the right to register."

Alan Connell, the lawyer representing the defendants indignantly told the judge that the 1972 election plan had "no intentional discriminatory effect" and that although blacks were defeated every time they ran, there was "no black and white issue then or now."

"I submit that just because you are black does not entitle you to office," he said. "There is complete cooperation between the races in the school system now, and we ask the court not to disrupt it."

MANY RULINGS GO AGAINST GEORGIA

Over the years, court decisions at levels up to the U.S. Supreme Court have included rulings that both state and local governments in Georgia have changed election laws and procedures in ways that could discriminate against blacks.

In 1973, the Supreme Court agreed to review a reapportionment of the Georgia House by the General Assembly. There had been extensive shifts away from single-member House districts in some populous areas. Instead, these would have multi-member districts, where one group of voters would elect several representatives—a system resembling county at-large voting schemes.

The issue, wrote Justice Potter Stewart, "is whether such changes have the potential for diluting the value of the Negro vote." He answered: "It is beyond doubt that such a potential exists."

The state had to come up with a new districting plan.

Two years ago, a three-judge panel of the U.S. District Court in Washington had to rule on a change in Wilkes County, Ga., in which county-wide voting had been instituted for both commission and school board elections.

Noting that while blacks constituted 47 percent of the population, they still comprised only 29.9 percent of registered voters, the court found evidence of "past discrimination in voting against black residents . . . failure of the elected officials to remedy the effects of that discrimination, (and) virtual control of the electoral process by white persons."

The court concluded: "The effect of the voting change has been to diminish black voting strength . . . Black residents have less opportunity than white residents to participate in the political process."

Without that district, however, he vowed to push for increased registration among blacks here—it remains very low. While blacks comprise more than 40 percent of the county's population, only 22 percent of the voters are black, according to county registration figures. "We've got to put on a registration drive and get people to vote," Hughley said.

Hughley and Curtis have pleaded with the registrar, Ed Wood, to hire a black assistant registrar to go out into black areas of the county to sign up voters. So far, Wood has refused.

"Our office is open six days a week," Wood said during a conversation at the courthouse last week. "They can come in and register on Saturday morning if they want to. We also register people on election day—which we are not required to do. I have copies of the ads that we ran in the paper asking people to come register. The operation is centered here at the courthouse. The code does not require us to set up a satellite registration office."

Judge Pitts, interviewed in his office library, defended the county's treatment of blacks. "In my opinion," he said, "we don't have a problem. Blacks and whites get along. There is no discrimination shown them. They are shown the same courtesy as anybody else who comes in."

While officials of the voting section of the Justice Department admit that many changes in laws or regulations which affect elections are never submitted for review as required by the Voting Rights Act, the fact is that almost 2,900 proposed changes have been submitted from Georgia. "We get thousands of submissions. The great majority are non-discriminatory," said the Justice Department's Hancock. "But," he added, "some of them are."

Since 1968, the Justice Department has ruled as potentially racially discriminatory 78 proposed election-related changes in Georgia. The targets of the objections have ranged from the statewide reapportionment plan cited above down to the location of voting booths in one county in a private club which normally barred blacks.

Georgia has drawn more objections than any other state except Texas, which came under the Voting Rights Act in 1975 when the act was amended to extend special protections to "language minorities," including Spanish-speaking Texans.

TWO DIFFERENT TYPES OF SUITS

There is a fundamental difference between cases in which the Justice Department challenges a local voting change and the case in Pike County, where black citizens filed suit challenging election districts.

Under the Voting Rights Act of 1965, a state or local government whose voting change is challenged by the Justice Department bears the burden of proving that the move will not discriminate against blacks.

"I have to agree," said Wood, "The relationship is a lot better here than it is in a lot of other places."

Clearly, there is a wide disparity between the way blacks and whites view Pike County politics. Wood and Pitts see no discrimination; Hughley and Curtis are constantly conscious of it. "It's time for a change," Hughley said. "I'm 42 years old, and this has been going on all my life. If it hasn't changed by now, maybe there's never going to be any change."

As for Robert Curtis, he has decided that while he is better off now, back under district voting, even increased registration by blacks may not be enough to win him an election. He is still convinced that the county changed its election system because whites were scared when he almost won in 1970. But he figures he won some white votes the last time, and that with work he could win more. "I'm kind of optimistic," he said.

Yes, Curtis said, he will try for the seat again in the next election in 1982.

Thursday in The Constitution: The Voting Rights Act's uncertain future.

In the Pike County case, the burden of proof was not on the local government, but on the challenging blacks and this proved to be the crucial factor in the case.

Judge Tidwell ruled that while there was testimony on white dominance of the election process which was "impossible to justify," the black group had "failed to carry their burden of proving purposeful discrimination."

"The evidence most close approaching a showing of purposeful discrimination the judge wrote, "was evidence of the failure of the registrar, who was not made a party to this action, to accept black deputy registrar and the lack of black citizen in elective or appointive positions in the Pike County courthouse. Although these last two factors are highly suspicious and impossible to justify, they do not constitute sufficient proof of purposed discrimination affecting voting."

On Nov. 4, Pike County held its school board elections. Five whites again were voted into office.

The election brought politics here full cycle after a decade.

Once again, because the Justice Department had ruled out countywide voting, there was voting by districts—even if they were not the districts sought by the group of blacks.

And once again, Robert Curtis ran for the Zebulor district seat—and he lost to the incumbent in a runoff.

BLACK SEES NEED FOR 65 PERCENT DISTRICT

Roy Hughley, a black man who has supported Curtis over the years and who was a plaintiff in the federal suit, said recently that a "race-conscious" solution to Pike County redistricting would have made a black candidate for the school board a lot less difficult. "We need a district that's 65 percent black," he said.

[From the Atlanta Constitution, Dec. 11, 1980]

VOTING: A RIGHT STILL DENIED—LAW EXPIRES IN '82; WHAT IS ITS FATE

These articles conclude a five-day series examining electorial practices in Georgia and other sections of the South 15 years after the enactment of the Voting Rights Act of 1965. The articles were researched and written by Atlanta Constitution staff writers Chester Goolrick, Paul Lieberman and Ken Willis.

WASHINGTON.—An unlikely group of men marching into the Senate Caucus Room here last month provided a clear reminder of the uncertain future of the Voting Rights Act of 1965.

First came Sen. Strom Thurmond, R-S.C., the onetime segregationist standard-bearer of the States Rights Party and soon-to-be chairman of the powerful Senate Judiciary Committee. Behind Thurmond, as cameras flashed, marched the Rev. Ralph David Abernathy of Atlanta and a group of other black politicians, some of whom had once led civil rights protests in the South.

The Nov. 21 gathering was in large part a media event, a chance for a leader of the new Republican majority in the Senate to pose with black politicians who had supported the presidential candidacy of Ronald Reagan. But the men had also met privately to discuss political legislation, and Abernathy had brought along a written agenda. Listed as the first concern—ahead of his appeals for continued affirmative action, continued school busing and the like—was that Thurmond use his influence "to salvage and extend the Voting Rights Act."

The act—requested by President Lyndon Johnson to counteract literacy tests and other practices that had kept blacks from political participation in the South—expires in August 1982. During the coming year, Congress will debate whether to extend, amend, or kill the measures which have regulated election practices in the South for the past 15 years.

When his turn came to comment—before a dozen television cameras—on the meeting with Thurmond, Abernathy repeated his plea. "We let the senator know," he said, "the fact that the Voting Rights Act is possibly one of the most outstanding things that has happened for the black people in this century."

"We were in total agreement," he added "that nobody should be denied the right to vote in this country."

A few moments later, Thurmond interjected a note of caution. "We're not here today to discuss issues," the 76-year-old senator said. He added that while he expected to meet with the black politicians in the future, "I'm sure there will be differences."

Indeed, seated behind the desk in his office the previous day, Thurmond had not been shy about his dissatisfaction with the Voting Rights Act—the legislation for which Abernathy had campaigned in the 1960s in marches to Selma, Ala., and other places around the South. "I feel it's unconstitutional," Thurmond said flatly in an interview.

The U.S Supreme Court upheld the constitutionality of the Voting Rights Act in 1966, in a case involving Thurmond's home state of South Carolina, and the voting legislation has withstood numerous legal challenges since then.

As Thurmond sees it, however, the Voting Rights Act illegally singled out certain states, primarily in the South, and imposed excessive federal control over the region's state and local governments. The act requires governments in covered areas to get approval from the U.S. Justice Department or a federal court in Washington for all changes in laws or regulations that might affect voting.

"I've had a lot of complaints from different states," Thurmond said, "that any ordinance of a city council, or every action of a county government or the state legislature has to be sent up to Washington."

Thurmond said that "if it's going to continue," the Voting Rights Act's provisions would have to be extended beyond the South and the few other areas now covered. "When you single out certain states, I think it's unconstitutional," he reiterated.

In the weeks since the Nov. 4 national election, Thurmond has talked several times about his goals as chairman of the Judiciary Committee. And in the offices of the voting section of the U.S. Justice Department, just a mile from the Capitol, Thurmond's comments have drawn more than casual interest. An article headlined, "States Rights Pressed by Thurmond—He Favors Repeal of 1965 Voting Act," is tacked up on a bulletin board there beside staffers' ride notices and vacation schedules.

Paul F. Hancock, the 36-year-old chief of litigation for the voting section, shrugged when a visitor commented recently on the clipping. "There's been opposition to the Voting Rights Act from the day it was adopted," he said. "It has been recognized as the most effective of the civil rights acts which were passed."

FOCUS HAS CHANGED SINCE 1965

Over 15 years, events have changed the focus of the Voting Rights Act.

When the act was being considered in 1965, its sponsors believed that its most important feature was the suspension of literacy tests that had long been used to keep blacks from voting in the South. The 15th Amendment to the U.S. Constitution had outlawed voting discrimination against blacks 95 years earlier, but the percentage of voting age blacks registered still was estimated at under 30 percent in Georgia, under 20 percent in Alabama and less than 7 percent in Mississippi.

In the few years after President Johnson signed the act—saying at a Capitol ceremony, "The time for waiting is gone"—more than 1 million blacks were registered to vote throughout the South. While voting registration rates of blacks still fall below those of whites in many areas, the lack of registration is no longer the major issue.

Increasingly, the main point of controversy surrounding the Voting Rights Act has become the extraordinary power it gives the federal government over state and local laws.

There are two sources of the power: the first is the provision that state and local governments "pre-clear" in Washington any changes which could affect voting—from the drawing of voting districts and method of electing candidates down to the location of polling places; the second is the fact that the burden of proof is placed on the state or local government to prove the change is *not* discriminatory.

In upholding the powerful provisions of the law, the Supreme Court observed that the purpose of the Voting Rights Act was to "shift the advantages of time and inertia from the perpetrators of the evil to its victims."

Still, it is not only one-time segregationists like Strom Thurmond who challenge such federal powers.

"It remains a serious matter that a sovereign state must submit its legislation to federal authorities before it may take effect," three Supreme Court justices commented when asked to rule in 1973 on a Justice Department challenge to a statewide redistricting plan submitted by the Georgia General Assembly. Their opinion was a minority one, however, and the court majority struck down Georgia's proposed districts because they had "the potential for diluting the value of the Negro vote."

The same basic issues, which will likely be at the center of debates on the Voting Rights Act in 1981, surfaced this year in another case that made it to the Supreme Court. At issue were elections in Rome, Ga., and a dispute that prevented Rome from holding municipal elections for more than six years.

For 37 years, from 1929 to 1966, the city of 30,000 in north Georgia elected members of its commission and board of education by a system in which a candidate could win with less than a majority vote. If there were several candidates running for a single seat, the one with the highest vote simply won.

In 1966, Rome adopted a new election system under which a run-off would determine the winner if no candidate achieved a majority of the vote.

MANY FAIL TO TELL WASHINGTON

The Atlanta Constitution's investigation of election practices in Georgia found that many communities failed to submit voting changes to Washington as required by the Voting Rights Act—and this was the case with Rome.

In fact, the Justice Department did not learn of the Rome election changes until 1974, eight years after they were made. Department attorneys then objected to the new system as potentially discriminatory—because in the city where 23 percent of the population is black, a change to election by majority vote countywide diminished a black candidate's chances of winning.

The change had, indeed, helped defeat a popular young black minister named Clyde Hill who attempted in 1970 to become the first black elected to office in Rome.

Running for a school board seat, Hill came out ahead of three white candidates, but his total fell short of a majority. In the run-off election, he was defeated. "The (black) people became somewhat disenchanted," recalled Hill, who now lives in Augusta.

Municipal elections were postponed as the Justice Department's challenge to the voting system worked its way through the courts.

There was no allegation that Rome had changed its election system with race in mind. A federal district court noted that literacy tests had not been used to keep blacks from voting; indeed, whites had even encouraged blacks to run. And the court found that the city had "not discriminated against blacks in the provision of services." The court commented, however, that there was some history of "racial bloc voting" and that the annexation of some all-white neighboring areas had "diluted" the black vote.

Finally, last April 22, the Supreme Court had ruled that while though no discrimination may have been intended, the 1968 vote would have to be scrapped.

One month after the Supreme Court threw out the Rome election system, the north Georgia city got its first black city commissioner, but not by election. A resignation on the commission created a vacancy and the other members appointed Napoleon Fielder, a 57-year-old black former state employee.

Then this month, with elections conducted again under a plurality system, Fielder became the first black ever elected to office in Rome. He was the top vote-getter in the Nov. 18 Democratic primary, then breezed through the Dec. 2 general election—the first municipal voting in Rome since the legal wrangling began in 1974.

The winning candidate attributed his success not so much to the series of court cases as to his ability to get votes from whites. "The more you are known in the white community, the more chance you have of being elected," Fielder said. "There was a time when bloc voting happened, but I think that people vote for whomever they want now."

NUNN SAYS LAW BIASED AGAINST SOUTH

Georgia U.S. Sen. Sam Nunn is one of the people in Congress who argues that the Voting Rights Act unfairly picks on the South. He sponsored an amendment in 1975 to extend the bill's provisions nationwide—meaning that if Rome's elections were subject to review, so would those of a city in any state—and he still believes such revision is needed.

In the 1960s, Nunn said in a recent interview, there may have been "reasonable cause for those in Congress to think there were more problems in the South." He said it would be "tragic" to drop the protections of the law, but that now the region no longer needs to be "singled out."

"The next time it comes up, I will renew my effort to have it applied to the whole country," Nunn said.

Officials of the voting section of the Justice Department in Washington argue that such a broadening of the act's coverage would make enforcement considerably more difficult—that it would be impossible to monitor electoral changes made in every state.

"It would be just mind boggling," said Gerald W. Jones, chief of the section, which employs 18 attorneys and 17 legal assistants. "We have a full workload with what we have now."

John McCoon, the attorney who heads the voting section unit which reviews election changes from areas covered by the Voting Rights Act, said he and other department lawyers have attempted to bring voting discrimination cases in the North.

The Justice Department has since taken some actions in the North. It used federal observers to monitor elections on Indian reservations, and objected in 1974 to a New York State districting plan which might dilute the vote of minority residents. McCoon said, however, that it was hard to find cases in the North to match those regularly found in the South.

"For a year or so we made a concerted effort," he said. "There were isolated instances . . . but we just did not find the same racial bloc voting against blacks." McCoon said he was surprised "because private discrimination is just as prevalent in the North—I thought we'd find it in voting."

VOTING DISCRIMINATION STILL STRONG

The Atlanta Constitution's investigation in Georgia found that 15 years after the adoption of the Voting Rights Act, racial discrimination against blacks in the election process is still strong in many areas of the state—and often successful in keeping blacks far short of equal political participation. A series of reports this week has documented a variety of traditions, campaign practices and government actions used to perpetuate white control even in majority black areas.

One student of voting practices in the South suggested there continues to be a "race war over voting" in the region—and the case studies often reflected such conflict.

But the survey of voting practices also found evidence of changing electoral conditions, attitudes and practices showing blacks moving closer to equal participation in Southern politics in the years since adoption of the Voting Rights Act.

A listing of 237 black elected officials in Georgia reflects more than just gains by blacks in Atlanta and other large cities.

While 15 of Georgia's 22 counties with majority black populations still have only whites on their county commissions, there also have been a handful of black victories in tiny, rural communities which have black majorities.

The small towns of Greenville, Walthour, Riceboro, Harrison, Wadley and Whitesburg have black mayors. Wadley and Whitesburg elected their first black mayors within the last week.

B.A. Johnson, an elementary school principal who won the Wadley race, traces his victory to passage of the Voting Rights Act 15 years ago. Before that, he said, blacks faced literacy tests given by whites "and we didn't have a whole lot of blacks we were sure could pass that."

Johnson said he and other blacks started a voter registration drive when the literacy test was ruled out by Congress in 1965. "We have workers that we pay $1.25 a head to bring people in to register," he said. "A lot of people make some spare change that way."

There were 70 blacks registered to vote in Wadley in 1965. Now there are 710 blacks registered, the new mayor said.

KEEPING THE PROCESS ALIVE

David Walbert, a professor at Emory University's School of Law who has taken several voting rights cases to court, said he sees the Voting Rights Act at least "keeping the political process alive" in the Deep South.

"The situation is infinitely better than it used to be," he said. "At least people are yelling at each other."

Sherrill Marcus, director of the Atlanta-based Voter Education Project, is not quite as optimistic. He sees the vote as the "most powerful mechanism black folks have for influence in this country" but also notes that electoral victories are still far fewer than black population totals would lead him to expect. They "continue to lack the resources and sophistication to compete," Marcus said.

Former Voter Education Project Director John Lewis was in the front line of the tense Selma march which urged passage of the Voting Rights Act of 1965, and for years headed voting registration drives around the South. Several years ago, he ran for Congress and lost. The experience has placed him among the optimistic.

"There still is an incapacity on the part of the black population to deal with some of the problems in the small towns. We need more voter education there," Lewis said recently, but he said the Voting Rights Act is "the lifeblood of black political progress."

Lewis is expected to be among those lobbying for renewal of the Voting Rights Act next year. "If you don't have anything like it, there's a real danger of slipping back," he said.

Additional Material Submitted by James Elyburn

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

GREENWOOD DIVISION

ORIGINAL FILED

APR 17 1990

MILLER C. FUSTER, JR., CLERK
U. S. DISTRICT COURT

Thomas C. McCain, Ernest Williams and William Spencer, Individually and on behalf of all those similarly situated,	
Plaintiffs,	
vs	Civil Action No. 74-281
Charles E. Lybrand, Gene Huiet, Henry M. Herlong, Roy A. Harling, and W. T. Timmerman, Individually and as members of the County Council of Edgefield County; Norman Dorn, John S. Edwards and Richard A. Beals, Individually and as members of the Board of Election Commissioners of Edgefield County, S. C.; and J. M. Pendarvis, Individually and as President of the Executive Committee of the Democratic Party of Edgefield County,	ORDER
Defendants.	

This action challenges the method by which members of the Edgefield County Council are elected. Plaintiffs are certain black, adult citizens of Edgefield County and allege that the present method of election violates the one man - one vote principle of Wesberry v. Sanders, 376 U.S. 1 (1964), and that such system also dilutes the voting strength of the black citizens of Edgefield County in violation of the principles set forth in Whitcomb v. Chavis, 403 U.S. 124 (1971), and White v. Regester, 412 U.S. 755 (1973).

RLC #1.

The defendants are the five members of the Edgefield County Council, the three members of the Edgefield County Board of Election Commissioners and the president of the executive committee of the Edgefield County Democratic Party. Each defendant is sued individually and in his official capacity.

The complaint raises two issues. The first alleges that the present apportionment of the Edgefield County Council dilutes the relative strength of the voters living in Districts One and Three to such an extent as to violate the rights of plaintiffs, and other voters similarly situated, under the First and Fourteenth Amendments to the Constitution of the United States.

The second claim asserts the present apportionment of Edgefield County Council, including holding elections at-large, dilutes the relative strength of the class of black voters of Edgefield County in violation of their rights and the rights of other blacks similarly situated guaranteed by the First, Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States.

The complaint prays for a declaratory judgment that the Edgefield County plan violates the plaintiffs' constitutional rights; for an injunction prohibiting the defendants from holding further elections under the plan; and for an Order requiring Edgefield County Council to reapportion itself in a constitutional manner.

Defendants deny that the Edgefield County Council is unconstitutionally composed or elected and asks that the complaint be dismissed.

On May 16, 1974, the Court[1] granted a motion for summary judgment by the plaintiffs holding that because of the unequal apportion of certain of the districts within the county that the one man - one vote principle had been violated. On appeal this matter was heard and decided with Lytle v. Commissioners Election of Union County, 509 F.2d 1049 (4th Cir. 1974). The Circuit Court found that the Edgefield County plan did not have such a variance or disparity in population among the districts as to require the deletion on constitutional grounds of the resident requirements

[1] Honorable Sol Blatt, Jr.

imposed by the statute. Page 1054. Just prior to the trial of this cause this Court granted defendants' motion for summary judgment based upon the finding of the Appellate Court which states:

> We are of the opinion that the Edgefield County plan, as presently provided by statute, represents a proper balancing of interest and without such population variances among the districts as to require the deletion on constitutional grounds of the residence requirements imposed by the statute under attack. There is not the wide disparity in population among the districts as was the case in Union County. It is not obvious that a minority, either in numbers or in territorial or economical interest, can dominate the Board. The several districts are of sufficient size and numbers that a residence requirement does not appear to be an irrational method of achieving a form of county government, elected by all voters of the county but, through its residence requirement, assuming some attention to territorial interest. We conclude, therefore, that the District Court was in error in invalidating the statutory election procedure for the members of the Edgefield County Board.
> 509 F.2d at 1054

The issue remaining is whether the apportionment of the Edgefield County Council, which includes at-large election of the council members and requires that each of the five members of council reside in a separate residency district, dilutes the voting strength of the black citizens of Edgefield County in violation of their constitutional right.

RLC #3.

After extensive pretrial discovery this matter was tried before the Court on November 24 and 25, 1975. Thereafter extensive briefs and proposed findings of fact and conclusions of law were submitted by the parties. The matter was then delayed a long time because the Court was advised the South Carolina Legislature would adopt a new plan for Edgefield County After considering the testimony and over 100 exhibits, as well as studying the applicable law, the Court makes the following findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure.

FINDINGS OF FACT

1. That the plaintiffs are black citizens of Edgefield County, South Carolina. They are duly registered to vote in that county. Plaintiff McCain lives in District Two of Edgefield County, plaintiff Williams lives in District Three and plaintiff Sepencer lives in District One.

2. That the defendants Charles E. Lybrand, Gene Huiet, Henry M. Herlong, Roy A. Harling, and W. T. Timmerman are or were at the time this action was commenced the duly elected and acting members of the County Council of Edgefield.

3. That Norman Dorn, John S. Edwards and Richard A. Beals are or were at the time this action was commenced the acting members of the Board of Election Commissioners of Edgefield County.

4. That J. M. Pendarvis is or was at the time this action was commenced the President of the Executive Committee of the Democratic Party of Edgefield County.

5. That prior to 1966 the county government of Edgefield County consisted of a Board of County Commissioners which was composed of a county supervisor, elected at large in the county, and two commissioners, who were appointed by the governor upon recommendation of the County Legislative Delegation. These two commissioners ran at large for the office and the winners were recommended by the County Delegation to the Governor for appointment. The supervisor had general jurisdiction in the county over roads, bridges, ferries and paupers and in matters relating to taxes, disbursement of public funds for county purposes and in other matters necessary for the internal improvement and local concerns of the county. This County Board of Commissioners did not have power to tax, incur bonded indebtedness, or appoint members of county boards, commissions and agencies or the right of eminent domain nor the right to prescribe procedures for budgeting and accounting. These aforementioned powers belong to the local legislative delegation which

at that time consisted of one senator and one or more members of the House of Representatives, all of whom were residents of Edgefield County. These elected officials exercised their powers through the enactment of local bills in the General Assembly.

6. Prior to 1966, the state senator from Edgefield County and the members of the House of Representatives were elected at-large by the voters of Edgefield County. In that year O'Shields v. McNair, 254 F.Supp. 708 (D.C.S.C. 1966) required the reapportionment of the State Senate and it became obvious that Edgefield County with such a small population would probably lose its resident senator. Therefore, on June 1, 1966 Act No. 1,104 of 1966 was passed creating Edgefield County Council, which had three members and was elected from the county at-large from each of three residency districts set forth in the Act. Section 4 of the Act vested in Council the power to recommend appointments with the approval of the Edgefield County members of the House of Representatives and the powers of Council were set forth and included the rights: to exercise the powers of eminent domain; to make apportionments and levy taxes, to incur indebtedness, to issue bonds, to order the levy and execution of ad valorem taxes; to prescribe methods for accounting for county offices and departments and supervise and regulate the various departments of the county.

7. By Act No. 521 of 1971 the number of members of county council was increased to five and the residency districts were also increased from three to five.[2]

8. Prior to 1966 county governments in South Carolina had been controlled by the members of the General Assembly and particularly the state senator. Since local acts, "known as Supply Bills" were required to be passed each year to levy taxes and appropriate monies for the operation of the counties, and since these bills required passage by both the House of Representativ and the State Senate, the state senator exercised great control (actually a veto) over the operation of his county. The purpose

[2] These five members are elected for four-year terms at staggered two-year intervals.

of Act 1104 of 1966 was to create a strong county government with proper representation from the urban and rural areas. By requiring the candidates for county council to run at-large rather that in single member districts, it was hoped that council members would be responsive to all voters in the county and reduce factionalism or sectionalism. By requiring the candidates to reside in a certain district, one area of the county could not dominate council membership. The at-large feature of the election process was in keeping with the prior election plan for county commissioners and almost all other county officers in South Carolina.

8. The increase in membership from three to five passed in 1971 was made as an effort to provide wider representation on council and to provide rural areas with a greater voice in county government.

9. There was no evidence that either Act 1104 creating county council or Act 521 expanding its membership were enacted for the purpose of diluting black voting strength. But this does not mean that they do not have the effect. The residence districts established by both 1104 and 521 are based upon voting precinct lines of long standing and which anti-date the creation of county council.

10. The South Carolina Attorney General submitted to the Attorney General of the United States the changes made under Act No. 521. After review pursuant to Section 5 of the Voting Rights Act of 1965 the Attorney General of the United States on November 24, 1971 informed South Carolina Attorney General that he interposed no objection to the implementation of Act No. 521.

11. At the time of the Attorney General's letter (November 24, 1971) South Carolina had a "full slate" voting law. (§23-357 S.C. Code 1962). This is no longer the law[3] of South Carolina and minorities, both of race and of party, can increase their effective voting strength by "single-shot" voting, rather

[3] This change resulted from a black challenge in Stevenson v. West, C.A. 72-45 (D.S.C. unreported case 4/7/72). S.C. Republicans had failed in their suit eight years earlier. Boineau v. Thornton, 235 F.Supp. 175 (D.S.C. 1964), aff'd 379 U.S. 15 (1964).

than being required to vote for candidates equal in number to the offices to be filled.

12. As of the 1970 census Edgefield County's population was 8,104 black and 7,586 white. The total voting age population was 9,364, of which 4,167 or 44.5% were black and 5,195 or 55.5% were white. Although blacks make up 51.6% of the population, they comprise only 44.5% of the voting age population, obviously due to the age structure of the black and white populations of the county.

13. As of July 31, 1975 there were 5,685 registered voters in Edgefield County, 2,254 being black and 3,429 white. Therefore, the black citizens comprise 51.6% of the total population, 44.5% of the voting age population and 39.6% of the registered voters. For whites these figures are 48.3%, 55.5% and 60.3% respectively. These figures reflect that 54% of the black voting population of the county is currently registered to vote.

14. Of the five council districts[4] in Edgefield County two contain a majority of black registered voters. In District Two blacks make up 61.8% of the total registered voters and 52.3% in District Five. The black percentage in Districts One, Three and Four are 30.8%, 36% and 18% respectively.

15. Of the 46 counties in South Carolina, Edgefield ranks 37th in size with 482 square miles. According to the 1970 census Edgefield County is 41st in total population and 37th in population per square mile with 32.6 persons per square mile. The rural population is 10,390 or 66.2% and the urban population is 5,302. The rural population is 54.3% black and a majority of these persons are located in the northern and eastern parts of the county.

16. Black citizens of Edgefield County now register to vote on an equal basis with whites. As was true in many other areas of the south, it was quite difficult, and often impossible,

[4] The residence districts follow precinct lines, as follows

District 1: Johnston I, Johnston II, Long Branch
District 2: Trenton, Central, Bacon
District 3: Edgefield I, Edgefield II
District 4: Merriweather, Colliers, Cleveland, Kendall
District 5: Red Hill, Rock Hill, Moss, Meeting Street, Pleasant Lane

to register to vote until approximately 30 years ago. At the time of the passage of the Voting Rights Act in 1965 less than 20% of the voting age blacks of Edgefield County were registered.[5]

17. The Democratic Party has always dominated government in Edgefield County. Until the past 15 years the primary of this party was the only meaningful election anywhere in the state. Blacks were excluded from participation in the Democratic primaries until Elmore v. Rice, 72 F.Supp. 516 (E.D.S.C. 1947) aff'd, 165 F.2d 387 (4th Cir. 1948). But even after this landmark decision blacks in Edgefield County found it very difficult to register and threats were made against some blacks who did register.

18. No black has ever received a Democratic nomination or been elected to public office in a contested election in Edgefield.[6]

19. Blacks now participate in the affairs of the Democratic Party and this participation has grown in recent years. Blacks have participated within the organization of the Democratic Party and in the selection of its officials. They have also participated in organizing the precincts. At the 1974 County Convention for the Democratic Party approximately one-third of those in attendance were black. Of the 15 delegates elected by the County Convention to the State Convention of the Democratic Party, four were black. The Edgefield Democratic Party has a black vice-chairman and the alternate committeeman to the State Executive Committee is also a black.

20. Until 1970, no black had ever served as a precinct election official, and since that year the number of blacks appointed to serve has been negligible, although the percentage of registered voters who were black ranged from 33% in 1970 to

---

[5]

	W	B
VAP	4,103	3,764
Registration	3,950	650
%	96.3%	17.3%

[United States Commission on Civil Rights, Political Participation 252-53 (1968)]

[6] A black was appointed to a vacancy on the County School Board and has been unopposed in subsequent elections.

40% in 1974. The figures, arranged separately for primaries, general elections and a school board election, are as follows:

Primaries	#W	#B	%B
1970	68	4	5.5%
1972	69	4	5.4%
1974	55	9	10.8%
All primaries	192	17	8.1%
General Elections			
1970	87	7	7.4%
1971	50	1	1.9%
1972	86	13	13.2%
1974	58	12	17.1%
All General Elections	281	33	15.4%
School Board Election			
1974	34	4	10.5%
Total (all elections)	507	54	9.6%

Elections conducted in 1970-1974 are as follows:

1970: School Board, Primary, General
1971: Special General
1972: Primary, General
1974: School Board, Primary (including runoff), General

By analyzing these elections, it was possible to get a clear picture of how elections take place in Edgefield County. The Court's overall finding is that blacks were virtually totally excluded up to 1970, and that since that time they have progressed to minimal tokenism.

21. The race of those appointed to serve as precinct election officials has traditionally been regarded as an important barometer of the degree of minority participation in the voting process. In Edgefield County, precinct workers are appointed not by precinct officials but by county officials -- the County Democratic Executive Committee for primary workers, and the County Election Commission for general election workers. Evidence concerning the past few years' elections in Edgefield County showed exclusion of blacks (by officials exercising state action) in a critical part of the election process.

22. Of the 17 precincts in Edgefield County, fully 8 have never had a black person serve at the polls, at any of the eight elections conducted since 1970, primary, general, or school board. These precincts are shown below, with the total number of white official who have served during this period:

	W	B
Bacon	27	0
Central	27	0
Cleveland	28	0
Colliers	30	0
Kendall	30	0
Long Branch	27	0
Moss	26	0
Red Hill	30	0

23. Even among precincts whose voters are predominately black, county officials and county Democratic Party officials have refused to appoint any significant number of black precinct workers The number of precinct workers, by race, for all elections since 1970 is shown below for the 5 precincts which are majority black:

	% B Reg.	#W	#B	% B
Johnson I	(51%)	38	5	11.6%
Meeting St.	(55%)	28	1	3.4%
Pleasant Lane	(68%)	24	2	7.6%
Rock Hill	(80%)	28	1 *6	3.4%
Trenton	(66%)	35	10	22.2%
Total		153	19	11.5%

24. The evidence also showed that in each election certain officials are given greater responsibility [Edwards testimony] and work and are paid for more than one day. Records for the 1971 and 1974 elections showed 4 whites and no blacks in these positions. (During the 1972 election some precincts worked all workers for two days, but here again 22 whites worked more than the minimum number of days, compared to 0 blacks.)

25. Evidence was also presented concerning the race of the precinct Democratic Committee members. The number of such precinct officials, by race, for 1970 and 1974, is shown below:

	W	B	% B
1970 (12 precincts reported)	34	1	2.8%
1974 (17 precincts)	43	4	8.5%
Total	77	5	6.1%

[6] Five of the 10 black workers appointed at Trenton (McCain's precinct) have come in the two elections since black voters captured control of the precinct during the 1974 precinct organization meeting. Even in both those elections, a majority of the workers appointed were white.

26. The evidence established that voters in Edgefield County, when confronted with a race between black and white candidates, vote along racial lines. This behavior pattern is very clear as to white voters, many of whom will not vote for a black candidate. This fact is evident both from a visual examination of election results and from the statistical analysis of those results done by plaintiffs' expert witness, Dr. John Suich.

27. Four black candidates have run for office in Edgefield County, 1970-74, two for school board in 1970 (Lanham and Senior), one for County Council in 1974 (McCain), and one for South Carolina House of Representatives in 1974 (Brightharp). One of these candidates, Brightharp, also was in a runoff.

28. Examination of the election results shows an extraordinarily high correlation in every election between the votes received by a black candidate and the racial composition of the precinct. This is true for all precincts, but is especially clear in the precincts which are virtually all white. In these precincts, in each election, the votes cast for black candidates ranged from zero to just a handful:

1970 School Board Election

	1970 % B Reg.	W	B	W	B
Colliers	8%	66	2	68	0
Long Branch	10%	30	5	30	5
Red Hill	1%	92	0	92	0

		(House)		(County Council)		(House Runo.	
	1974 % B Reg.	W	B	W	B	W	B
Cleveland	5%	45	0	37	4	49	4
Colliers	4%	81	2	78	6	87	4
Long Branch	12%	45	3	43	7	51	5
Red Hill	1%	66	0	53	9	67	5

29. The Edgefield County pattern of racial bloc voting was confirmed by plaintiffs' expert witness, Dr. John Suich, who testified that the statistical correlation between the race of the voter and the race of the candidate was extraordinarily high,

in the range of 0.90 (on a scale of -1.00 to +1.00) for each election in which a black candidate has run. Dr. Suich testified that the correlation was not just statistically significant but overwhelming, and the Court agrees. The correlation between race and voting pattern went up, not down, from 1970 to 1974.

30. The testimony also showed that in both 1970 and 1974, each of the two black candidates received almost identical numbers of votes in each precinct. This was true for each precinct,but again was especially marked for those precincts which are virtually all white. In 1970, for example, the two black candidates lost to the two white candidates by identical votes in the precincts of Central (43-6), Cleveland (51-1), Kendall (66-18), Long Branch (30-5), and Red Hill (92-0). In six more precincts, the difference between the two blacks (and, correspondingly, between the two whites) was three votes or less. In 1974, the two black candidates lost in Central by idential votes of 35-14, and the votes in eight other precincts varied by eight votes or less.

31. The nearly identical votes cast for the two black candidates in 1974 were the more striking because of the evidence about the differences between them. T. C. McCain has long been known as an "activist" and has been engaged in many controversies with county officials. George Brightharp has not been engaged in controversial issues and has had a relatively close relationship with county officials and other white people. The evidence shows that these differences were wholly outweighed by the one common characteristic shared by McCain and Brightharp--their race.

32. The testimony of plaintiffs' witness Brightharp and defendants' witness H. Sam Crouch shows that blacks do not have equal access to the election process and the present system dilutes their strength. Brightharp testified that he had decided to run for office in the hope that voters would decide on the basis of issues or the merits of the candidates and in the hope that

in the range of 0.90 (on a scale of -1.00 to +1.00) for each election in which a black candidate has run. Dr. Suich testified that the correlation was not just statistically significant but overwhelming, and the Court agrees. The correlation between race and voting pattern went up, not down, from 1970 to 1974.

30. The testimony also showed that in both 1970 and 1974, each of the two black candidates received almost identical numbers of votes in each precinct. This was true for each precinct,but again was especially marked for those precincts which are virtually all white. In 1970, for example, the two black candidates lost to the two white candidates by identical votes in the precincts of Central (43-6), Cleveland (51-1), Kendall (66-18), Long Branch (30-5), and Red Hill (92-0). In six more precincts, the difference between the two blacks (and, correspondingly, between the two whites) was three votes or less. In 1974, the two black candidates lost in Central by idential votes of 35-14, and the votes in eight other precincts varied by eight votes or less.

31. The nearly identical votes cast for the two black candidates in 1974 were the more striking because of the evidence about the differences between them. T. C. McCain has long been known as an "activist" and has been engaged in many controversies with county officials. George Brightharp has not been engaged in controversial issues and has had a relatively close relationship with county officials and other white people. The evidence shows that these differences were wholly outweighed by the one common characteristic shared by McCain and Brightharp--their race.

32. The testimony of plaintiffs' witness Brightharp and defendants' witness H. Sam Crouch shows that blacks do not have equal access to the election process and the present system dilutes their strength. Brightharp testified that he had decided to run for office in the hope that voters would decide on the basis of issues or the merits of the candidates and in the hope that

racial politics was a thing of the past. After analyzing the election and the returns, he concluded, sadly, that racial politics is ever present in Edgefield County, and that because of it, blacks are not able to participate fairly as Edgefield County voters.

Mr. Crouch, Secretary of the Edgefield County Democratic Party, testified that blacks do not participate as equals in the electoral process of Edgefield County, and that the present system is the legacy of a long history of racial segregation. He said that there has been some improvement but it must come slowly, and indicated that no greater speed would be possible voluntarily -- that it would take a court order.

33. Juries. Blacks were historically excluded from jury service in Edgefield County. As late as 1968 and 1970, the grand jury had no blacks at all, while the trial jury venires in those years had few blacks. It was not until suit was brought in 1971 that the jury list was reconstituted to include blacks fairly. Bright v. Thurmond, CA No. 71-459 (D.S.C. 1971).

34. Chain Gang. The Edgefield County Council historically kept the county chain gang segregated by race, until a suit was brought in 1971. Carracter v. Morgan, CA No. 71-314 (D.S.C. Nov. 17, 1971); 491 F.2d 458 (4th Cir. 1973).

35. Blacks have been excluded from county employment by the County Council, even up to the present. No current black employee began service before 1971. Until the very eve of trial in this case, black employment was negligible. It was only when trial was about to begin that the County suddenly began hiring blacks in any numbers.

	W	B
As of 9/1/75	33	4
From 9/1/75 to 11/12/75	8	11

In addition, blacks are heavily concentrated at the lower wage levels. Of the last minute hires, none of the 11 blacks earns more than $5,460, while none of the 6 white males earns less

than that figure. (Two white females earn less than $5,460. For all county full-time employees, the salary levels are as follows:

	WM	WF	BM	BF
Less than $5,460	0	7	1	4
$5,460	2	0	7	0
More than $5,460	22	6	2	0

36. Blacks have been excluded by the County Council in appointments to country boards and commission. The date of trial membership of boards and commissions appointed by the County Council is as follows:

	W	B
Fire Study Committee	7	0
Human Relations Committee	10	9
Emergency Ambulance Service Board	3	0
Airport Commission	5	0
Planning Board	7	2
Tech District	1	0
Board of Tax Assessors	5	0
Tax Board of Appeals	3	0
Center for Mental Health Services	1	0
Health Professional Scholarship Board	5	0
Registration Board	3	2
Mini-Bottle Commission	6	1
Alcohol & Drug Abuse Commission	6	1
Hospital Board	7	0
Water & Sewer Authority Board	4	1
Migrant Health Program	9	0
Department of Social Services	3	2
Upper Savannah Regional Planning Board	3	1
Senior Citizens Council	9	6
Total	95	25
Total excluding Human Relations Commission and Senior Citizens Council	76	10

37. The Human Relations Committee was described by two witnesses, T. C. McCain and Willie Bright. McCain testified that he had been instrumental in persuading the County Council to create such a committee, and that the Council had set a condition that there be a white majority and white chairman. Bright a member of the Committee, confirmed McCain's account of the Committee's origin, and testified that after a few meetings, the chairman (white) resigned, and was replaced by another white. After one more meeting, the new chairman never called another, and the Committee had become defunct. When asked on cross-examination why the black members had not called a meeting them-

selves, Bright testified that the lifelong traditions of Edgefield County and the conditions under which the Committee had been set up did not allow for any such exception to white dominance.

38. The public schools of Edgefield County were historically segregated by race. School officials' first response to the ban on school segregation did not come until well after the 1954 Brown v. Board decision, and was a "freedom of choice" plan which resulted in fewer than 3% of the black students attending school with white students. It was not until September 1970 that any appreciable amount of desegregation took place, under a plan finally approved by the U. S. Department of HEW. After formal desegregation began to take place there was an effort by school trustees to maintain the racially discriminatory character of the schools. Under the school board's 1970 plan, Strom Thurmond High, the formerly white school, was designated the high school for all students. It kept "Confederate Rebel," and "Dixie" as the school nickname and school song, and kept the use of the Confederate Flag as the school symbol at athletic and other events. Black citizens complained that Strom Thurmond High was being maintained as an essentially segregated school, and that the school symbols were badges of slavery, white racism and were degrading indicia of second-class citizenship for blacks. The school board promptly resolved that "the existing traditions now in force in all schools of the system will continue," and secured an ex parte injunction against blacks' gathering or demonstrating against the school policies. Blacks affected by the injunction were never able to obtain a hearing on their motion to dissolve the ex parte injunction, which led this Court to vacate it. McCain v. Abel, CA No. 70-1057 (D.S.C. 19

39. Blacks in Edgefield County have a much lower socio-economic status than do whites. Blacks as a group have smaller incomes, less education and fewer employment opportunities

CONCLUSIONS OF LAW

1. The Court has jurisdiction pursuant to 28 U.S.C. 1331(a), 1331(3) and (4) and 2201. Also pursuant to Rule 23 of the Federal Rules of Civil Procedure the Court has the power to consider an act upon application for establishing a class action.

2. The Court finds that the necessary requirements of Rule 23 have been met for the maintenance of the class action since the class is so numerous that the joinder of all members is impractical, there are questions of law and fact common to the class, claims or defenses of the representative parties are typical of the claims or defenses of the class and representati parties will fairly and adequately protect the interest of the class. The class is composed of all black citizens who are residents of Edgefield County, South Carolina.

3. This action is brought for declaratory and injunctive relief alleging deprivation under color of law, statute, ordinance, regulation, custom or usage of certain rights and privileges secured to the plaintiffs by the Constitution and laws of the United States and such suits is authorized by 42 U.S.C. §1983. The plaintiffs claim constitutional deprivation of rights secured by the First, Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States.

4. Since the plaintiffs have made a constitutional attack on the form of government now in use in Edgefield County, South Carolina and the method of electing the members of County Council and the residential requirements of these members, the plaintiffs have the burden of proof and must establish their claim by the greater weight or preponderance of the evidence in establishing that the political processes leading to the nomination and election of candidates to County Council are not equally open to participation by blacks and that members of the class have less opportunity than do white residents of the county to participate in the political process and to elect representative

of their choice. White v. Regester, 402 U.S. 755 (1973). White also holds that it is not enough that plaintiff show that a racial group allegedly discriminated against has not had legislative seats in proportion to its voting potential. It must prove that the election process is not equally open to participation by the minority group. This been proved in the present case.

5. The Supreme Court in White v. Regester identified several factors indicative of denial of access to political process. Among these are:

a. A history of official racial discrimination which touched the right of the minority to register and vote and participate in the democratic process;

b. An historical pattern of a disproportionately low number of the groups' members being elected to the legislative body.

c. A lack of responsiveness on the part of elected officials to the needs of a minority community;

d. A depressed socio-economic status which makes participation in community processes difficult;

e. Election rules or party rules requiring majority vote as a prerequisite to nomination.

Other indicia were added by the Fifth Circuit in Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973). These include.

a. Poll taxes

b. Literacy test

c. Property ownership requirements for running for offic

d. Disproportionate education, employment, income levels and living conditions.;

e. Bloc voting - polarized voting by race

f. Segregation principles adopted by political parties;

g. Requirement for majority vote to be elected;

h. Prohibition against single-shot voting;

i. Systematic exclusion from juries, and

j. Levy of taxes to maintain a dual school system.

While many of these restrictions have been removed i.e. single-shot voting now allowed, no poll tax, no literacy test, unified school system, jury selection open to all registered voters, there is still a long history of racial discrimination in all areas of life. There is bloc voting by the whites on a scale that this Court has never before observed and all advances made by the blacks have been under some type of court order.

Participation in the election process does not mean simply the elimination of legal, formal or official barriers to black participation. The standard is whether the election system as it operates in Edgefield County tends to make it more difficult for blacks to participate with full effectiveness in the election process and to have their votes fully effective and equal to those of whites. Black voters have no right to elect any particular candidate or number of candidates, but the law requires that black voters and black candidates have a fair chance of being successful in elections, and the record in this case definitely supports the proposition and finding that they do not have this chance in Edgefield County.

If black candidates lose in the normal give-and-take of the political arena then the courts may not interfere. And under no theory of the law can a court direct a white to vote for a black or a black to vote for a white. However, if there is proof, and there is ample proof in this case, that the black candidates tend to lose not on their merits but solely because of their race, then the courts can only find that the black voting strength has been diluted under the system and declare the same unconstitutional.

Black participation in Edgefield County has been merely tokenism, and even this has been on a very small scale. Black workers at the polling places are appointed by the white controlled democratic party and blacks have been poorly represented even in

predominately black precincts as the above findings of fact reflect.

There can be no other explanation for the amazing votes reflected in Findings of Fact 28-30 except that whites absolutely refuse to vote for a black.

The County Council has not been responsive to the needs of black citizens, even though they make up a majority of the population of the county. The small number of blacks employed by the county, their pay scale, the small number of blacks appointed to various county committees and the nature, duties and responsibilities of these committees are stark proof of official neglect and unconcern on the part of the Edgefield County Council. There are 120 positions on various boards and commissions appointed by the present County Council. Of these 25 are held by blacks, with 9 of the positions being on the now non-existent human relations committee and 6 of the remaining 16 being on the senior citizens counsel. Of the 19 different boards and commissions black serve on only 9.

No black has been elected to County Council, the state legislature or any countywide office. The black serving on the school board obviously serves as a token and at the pleasure of the white power structure.

Normally the majority vote requirement and run-off elections to insure a majority do not dilute black voting strength. but in combination with all the other evidences of discrimination, bloc voting and disregard for needs of black citizens the majority vote requirement, run-off elections and even staggered terms of the members of council tend to dilute the voting strength of the blacks.

The present at-large voting plan is aggravated by the fact that there is only one party politics in Edgefield County, because there is no competition between parties and no need for the existing party to seek black support.

All these factors when coupled with the strong history and tradition of official segregation and discrimination draws the Court to the inevitable conclusion that the rights of the blacks to due process and equal protection of the laws in connection with their voting rights have been and continue to be constitutionally infringed and the present system must be changed.

IT IS, THEREFORE, ORDERED that judgment be entered in favor of the plaintiffs and that the defendants are hereby enjoined from holding any further elections for Edgefield County Council until a new and constitutional method of electing members to County Council has been adopted pursuant to applicable state law.

IT IS FURTHER ORDERED that the Court shall maintain jurisdiction of this case during the interim and while the plan is being adopted in accordance with the provisions hereof.

AND IT IS SO ORDERED.

ROBERT F. CHAPMAN
UNITED STATES DISTRICT JUDGE

April 17th, 1980
Columbia, South Carolina

TRUE COPY:
TEST:
MILLER C. FOSTER, JR., CLERK
BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION

Thomas C. McCain, et al.,
Plaintiff,
vs
Charles E. Lybrand, et al,
Defendant.

Civil Action No. 74-281
O R D E R

This matter is before the Court as a result of a motion filed by defendant pursuant to Rules 59(e) and 60(b) asking the Court to alter, amend, or vacate its Order and Judgment entered April 17, 1980, and April 22, 1980, respectively. This Court's Order of April 17 invalidated and declared unconstitutional the method by which members of the Edgefield County Council are elected and the judgment enjoined the defendants from holding any elections pursuant to the present plan.

The present motion to alter, amend or vacate is made upon the authority of a decision of the United States Supreme Court issued April 22, 1980, City of Mobile, Alabama v. Bolden, et _____ U. S. _____, No. 77-1844, decided April 22, 1980. The Mobile case decided that an action by the State that is racially neutral on its face violates the Fifteenth Amendment only if motivated by discriminatory purpose. The Court went on to hold that to prove such discriminatory purpose it is not enough to show that a minority group has not elected representatives in proportion to its number, but must prove that the disputed plan was "conceived or operated as a purposeful device to further racial discrimination."

In this Court's Order of April 17, 1980 it relied heavily upon the standard set forth by the Fifth Circuit in

Zimmer v. McKeithen, 485 F.2d 1297. In Mobile the Court referring to Zimmer stated:

> That case, coming before Washington v. Davis, 426 U.S. 229, was quite evidently decided upon the misunderstanding that it is not necessary to show a discriminatory purpose in order to prove a violation of the Equal Protection Clause - that proof of a discriminatory effect was sufficient.

The Mobile court pointed out that there had been a finding in the Mobile case that no Negro had ever been elected to City Commission because of the pervasiveness of racially polarized voting, and the trial court further found that city officials had not been as responsive to the interest of Negroes as to whites and concluded that the political processes in Mobile were not equally open to blacks, even though they registered and voted without an appearance. The Court further found that a proof of an "aggregate" of the Zimmer factors does not prove discriminatory intent or unconstitutional discriminatory purpose.

As to past discrimination the Court stated:

> But past discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful. The ultimate question remains whether a discriminatory intent has been proved in a given case.

As to the at-large electoral system and the majority vote requirement, the Court stated:

> But those features of that electoral system, such as the majority vote requirement, tend naturally to disadvantage any voting minority, as we noted in White v. Regester, supra. They are far from proof that the at-large electoral scheme represents purposeful discrimination against Negro voters.

A careful reading of Mobile and a reconsideration of the evidence in the present Edgefield County case convinced the Court that the plaintiffs have not proved that the voting plan for election of members of County Council in Edgefield County was either conceived or is operated as a purposeful device to further racial discrimination nor was it intended to invidiously

discriminate against blacks in violation of the Equal Protection Clause. Therefore, the Court's Order entered April 17, 1980 and the judgment entered thereon entered April 22, 1980 must be vacated. Since circumstances have changed since the evidence was originally taken in this case the parties may wish to submit additional evidence on the point that is now the crux of the case - whether the at-large system was conceived or operated as a purposeful device to further racial discrimination.

The Court will allow additional evidence to be submitted on this point and schedules the matter for a further hearing and the taking of any necessary testimony on Thursday, September 4, 1980 at 10:00 a.m. in the Federal Courthouse in Columbia, South Carolina.

AND IT IS SO ORDERED.

Robert F. Chapman
ROBERT F. CHAPMAN
UNITED STATES DISTRICT JUDGE

August 8th, 1980
Columbia, South Carolina

TRUE COPY:
TEST:
MILLER C. FOSTER, JR., CLERK
Mary Logan Phipps
BY: DEPUTY CLERK

All these factors when coupled with the strong history and tradition of official segregation and discrimination draws the Court to the inevitable conclusion that the rights of the blacks to due process and equal protection of the laws in connection with their voting rights have been and continue to be constitutionally infringed and the present system must be changed.

IT IS, THEREFORE, ORDERED that judgment be entered in favor of the plaintiffs and that the defendants are hereby enjoined from holding any further elections for Edgefield County Council until a new and constitutional method of electing members to County Council has been adopted pursuant to applicable state law.

IT IS FURTHER ORDERED that the Court shall maintain jurisdiction of this case during the interim and while the plan is being adopted in accordance with the provisions hereof.

AND IT IS SO ORDERED.

ROBERT F. CHAPMAN
UNITED STATES DISTRICT JUDGE

April 17th, 1980
Columbia, South Carolina

TRUE COPY:
TEST:
MILLER C. FOSTER, JR., CLERK
BY DEPUTY CLERK

ADDITIONAL MATERIAL SUBMITTED BY ROBERT BRINSON

THE Public Interest

NUMBER 55, SPRING 1979

The odd evolution of the Voting Rights Act

ABIGAIL M. THERNSTROM

THE Voting Rights Act of 1965 ushered in a revolution. In 1964 James Chaney, Andrew Goodman, and Michael Schwerner were murdered while participating in a voter-registration drive in Neshoba County, Mississippi. In that year less than 7 percent of Mississippi's adult blacks were registered to vote. Within three years black registration approached 60 percent. Ten years after the murders, there were 191 black elected officials in Mississippi alone; prior to the passage of the act, there had been fewer than 100 in the entire South.

The Voting Rights Act was the fourth modern attempt at ensuring the rights of disenfranchised Southern blacks, but the first effective one. The Civil Rights Acts of 1957, 1960, and 1964 had done little more than allow county-by-county injunctions against prejudiced registrars. But such case-by-case adjudication, requiring lengthy litigation in piecemeal fashion, had proven largely ineffective. There were too many recalcitrant registrars, too many indifferent judges, too many uninformed and illiterate blacks. Nor had the heroic efforts of civil rights activists in the early 1960's had much impact. Student Non-violent Coordinating Committee volunteers working in LeFlore County, Mississippi had enlarged the ranks of black voters by only 300. Yet within two months of the initiation of Federal intervention,

following the passage of the 1965 act, approximately 5,000 blacks were registered in that same county.

Such immediate and massive registration was precisely the purpose of the legislation, but today the simplicity of that aim has been largely forgotten. Success generated a new view of the protection that was afforded blacks and other minorities by the act. And so, as the problem of registration receded, a host of new and startling questions arose. Should a literacy test, even one administered impartially, be considered discriminatory where there has been a history of unequal educational opportunity? Do multimember electoral districts impermissibly dilute the political strength of minorities? Can heavily black cities annex largely white suburbs without violating Federally protected rights? Are constitutional rights infringed when the Justice Department forces a redrawing of district lines in order to achieve maximum minority representation?

Behind these questions lies a radical redefinition of the meaning of political equality for racial and ethnic groups. The traditional concern of civil rights advocates had been access to the ballot. But these questions involve not simply access, but *result*. They assume a Federally guaranteed right to maximum political *effectiveness*. Nowadays local electoral arrangements are expected to conform to Federal executive and judicial guidelines established to maximize the political strength of racial and ethnic minorities, not merely to provide equal electoral opportunity.

From access to results

The Voting Rights Act, then, ushered in a dual revolution: Not only were the names of two million blacks added to the registration rolls, but the definition of enfranchisement changed. The right to vote came to mean the right to equal electoral *result* and maximum political effectiveness.

That no one in 1965 contemplated such a development is indisputable. Equality in the mid-1960's meant equal opportunity, not equal result. Preferential admissions programs were not initiated until the end of the decade. Opportunity in employment did not begin to be measured by the standard of group parity until around 1970. And the use of racial quotas for the purpose of integrating primary and secondary schools was constitutionally sanctioned only in 1971.

In the original Voting Rights Act the emphasis was on equal political opportunity—that is, equal access through securing the ballot. In the Judiciary Committee hearings prior to passage, Attorney

General Katzenbach described the act as "aimed at getting people registered." "Our concern today," he said, "is to enlarge representative government. It is to solicit the consent of all the governed. It is to increase the number of citizens who can vote."

Katzenbach was convinced that black ballots were the key to Southern recognition of other Federally protected rights. As Deputy Attorney General under Kennedy, he had been part of a concerted effort to push civil-rights leaders into focusing on voting rights. Some had complained that Washington was nudging the movement away from massive social change and on to safe ground. But by 1965 that safe ground was widely regarded as the territory the movement had to conquer first.

If the ballot was the key to other rights, the elimination of the literacy test was the means to the ballot. "No matter from what direction one looks at it," V. O. Key had written in 1949, "the Southern literacy test is a fraud and nothing more." It was no less a fraud in 1965. In the 1960's, Southern registrars were observed testing black applicants on such matters as the number of bubbles in a soap bar, the meaning of obscure passages in state constitutions, and the definition of such terms as "habeas corpus." Booker T. Washington had believed that "brains, property, and character" would "settle the question of civil rights," but 80 years after the founding of Tuskeegee Institute blacks with brains, property, and character in the city of Tuskeegee still found themselves unable to demonstrate their literacy. "If a fella makes a mistake on his questionnaire, I'm not gonna discriminate in his favor just because he's got a Ph.D.," the chairman of the Board of Registrars righteously maintained.

What the Voting Rights Act did, then, was to suspend Southern literacy tests—though indirectly. Without naming any states explicitly, the act inferred a statistical link between low voter registration or turnout, literacy tests, and discrimination. By providing for the automatic suspension of all tests wherever there was inadequate political participation, it circumvented the difficult task of attempting to prove discrimination. No state which had either a registration or turnout of less than 50 percent of the voting-age population in the Presidential election of 1964 could employ *any* test or device to screen potential voters.

While the target of the act was clearly the South, in fact the ban on tests wherever there was low registration or turnout affected as well a smattering of counties in such states as Arizona, Hawaii, and Idaho. But at the discretion of the District Court of the District of Columbia coverage by the act could be waived.

Judicial discretion had been considered the bane of previous civil-rights bills. Yet the Voting Rights Act did not shift authority from the judiciary to the executive; it augmented the power of both. But the Southern district courts—described by Katzenbach at the hearings as beyond redemption—lost out. For though disputes involving Federal rights are normally taken to a local district court, cases arising under the Voting Rights Act are almost exclusively under the jurisdiction of the District Court of the District of Columbia. And appeals from its decisions go directly to the Supreme Court. It was not a unique arrangement, but Southerners saw it as an insult to Southern justice. "On what basis," Senator Sam Ervin asked, "can you justify saying, 'Close all the courts in the land except one'?"

Justice Hugo Black was among those who saw in the arrangement the ghost of Reconstruction. He was particularly irked by what was called the "preclearance" provision. Section 4 suspended literacy tests and other "devices" in all states and political subdivisions with a voting registration or turnout of less than 50 percent. The preclearance provision—section 5—reinforced section 4 by forbidding in those same jurisdictions the institution of any new "voting qualification or prerequisite to voting" without the approval of the Attorney General or the D.C. court. As Justice Black described it, states were treated like "conquered territories." "I doubt," he said, "that any of the thirteen colonies would have agreed to our Constitution if they had dreamed that the time would come when they would have to go to a United States Attorney General or a District of Columbia court with hat in hand begging for permission to change their laws."

Nevertheless, the motive behind the provision was clear. Southern states were adept at the fine art of circumvention. Banishing literacy tests, it was feared, might not be sufficient. New devices could be created with the same impact as old. Registration could be blocked anew.

The change in section 5

While section 5 was originally regarded as nothing more than a corollary of section 4—the one banning literacy tests and the other making sure that the effect of that ban stuck—in time the provision took on quite a different meaning. It became the instrument by which the definition of enfranchisement was altered. What was a new "standard, practice, or procedure with respect to voting" that had to be precleared to determine that it was not discriminatory? By 1969 procedural changes covered by the act had come to include

making an office appointive instead of elective, increasing the requirements for an independent to gain a place on the ballot, and, most important, switching from ward to at-large voting. Later decisions added district-line and city-boundary changes. Thus in 1974 the Attorney General determined that a reapportionment plan for Kings County, New York had to be cleared, even though that plan did not in any way constitute an effort to resist the registration of blacks: New York State had a literacy test and King's County was one of three New York counties with voter turnout below 50 percent. But by then the entire notion of anticipating Southern resistance had been long lost, and the provision transformed.

The original conception died largely because Southern resistance was so successfully extinguished. With the passage of the act, the registration of Southern blacks soared. By September 1967 registration in Mississippi had risen from an estimated pre-act figure of around 7 percent of the voting-age population to almost 60 percent. In other states the rise was less spectacular, but still impressive.

In part, Southern resistance to registration never materialized because the act—as originally conceived—was on solid constitutional ground, and the South knew it. The Fifteenth Amendment prohibited the denial of the right to vote on account of race, and Congress had been given the power to enforce that prohibition by appropriate legislation. The Voting Rights Act was an unimpeachable exercise of that undeniable power. More important, registration was difficult to prevent, for the power given both to the Attorney General and to the District Court of the District of Columbia was extraordinary. And so, in a short time section 5 was deprived of its clearest function. Originally intended to forestall devices designed to hinder black registration, it was left without any obvious use.

A new one, however, soon appeared: ensuring electoral effectiveness. In every Southern state black ballots were being counted, yet in many districts they appeared to have little impact. By 1969 that had become the central concern of both the Justice Department and the D.C. District Court.

The end of literacy tests

The emergence of section 5 as a tool for guaranteeing minority groups maximum electoral effectiveness was aided by a district court decision in the important case of *Gaston County v. U.S.* Under section 4 literacy tests had been suspended in all jurisdictions with a voting registration or turnout of less than 50 percent—a suspension

that could be waived if a test were shown to be nondiscriminatory. In 1968 North Carolina's Gaston County brought suit in the D.C. District Court to procure such a waiver. Six years earlier, the county had replaced its traditional oral test with a written one, and had begun a well-publicized process of reregistering all voters. Announcements blanketed both white and black sections of town. The court did not question the test's impartiality.

The Southern setting, of course, made the test suspect. But though the Voting Rights Act was clearly aimed at the South, it did provide for exemptions, and counties such as Gaston should have qualified. The court, however, turned Gaston's petition down. It found the test discriminatory—not in purpose, but in effect. Gaston County had maintained segregated schools until 1965, and, Judge Skelly Wright argued, unequal educational opportunity had resulted in an unequal ability to pass the test. Thus the test penalized blacks for inadequacies imposed by the state.

Although Judge Wright spoke of North Carolina's history of segregation, in fact his logic could be applied to most Northern cities as well. There was no such thing as a racially blind literacy test, Judge Wright effectively ruled. It was a variation on the theme that has since become so familiar: When opportunities have not been equal, meritocratic systems don't work. Gaston had been attempting to administer a test of merit in the context of unequal educational opportunity.

It was a plausible but troubling argument. The Voting Rights Act had assumed that there was a difference between a region that used a literacy test to oppress a racial minority and one that exercised its traditional authority to set standards for voting. It assumed that while race could not be made a qualification, competency could. Judge Wright's reasoning, however, blurred that distinction—or at least dismissed it as worthless in the setting of Gaston.

Judge Wright's opinion had an effect far beyond Gaston County. The interpretation the courts have given to the Voting Rights Act has affected Congressional perception of the act as well. Judge Wright's decision strengthened the hands of those in Congress who favored the abolition of *all* literacy tests. Enlisting Wright's argument, they succeeded in 1970 in amending the act to provide for a nationwide suspension of all literacy tests for a five-year period. In 1975 that suspension was converted to a permanent ban.

Judge Wright's opinion also promoted the cause of those who argued that through the intervention of Federal power the process of political change could be greatly accelerated. The framers of the

original Voting Rights Act had assumed that a massive registration of blacks would eventually result in a radical redistribution of political power. But in Judge Wright's view, judicial intervention could speed up that painstaking process.

That view was challenged by Judge Oliver Gasch. In a concurring opinion Judge Gasch contended that an absence of economic (not educational) opportunity had created black illiteracy.[1] Blacks were disproportionately illiterate because they went to work and not to school. Even the segregated schools, had blacks attended them, would have provided sufficient education to pass the county's very simple test.

Judge Gasch was suggesting (although he did not spell it out) that Federal courts cannot remedy wrongs built into the very structure of society. Unequal education opportunities often result from inequities in the economic structure, but since courts are helpless to affect the latter, they cannot undo the effects of the former. The level of black illiteracy in the end may be the responsibility of the state, but questions of such ultimate responsibility are not—and cannot be—the normal concern of courts.

Yet Judge Wright (and with him Judge Spottswood Robinson) swept that suggestion aside. The registration of blacks, they were convinced, need not await a change in the level of economic opportunity. The process of political change need not be so laborious. While the district court could not directly attack the economic structure, it could lessen the impact of that structure on the political power of minorities. In fact, it was the court's duty to do so. For minorities had the right—as the Supreme Court subsequently agreed—not simply to equal political opportunity, but to equal electoral result.

Disenfranchisement and dilution

The implementation of that right awaited the remaking of section 5. Though Judge Wright's opinion in *Gaston* cleared the way, it was the Supreme Court's 1969 decision in *Allen v. Board of Elections* that definitively altered the meaning of that provision.

The case, which involved several statutory amendments to electoral procedure—the most important of which was a switch from

[1] The opinion reads like a dissent, but was actually a concurrence. Gasch agreed with the result reached by the court, but on entirely different grounds. The county, he said, had failed to meet the required burden of proof—a demonstration that every election within its boundaries had been conducted in a nondiscriminatory manner.

single-member district to at-large voting in the election of Mississippi county supervisors—opened the way for the Court to rule on the scope of section 5. Were the amendments "practices or procedures" that violated the provision? Did they need to be cleared by either the District of Columbia court or the Attorney General? The Court held that, because the changes had the potential of *diluting* the black vote, they were subject to review. "The Voting Rights Act," Chief Justice Warren asserted, "was aimed at the subtle as well as the obvious state regulations which have the effect of denying citizens their right to vote because of race."

This was a cumbersome rewording of Justice Frankfurter's 1939 observation that the Fifteenth Amendment "nullifies sophisticated as well as simple-minded modes of discrimination." The Voting Rights Act, and the constitutional amendment upon which it rested, clearly barred subtle as well as obvious disenfranchisement. But what constituted disenfranchisement? That was the difficult issue.

The question of the impact of at-large voting is particularly complex. Multimember districts, it is generally argued, benefit the strong against the weak. The party of the majority is able to capture all contested seats. As a result, it is said, political groups are not represented in proportion to their strength in the voting population, and minorities lose out. But in fact multimember voting does not *always* disadvantage a minority—an at-large arrangement, in which every single vote counts, may actually benefit blacks. Single-member wards often permit a white majority to ignore a black enclave. But in an at-large system whites may be forced to compete for black votes.

Equally important, disadvantage and disenfranchisement are not the same. Multimember systems may disadvantage blacks, but they do not disenfranchise them. There is no electoral system that ensures representation precisely in proportion to the potential strength of every group. Every districting system discriminates. The drawing of district lines—whether ward or multimember—has an inevitable impact upon the effective power of various political groups. Some groups are split; others find themselves concentrated to the point of greatly diminished returns; candidates of equal quality are not equally available in all wards; district lines often separate a candidate from his natural constituency; and so on. No district with a population greater than one can be created that will guarantee to each voter equally effective political power.

In fact, not only the task of drawing district lines, but even the political process itself discriminates. Formal and informal aspects of

government disadvantage some groups and advantage others. Neither campaign funds nor political talent are evenly distributed. A multitude of political decisions made before and after elections affect power. Political alliances make and break programs. How can political weight be judicially distributed so that every vote has equal value?

That dilution is not the same thing as disenfranchisement was acknowledged by Chief Justice Warren in *Allen*. "The right to vote," he said, "can be *affected* by a *dilution* of voting power as well as by an absolute prohibition on casting a ballot" (emphasis mine). Warren carefully distinguished diluting from denying, but he neglected to point out that the Fifteenth Amendment—on which the Voting Rights Act was based and to which the case thus ultimately referred—only protects against denials.

There is one circumstance in which dilution does shade into denial, and it is this circumstance that Chief Justice Warren must have had in mind, for he went on to say: "Voters who are members of a racial minority might well be in a majority in one district, but in a decided minority in the county as a whole. This type of change [at-large voting] could therefore nullify their ability to elect the candidate of their choice just as would prohibiting some of them from voting." A racial minority, in other words, *can* find itself permanently locked out, if one assumes (as evidently Warren did) consistent and persistent racial bloc voting. But, in general, to disadvantage a political minority is not to disenfranchise it. Most political losers can imagine a context structured more to their benefit, yet few would argue that they possess either a statutory or a constitutional right to an optimal political environment. But when politics and race become thoroughly entwined—when political identity is inextricably linked with racial identity—then such a claim becomes enticing.

In situations which are politically fluid, disadvantaged voters are not considered disenfranchised. Democrats in a Republican community, for example, are free to join the Republican Party and bore from within. Candidates can choose to emphasize certain issues at the expense of others in an effort to win votes. But in a situation of true racial bloc voting, there is no vying for votes across racial lines. Between two candidates of different races, there is no contest at all. Campaigning is unnecessary; a racial count will do. Color becomes the sole determinant of political effectiveness.

Such a situation must be distinguished from one in which black, white, and other citizens belong to political interest groups that

cross racial lines. Race and politics are not necessarily coterminous. While at-large voting usually works to the disadvantage of a political minority, it does not always nullify the ability of blacks to elect candidates of their choice.

The crucial distinction is blurred by Chief Justice Warren's opinion in *Allen*. He begins by speaking about the necessity to guard against the dilution effect of at-large voting. Voting, it is asserted, includes "all activities necessary to make a vote effective." But the racial disenfranchisement he clearly had in mind had nothing to do with an imbalance in political effectiveness. The reference to a "candidate of their choice" makes clear the Chief Justice's perspective: He is envisioning color-coordinated politics—the color of the candidate unfailingly matching the color of his constituency. And he is asserting the right of a minority racial bloc to equal access to the political process.

Allen set the tone for all future Voting Rights Act litigation. It permanently blurred the distinction between disenfranchisement and dilution, and between equality of political opportunity and equality of electoral result.

A change of focus

The impact of the decision was not confined to the courts. It had an immediate effect on Justice Department policy as well. The voting section of the Civil Rights Division is primarily responsible for enforcing the Voting Rights Act. Most disputes concerning section 5 are settled by negotiation between local and Federal attorneys; suits are brought in the District Court of the District of Columbia only as a last resort.

In the years between the passage of the act in 1965 and the *Allen* decision in 1969, the focus of Justice Department attorneys was on section 4. The aim was to get Southern blacks registered. But the Justice Department conceived of its role as exceedingly limited—a conception born, in part, of necessity: The Civil Rights Division had a staff of approximately 40 to handle all litigation involving the infringement of civil rights in the South. Yet ideology also restrained the Department. Both Robert Kennedy and Ramsey Clark preferred negotiation to confrontation. They believed in working behind the scenes, in securing compliance through persuasion.

Ironically, it was under Nixon that Justice Department policy radically altered. Beginning in 1969, the Voting Rights Act, and particularly section 5, was enforced with unprecedented aggressive-

ness. In part, the new militance was the unforeseen consequence of bureaucratic reorganization. Beginning in 1969, attorneys were no longer assigned to a geographical region, but instead to such legal specialties as housing, education, or public accommodations. A voting section was thus created and a cadre of attorneys devoted to the enforcement of the Voting Rights Act emerged. The new specialists had a vested interest in interpreting the act as broadly as possible.

Thus the decision in *Allen* legitimized policies to which this new cadre of attorneys was already committed. The voting section had been at odds with Attorney General Mitchell over the scope of section 5. Mitchell had argued in the 1969 hearings on the extension of the act that section 5 should not be read to cover either redistricting or annexations. He lost both in the courts and Congress. *Allen* was the turning point. Within seven days of the decision, the voting section began to enforce a refurbished section 5. It began to send instructional packets to legal officers in the covered jurisdictions, informing them of the necessity to clear every change in voting procedure with either the Attorney General or the District Court of the District of Columbia. And whereas only 323 voting changes had been received for preclearance by the Department in the years between 1965 and 1969, almost 5,000 were submitted between 1969 and 1975.

The interpretation which the Supreme Court had given to section 5 in *Allen* was not created out of whole cloth. From one perspective, Chief Justice Warren in *Allen* was simply reading into a statute resting on the Fifteenth Amendment those standards for equally effective political participation that had been developed in the Fourteenth Amendment one-man, one-vote cases. *Baker v. Carr*, for example, had established in 1962 a constitutional right to equal representation for equal numbers.

But "rotten boroughs" are not strictly analogous to multimember districts, nor was the principle enunciated in *Allen* a necessary extension of that established in the legislative reapportionment decisions. Those decisions focused on individual voter weight, and measured that weight solely by the standard of equal district populations. Their concern was the malapportionment of *individuals*, not the malrepresentation of *interests*. In contrast, *Allen* and subsequent Voting Rights Act decisions establish the necessity for equality among groups—specifically among racial and (more recently) ethnic groups. Today, the test of disenfranchisement is not whether one person's vote is worth more than another's, but whether the group to which that person belongs is "underrepresented" in

the system. Group power, not individual worth, is made the measure of political equity.

Quite a different conception was initially built into the Voting Rights Act. Sponsors of the original legislation assumed that once blacks had access to the ballot, their position in the polity would be normalized. They would be citizens in that most elementary sense of the word, possessing the right to lend a voice to the political process. Those sponsors assumed that, in time, an end to discrimination would bring an end to racial bloc voting. Color-blind politics was the ultimate goal: the true integration of Southern blacks in a color-blind electoral process.

But the Court's redefinition of section 5 marks an abandonment of those hopes. It envisions blacks as a permanent group apart. It assumes that there is no escape from race. It acquiesces in separate politics for separate racial and ethnic groups, demanding only that between those groups there should be rough equality. Hence the necessity to be on constant alert for threats to black political power —the necessity to make sure that blacks have more than the right to go to the polls, to make sure that the vote they cast there will have maximum weight.

Perhaps color-blind politics in this color-conscious society was a naive hope, and political access too restricted a goal. Racial bloc voting may be the reality for some time to come, and ward politics may indeed make the most sense for most minorities in most communities. Yet incorporating this depressing political assumption into the Voting Rights Act is costly, for it produces a society in which political interests are defined by racial or ethnic identity and representation is guaranteed in proportion to groups' numerical strength. For when a perceived reduction in the potential power of a racial or ethnic group is called disenfranchisement, then proportional racial representation inevitably becomes the standard by which proper political effectiveness is measured. And although the Supreme Court has had an occasional second thought (not shared by either the D.C. District Court or the Justice Department), this is the basic standard that has applied since *Allen*. Moreover, it has been extended from blacks to a variety of other ethnic groups as well, for in the last few years both the ethnic and geographic scope of the act have been enormously expanded.

Whether we want a society in which citizens are assigned slots on the basis of their race or ethnicity is, of course, precisely the question that the *Bakke* case has since raised with reference to higher education. And it has been the issue in a series of constitutional

cases dealing with the problem of desegregation at the elementary and secondary school level. Whether either preferential admissions or pupil assignment in the interest of racial balance makes much sense is far from settled. But whatever the outcome of that debate, it is not likely to settle the question of proportional racial representation in politics, for none of the reasons customarily given for the use of racial and ethnic quotas in education apply to the realm of voting.

Proportionality, race, and party

In 1971, with the Supreme Court's decision in *Swann*, racial quotas became a permissible tool with which to dismantle a dual school system. Two assumptions lay behind the Court's ruling: that had there not been a history of *de jure* segregation, schools in the North Carolina district of Charlotte-Mecklenburg would have been racially mixed; and that racially neutral pupil assignment had become inadequate to the task of creating that previously impeded mix. The law of inertia, it was believed, governed segregation, and once set in motion could be checked only by determined interference in the form of racially conscious action. Racial quotas, then, were a permissible means of achieving the racial mix that would have occurred had there been no policy of deliberate segregation, although they were forbidden as an end in themselves. The use of quotas or goals in preferential-admissions programs is supported by a different logic. The motivation in such cases is not to provide an adequate remedy for constitutional wrongs, but to furnish compensation for educational deficiencies produced by centuries of discrimination, public and private.

Neither of those justifications applies to voting. The problem for the Southern black was not a dual system, as in schools, but no access at all. Blacks were not politically "segregated"; they were excluded. The ballot was their immediate and obvious need. In the absence of disenfranchisement, would the racial mix in politics have been statistically "balanced"? Can quotas be justified as part of an effort to create artificially that mix which would have evolved naturally under more auspicious circumstances? In the schools, perhaps, but not in government. Political offices are not equivalent to seats in a classroom. Groups in our society have never been politically represented in proportion to their size. The Irish have been "overrepresented," Jews were long "underrepresented." Culture and experience—not simply discrimination—have accounted for such dif-

ferences. Nor does proportional racial representation in voting have anything in common with admissions to desirable educational programs. There is no barrier set to voting, as there is by selective admissions. And one vote has the same value as any other.

Not only is the principle of proportional racial representation difficult to justify; it is impossible to implement. Thus the drawing of district lines to maximize black representation does not guarantee racial proportionality. While racial balance in schools can be attained (more or less) through racially conscious seat assignment, that same balance in politics cannot be achieved by the assignment of citizens to wards.

One case in particular, *Whitcomb v. Chavis* (1971), is often cited as proof that the Supreme Court recognizes the limits of proportional racial and ethnic representation as a standard by which to measure political equity. But *Whitcomb* is a perfect example of the depth of the Court's commitment to a principle it appears to spurn.

The issue in *Whitcomb* was the representation of Indianapolis blacks. The entire county in which the city was located had been reconstituted as one large multimember district. That change, blacks asserted, unconstitutionally diluted the effectiveness of the minority vote. But the Court held that disproportionate racial representation did not alone prove discrimination. Rather, the Court said, blacks had aligned themselves with the wrong political party. They had insisted upon being Democrats in a city in which Republicans most often won. Political choice had distorted the racial and ethnic balance of legislative seats.

The effect of *Whitcomb* was to assign to courts the impossible task of distinguishing those elections which are racially "clean" from those which are "tainted." Except in cases of persistent and obvious racial-bloc voting, how can a court determine the impact of race on elections? How can it know when the racial identity of candidates or voters and not political issues has determined the outcome of an election? The link between race and politics is often close. If the Democratic Party is perceived as the party of blacks, does that perception help or harm the Democratic vote? How can the court find out?

Despite these difficulties the Court insisted that in situations which are racially "tainted," proportional racial representation—in practice, ward voting—is the standard by which to measure electoral equity. Where black political power is reduced by racial hostility, at-large districting impermissibly dilutes the black vote.

The standard of proportionality was thus indirectly reaffirmed

in a case often cited as evidence to the contrary. By the imposition of ward voting, the District Court of the District of Columbia and the Department of Justice are attempting to accomplish for certain minorities what only a very different political system could truly guarantee. How can the creation of single-member districts solve the problem of blacks or Chicanos who side with a losing party? Even the most careful drawing of ward lines does not guarantee the representation of minorities in proportion to their size. Proportional racial and ethnic representation is a dubious end, and single-member districting an inadequate means.

Territorial annexations

Just how far the courts and the Justice Department are from discarding proportionality or questioning the efficacy of ward voting is demonstrated by three decisions involving territorial annexations. The city of Petersburg, Virginia, like all political subdivisions in that state, is required under section 5 to clear changes in voting procedure with the Federal government. In 1971 it petitioned the Attorney General for approval of an annexation. The pre-annexation population of the city was 58 percent black, 44 percent white. The city's seven-member governing body was elected at-large. Although 7,000 whites and few blacks were added to the city as a result of annexation, blacks and whites alike supported it. Blacks constituted a majority before annexation, and a minority afterwards (47 percent), yet it was generally agreed that the city needed to expand its tax base and enlarge its potential for economic growth. In fact, the annexation ordinance was originally introduced by one of the two black members of the City Council; adoption was unanimous. Nothing about the annexation indicated racial purpose.

After the annexation, a black member of the council presented a proposal to have members of that body elected from single-member districts; it was turned down. At-large voting was traditional in the city, and considered to have some advantages.

Nevertheless, the Justice Department ruled against the city. The reduction in the voting strength of blacks, it said, had a discriminatory effect on voting rights within the meaning of section 5. Congress, it conceded, did not intend for all Southern cities to be prevented from annexing territory. But by maintaining the at-large system in the context of a shift from a black to a white majority, the city wrote into the Petersburg election law "the potential for an adverse and discriminatory voting effect."

The D.C. District Court concurred. It allowed the annexation, but required Petersburg to adopt a ward system of voting. Although the purpose of the annexation, it said, was not racial, the city had had a long history of racial discrimination. While white numerical domination in the mid-1960's had not prevented the election of black councilmen, nevertheless the races had long been polarized and racial bloc voting was the norm. The City Council had always had a majority of white members and had, the court said, been "generally unresponsive to some of the expressed needs and desires of the black community." It had "on some occasions rejected or failed to adopt programs, employment policies, and appointments recommended by blacks." The fact that few city employees were black gave substance to the charge that it was a city run by whites for whites.

Yet a ward system would provide little relief. If district lines were drawn just right, the number of black representatives might increase. That increased representation would provide greater opportunities for patronage. Blacks might secure those "appointments" to which the decision elusively referred. But as long as racial bloc voting persisted, black councilmen would remain in a minority, and those "programs" to which the decision also alluded would have no greater chance of passing. The assumption that runs through these decisions—that equality at the electoral level will produce equality at the legislative level as well—is unfounded. Rearranging electoral districts to equalize legislative seats, even when successful, will not necessarily produce legislative programs of equal benefit to all. Blacks may gain their statistically equitable proportion of seats without gaining a comparable proportion of legislative benefits.

The courts and the Justice Department seem to believe that ward systems universally benefit minorities, but the blacks in Petersburg might have fared even better with a council elected at large. The city was almost half black. In an at-large system every councilman would have had black constituents. With minimal energy and organization those constituents could have made their presence felt.

Political conditions obviously vary from city to city. And the degree to which single-member districts in any one city will actually benefit a minority is unpredictable. In part, those benefits depend upon the skill with which district lines are drawn. The Department of Justice and the D.C. District Court focus on the dangers of lines drawn to disperse black votes and reduce black power. But the black vote can be diluted, as well, by excessive concentration. Votes can be wasted as well as ignored.

Neither the D.C. court nor the Justice Department, in other

words, can be certain that one electoral arrangement is superior to the other. And the cost of judicial and executive interference into local electoral arrangements is considerable. When the Federal government intervenes in local electoral arrangements—when it attempts not simply to augment political opportunities but also to shape electoral results—it deprives citizens of their right to achieve through conflict and conciliation those electoral arrangements most suited to their needs.

Decisions such as *Petersburg* have an additional consequence: They create incentives to keep a city ghettoized. Once a ward system is instituted, the geographical dispersion of blacks cuts into black power. How many individuals would actually base a housing decision on such political considerations is, of course, difficult even to speculate about. Nevertheless, courts have often argued that residential segregation is the responsibility of school boards, since decisions establishing school-construction sites mold neighborhoods. It is certainly as plausible that area-based political machines help to shape a city. The courts, by rulings such as *Petersburg*, lend their weight to the cause of those who envision American society as deeply and permanently divided along racial and ethnic lines.

A further difficulty is that the courts and the Justice Department impose ward voting without making clear the precise circumstances which compel their decision. What if blacks had retained a slim majority in post-annexation Petersburg? And when single-member districts are required, where must district lines be drawn? In reviewing reapportionment in New York after the 1970 census, the Justice Department demanded that district lines in the Williamsburg section of Brooklyn be redrawn to give blacks and Puerto Ricans a 65 percent majority: Because the turnout of minority voters was low, the 61 percent given under the proposed reapportionment plan was found wanting. In other words, the Attorney General made the bizarre assumption that if an ethnic group has a history of low voter turnout, it is necesary to draw district lines in such a way as to increase the concentration of that group! Apparently the whole political system had to be adjusted to take account of that transitory social fact. And if minority turnout increased to the point that minority votes were being "wasted," would the system then require further readjustment?

The inevitable confusion over the when and where of district lines has been further compounded by two decisions involving the annexation of a suburban area by the city of Richmond, Virginia. The annexation in *Petersburg* was indisputably motivated by eco-

nomic considerations. But race lay behind Richmond's decision to incorporate surrounding territory—or at least that is what the District of Columbia court alleged. Judge Skelly Wright said that whites had attempted to sustain waning power through the addition of more white voters.

The Richmond story

Voting in Richmond had been at large. After the annexation the city proposed a ward plan, in hopes of complying with the principle established in *Petersburg*. But a ward plan, the court ruled, cannot save an annexation which is racially motivated, since the Voting Rights Act prohibits the purposeful dilution of the black vote. "To convince a court that such a city ... has purged itself of a discriminatory purpose," wrote Judge Wright, "... it would have to be demonstrated by substantial evidence ... that the ward plan not only reduced, but also effectively *eliminated* the dilution of black voting power caused by the annexation." (Emphasis mine.)

The only plan which could possibly "eliminate" that "dilution" would be one guaranteeing to blacks the level of power they had previously possessed. The court did not specify, however, whether that level would be the number of seats to which blacks were actually elected, or that which a ward plan without annexation would have given them. But the principle was clear: Annexations which are racially motivated cannot be permitted to dilute the political strength of blacks. Under such circumstances, blacks are entitled to representation not simply in proportion to their present numbers, but in proportion to what those numbers were prior to annexation.

There was a certain logic to preventing a city with a long Jim Crow history from duplicitously shoring up waning white power, if indeed that was what it was doing. But the principle formulated by Judge Wright was unworkable and indefensible. It made annexation conditional upon a fixed balance of power and in effect established a political quota system that guaranteed blacks a permanent right to a certain proportion of the seats in city government. Implementation of the principle was left to a district court in Virginia, one more familiar with Richmond politics.[3]

[3] Ironically, the struggle over annexation took place at the same time that the city was grappling with the problem of school integration. The local district court ordered the consolidation of the Richmond school district with that of two surrounding counties. While one Federal court looked for ways to reduce the effect on black voting power of the addition of more whites, another searched for a method to add more votes for purposes of school integration

In fact, Judge Wright had alluded to the option of de-annexation, but by the time the court ruled, the annexation was more than four years old. Moreover, there was some reason to think that blacks actually favored annexation, although Judge Wright conveniently relegated to a footnote evidence of such support. Yet the issue was obviously crucial. Perhaps blacks in Richmond, as in Petersburg, did not regard black numbers as the necessary solution to their economic and political woes. While the court was convinced that the City Council had been unresponsive to black needs and equated that lack of responsiveness with white domination, apparently blacks saw the situation as more complicated.

Undoubtedly, some Richmond whites welcomed the addition of more white voters through annexation, but the motives of even the most racist among them must have been mixed. Annexation made economic, as well as educational, sense. Several months ago, *The New York Times* described the city as beginning to suffer from Northern-style urban pains. "It is becoming blacker, poorer, and older," the *Times* said. The inner-city population has been falling almost 2 percent annually, half the residents are black, the school system has an 80-percent black-enrollment, and unemployment exceeds 15 percent in many black sections. The *Times* described the annexation as an effort both to slow white flight and to expand an inadequate tax base. The effort failed; but had it succeeded, the city's new black mayor would be facing far fewer problems. As the situation now stands—and as the mayor has made clear—only the cooperation of the white business elite can prevent further decay.

Not even annexation, then, could preserve the political and economic status quo. Neither the citizens by territorial means, nor the Federal government by judicial ones, could stop the city's demographic, economic, and political change.

The D.C. District Court's decision did not last long. In 1975 it was overturned by the Supreme Court in an opinion which argued that the ward plan already adopted would suffice. Blacks, the Court said, were not entitled to any absolute number of seats, but only to a number proportionate to their current strength.

Adding language to race

The principle of proportional racial representation could have been repudiated by Congress. Richmond provided the perfect opportunity for legislative redefinition of the act. The Supreme Court decision was handed down in June 1975. The act was due to expire

in August, and hearings on its extension had been underway since late February. But judicial decisions seem to encourage not contraction but expansion of legislative scope. When the Court embellishes the original meaning of a piece of legislation, the new interpretation becomes a tool for those in Congress who favor even greater change. Thus the act's 1975 extension resulted in both a reaffirmation of the principle of proportionality, and the addition of amendments which greatly enlarged the scope of the law. The 1965 act had protected all citizens denied the right to vote on account of race or color. And since it was based on the Fifteenth Amendment, essentially that meant blacks. In 1975 protection was extended to four specifically designated "linguistic minorities": American Indians, Alaskan Natives, Asian-Americans, and citizens of Spanish heritage.

As in the original act, coverage in the 1975 extension was triggered by the existence of a test in areas with a registration or turnout of less than 50 percent. And coverage meant not only suspending those tests, and providing Federal registrars where needed, but the necessity for states and localities to "preclear" all changes in electoral procedure, including annexations and apportionments. Moreover, the definition of a "test" was broadened. Under the 1975 legislation, ballots printed in English were considered a "test" when used in a jurisdiction in which more than 5 percent of the citizens of voting age were members of one of the designated minorities. And the "suspension" of such a test involved the provision of bilingual ballots.

One provision in the 1975 amendments had no counterpart in the 1965 law. Originally the Voting Rights Act covered only those jurisdictions in which a low level of political participation indicated a history of discrimination. But Congress concluded that bilingual ballots were often needed in areas in which voting turnout exceeded 50 percent. The amendments therefore made the provision of those ballots mandatory wherever linguistic minorities with an illiteracy rate higher than the national average resided. Thus a host of counties in California, Colorado, and elsewhere came under partial coverage. They were expected to provide bilingual ballots and other instructional material, but were not subject to other provisions such as preclearance of changes in their electoral laws.

The coverage of these "linguistic" groups compounded the problems already inherent in the act. To the difficulty of guaranteeing maximum electoral effectiveness to blacks was added that of ensuring equal effectiveness to American Indians, Alaskan Natives, and those Asian-American and "Spanish heritage" groups that the Justice Department, in implementing the act, designated as having been

"effectively excluded from the electoral process." This category includes: Filipinos, Chinese, Japanese, and Koreans; persons of Spanish surname in Arizona, California, Colorado, New Mexico, and Texas; persons whose mother tongue is Spanish in 42 states; and Puerto Ricans in New York, New Jersey, and Pennsylvania.

These were groups without a history of disenfranchisement comparable to that of Southern blacks. No test designed to disenfranchise citizens of a particular race had kept them from the polls in recent decades. But the Department of Justice, implementing Congressional intention, concluded that they had been sufficiently disadvantaged by the absence of bilingual election material so as to warrant Federal protection. A "test" of disproportionate ethnic impact (inability to read English was assumed), when coupled with low voter turnout, became the trigger which entitled this odd assemblage of groups to the political privileges created and protected by the Voting Rights Act.

What can explain the passage of these amendments? And why did they take the form they did? For one thing, the inclusion of "linguistic" minorities quieted the customary Southern opposition. "We feel the same way about this as we do about busing," one Louisiana Representative remarked. "Let them stew in their own juice up there." Two Alabama Congressmen publicly endorsed the bill. But though the taste of revenge was sweet, more important was the simple recognition of political realities: By 1975 a quarter of the voters in the seven Southern states covered by the act were black. The expansion of the act would ensure its renewal and blacks wanted it renewed.

Outside the South, too, opposition was muted. The enthusiasm of the North and West in 1965 and 1970 had cost those regions nothing politically, but the amendments proposed in 1975 affected almost every state. Yet the issues were scarcely debated. This was in part because no legislation was more important to the black community, in part because civil rights in general had become a privileged issue and sheltered from political discourse. And in part it was because by 1975 there had developed a remarkable consensus that group effectiveness was the real measure of political equality.

Republican Representatives M. Caldwell Butler and Charles E. Wiggins proposed amendments that would have released jurisdictions from the provisions of the act when they achieved a high percentage of persons registering or voting. The Butler proposal allowed a political unit to bail out as soon as either registration or turnout reached 60 percent. Wiggins wanted release tied directly to

the level of black participation. Black turnout would be examined after each Congressional election, and no jurisdiction in which the black vote was over 50 percent would be covered. But both proposals were roundly defeated. The states and counties that fell under the act because of low voter turnout in 1964 were still to be covered after 1975.

The consensus on maintaining supervision over the Southern states went beyond Congress, of course. In the press there was widespread support for the amendments. The view of a *Washington Post* staff writer was characteristic: "Civil-rights lawyers," he wrote, "agree that the law is tough but say that is its beauty—that blacks are protected from sophisticated techniques like racial gerrymanders of election districts that can rob them of voting power just as surely as a gang of klansmen hanging around a voting booth." The equation between terrorism and redistricting did not seem to raise any eyebrows.

The consensus on the need to protect political effectiveness—and the sanctity which enveloped the act—gave a very free hand to the House Subcommittee on Constitutional and Civil Rights, where the amendments were drafted. And it was a committee ready and willing to use that freedom—ready to demonstrate, as New York Representative Herman Badillo put it, that the spirit of the 1960's was not dead.

To help Badillo demonstrate the vitality of that spirit were Chairman Don Edwards of California and Congressman Robert Drinan of Massachusetts. Off the committee, but equally involved, were Texas Congresswoman Barbara Jordan and California Representative Edward Roybal. It was a powerful group, ably supported by a skilled and committed staff, and it was likely to get what it wanted.

The Mexican connection

At the outset what it wanted was quite limited. Initially, the intention was to extend the act to cover Mexican-Americans in southwest Texas, affording them all the protections of the act, including section 5 on preclearance of changes in electoral procedure. The practice of the Justice Department in implementing the act had been to treat Indians, Puerto Ricans, and Mexican-Americans as racial groups, with the result that Mexican-Americans in states that required literacy tests were covered. But Texas had had no such test in 1964, and was therefore exempt from the provisions of the entire act!

Yet even without the barrier of a test, the Mexican-American registration rate in Texas was low. Precisely how low was difficult to tell, for the figures are distorted not only by the inclusion of aliens, but by the problem of age structure. (The percentage of Mexican-American citizens below the voting age is much greater than that of old-stock whites.) Nevertheless, it was estimated that the registration rate was approximately 46 percent. In the 1972 elections, 38 percent voted. Witnesses pointed out that Mexican-Americans comprised 10.7 percent of the elected officials in Texas, but 18 percent of the population.

These Mexican-Americans, however, could not be covered easily. The 1965 act had been based on the Fifteenth Amendment. It protected against denial of the right to vote on account of race or color. While in the view of the Justice Department, Mexican-Americans constituted a separate race, in the view of Herman Badillo (among others) they did not. In 1965 Attorney General Katzenbach had suggested that since every person had a race or color, everybody would be covered. But fortunately that view was not widely accepted. In the 1975 hearings, the Department of Justice, with mock-scientific accuracy, testified that in 1921 the population of Mexico had been 10.3 percent white, 29.2 percent Indian, and 60.5 percent mestizo, that the present breakdown was roughly the same, and since the vast majority of Mexicans were either part Indian or part black, Mexican-Americans could be said to be racially distinct. But the fact remained that the Census Bureau considered the Mexican-Americans to be white, and that Herman Badillo and others still considered it a mark of opprobrium to be classified as non-white. In the end, therefore, the arguments of the Justice Department fell on deaf ears. In any case, officially designating Mexican-Americans as a race would not have resulted in their coverage, but would merely have eliminated any need to refer to a "linguistic" minority. Actual coverage required a new trigger—one which did not depend upon the presence of a literacy test.

A dual solution was forged. The issue of race was dodged, and the base of the act was broadened to include the Fourteenth Amendment, as well as the Fifteenth. Including reference to the Fourteenth Amendment—with its equal protection clause—allowed the coverage of groups disenfranchised by reason of their national origin. At the same time, the meaning of the term "test" was expanded to include the use of English-only electoral materials, thus extending coverage to states without traditional literacy tests. This solution not only obviated the problem of defining race, but by retaining the link be-

tween a "test" and low voter turnout—the latter being an indicator of the discriminatory effect of the former—it avoided a return to the pre-1965 need to examine the intentions or actions of individual registrars.

But if some problems were avoided, others were created. A ballot in English is not the same as a literacy test designed to disenfranchise citizens of one race. English-only electoral materials do not discriminate against a racial or ethnic group as such.

There are practical problems as well. How is one to identify accurately citizens who are illiterate in English but literate in some other language, and therefore need foreign-language ballots? Attorneys in the voting section of the Justice Department use the Census Bureau's mother-tongue data, which tell the language spoken in the household in which the person grew up. But for the purpose of identifying those who are illiterate in English, the data are quite unreliable. Based on only a 15 percent sample, and including aliens as well as citizens, it assumes (contrary to fact) that second and third generation immigrants know only the language of their parents. Information on usual language spoken would be much more reliable, and indeed since 1975 the Census Bureau has been able to provide such information. But it would be *politically* much less useful. The 1970 census lists 43 million Americans as having a foreign mother tongue. Yet quite a different picture emerges when one looks at the figures for usual language. By that measure, only 1.1 million persons of Spanish heritage know only Spanish. Another 2.9 million are bilingual, but consider English their second language. Only 2.2 million describe themselves as having "difficulty in English." The total unreliability of the mother-tongue data is indicated by one more startling figure: Only 17 million Americans list themselves as competent in a foreign language—and that figure includes those who learned that language in school, as well as aliens!

The most serious problem, however, was not the inclusion of a significant number of individuals who were perfectly fluent in English, but the inclusion of groups who made no claim of discrimination. Ethnic identity, linguistic inability, and disenfranchisement were equated. Yet no one believed that any European group was actually the victim of discrimination. The assertion that English-only electoral materials by themselves so discriminated against certain groups as to warrant the extraordinary protection of the Voting Rights Act was nothing but a convenient pretense. No one wanted any special protection for recent Italian immigrants, for example, even though the number of Italians who do not list English as their

usual language is only slightly smaller than that of Asians—593,000 Asians in 1975, compared with 447,000 Italians.

The solution arrived at was unprecedented and extraordinary: *Congress simply designated four groups as deserving, and excluded all others.* The 1965 legislation protects *all* citizens denied the right to vote on account of race or color. But the 1975 protection against disenfranchisement on the basis of language extends to *certain* citizens only: Alaskan Natives, American Indians, Asian-Americans, and those of Spanish heritage.

If four groups could be so designated, why not one group? The original focus of concern was the Mexican-Americans in Texas. Why such a broad-gauged, roundabout, and problematic solution to such a geographically and ethnically confined problem?

In part, political considerations dictated the coverage of groups other than Mexican-Americans. It was difficult to stop once the line from black to brown was crossed, and there was pressure to include other groups. But equally important were the constitutional problems inherent in simply designating one group to be covered but not enunciating some larger principle. Equal protection demands that in conferring legislative benefits upon only certain persons, great care be taken to demonstrate the relationship between remedies and wrongs. The selection of one group for preferential treatment is constitutionally suspect unless that treatment is related to actual deprivation and perceived social needs. That is why the 1965 legislation did not name blacks specifically, but referred to citizens denied the right to vote on account of race, and why, with regard to the Mexican-Americans, the formulation of some wider principle was necessary. Once that larger principle of linguistic disenfranchisement was established, however, other groups seemed logically to qualify.

Yet the logic was strained. Consider Asian-Americans: No evidence was offered at the hearings as to their political oppression, and such evidence would have been hard to come by. Japanese-Americans are among the most successful of all American ethnic groups. They suffer no discrimination at the polls. Nor do Chinese, Koreans, or Filipinos. Census information for the Japanese and Chinese is illuminating. Less than 15 percent of white Americans of native parentage were college graduates in 1970. For second-generation Chinese-Americans the figure was 27.4 percent, and for second generation Japanese-Americans 18.6 percent. Median family income of second-generation Chinese-Americans was 29 percent higher than that of old-stock whites. The figure for Japanese-Ameri-

cans is even higher: 41 percent above the norm for native whites of native parentage.

Over-inclusion might appear harmless. No deprivation would seem to result from designation. But section 5 makes the inclusion of superfluous groups far from socially benign. The presence of these linguistic groups, in the context of low voter registration or turnout, establishes coverage—and once a political subdivision is covered *every* change in voting procedure must be submitted for clearance.

Between 1975 and 1977 there were 2,000 such submissions. Most, it is true, involved innocuous electoral changes that were immediately cleared. But a significant number, involving annexations, reapportionments, changes from ward to at-large voting, changes in the method of filling a public office, and so forth, were not. Precisely how many conflicts developed is difficult to tell, for disapproval usually results not in litigation, but in negotiation. That is, the voting section of the Civil Rights Division suggests ways in which the electoral arrangement can be altered to secure approval. Such off-the-record negotiations have become the heart of the enforcement procedure. For example, they lay behind the alteration of district lines in the Williamsburg section of Brooklyn, New York. Only when these negotiations break down, as they did in Richmond, does litigation commence.

Through this informal negotiating process, the Department of Justice has become the national arbiter of political conflicts involving racial and ethnic groups. Across the nation, in districts in California, Arizona, Colorado, Hawaii, Alaska, New Mexico, and New York, in addition to the South, the voting section is engaged in adjusting local electoral arrangements in order to augment the power of certain groups and diminish that of others.

A continual arriving

The Voting Rights Act was a noble response to the callousness of those who for so long permitted and perpetuated the disenfranchisement of Southern blacks. And its accomplishments have been very real: The old political order has crumbled in the South. Politics is no longer a lily-white preserve.

But not everything that has resulted from the passage of the act has turned out so well. The transformation in the meaning of political equality—the movement from equal opportunity to equal result—cannot be so simply celebrated. Congress, the courts, and the Department of Justice have taken a course that is frequently ineffective

and always dangerous. The effort to maximize the political effectiveness of a variety of ethnic and racial groups, even when ultimately successful, is always costly. Proportional racial and ethnic representation inevitably becomes the standard by which to measure that effectiveness, and so citizens become classified for political purposes along racial and ethnic lines. There develops an acquiescence in separate politics for separate racial and ethnic groups, which are then arranged in a hierarchy with those designated for coverage placed at the top.

And the problem of costs is compounded by that of ineffectiveness. Williamsburg is a good example. Buying votes or stuffing ballot boxes works, but the drawing of ward lines cannot fix an election. In order to ensure the selection of a black, the Justice Department forced New York to redraw district lines. But factional strife, both within the black community and between blacks and Puerto Ricans, resulted in the election of a white. The underrepresentation of minorities may be a problem, but we have no reliable remedy, and those we attempt to provide don't come free.

Even where an increase in minority representation has been successfully engineered, the power of minorities may remain exceedingly limited. Such limitations were recognized in Petersburg, where blacks joined whites to choose economic growth over black numerical strength, and are even more apparent in those communities in which minorities are truly in the minority. Neither at the local, state, nor national level will a few more Mexican-American representatives get for the Mexican-American community what it needs most: legislation benefitting the poor. Political alliances are necessary—alliances based on class, rather than race or ethnicity. But the implementation of the Voting Rights Act may be decreasing the possibility of such ties. The political polarization of the society along racial and ethnic lines may be its main accomplishment. In the view of those who have modified and implemented the Voting Rights Act, separate politics for separate racial and ethnic groups appears to have become the norm. Yet if our aim is to create one society—not two or four or twenty—is this the direction in which we want to go?

That direction, it is often asserted, is only a temporary one. When the problem disappears, the act will expire. But the act itself is creating a host of new problems. Moreover, it seems well on its way to becoming a permanent part of our political landscape. How would we know when political success had been attained? We have no measure of political arrival. Those who implement the act now use the standard of racial and ethnic proportionality to assess electoral

equity. But proportionality is a destination we shall never reach. We shall always be arriving and never there.

The act is due to expire in 1982, but there is no indication of any lessening of enthusiasm for it. The feeling is widespread, as one advocate recently put it, that "governmental units should not do less than is open to them." Until that feeling changes, and until we arrive at a definition of political equity for racial and ethnic groups that once again focuses on access, and foregoes the temptation to secure maximum effectiveness, the Voting Rights Act will be here to stay.

EXTENSION OF THE VOTING RIGHTS ACT

WEDNESDAY, MAY 20, 1981

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
Washington, D.C.

The subcommittee met at 1:30 p.m. in room 2237 of the Rayburn House Office Building, Honorable Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Washington, Hyde, Sensenbrenner, and Lungren.

Also present: Representative Butler.

Staff present: Ivy L. Davis, assistant counsel, Helen C. Gonzales, assistant counsel, and Thomas M. Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

I ask unanimous consent that the subcommittee permit coverage of this hearing, in whole or in part, by television broadcast, radio broadcast, and still photography, in accordance with the rules of the committee.

Mr. EDWARDS. The Chair has no objection. It is so ordered.

Today we are going to begin our fifth hearing on legislation to extend and amend the Voting Rights Act. This afternoon we will hear testimony on the effect the Voting Rights Act has in the State of Virginia.

Before I introduce our first witness, I welcome a former member of the subcommittee who has done work on this subcommittee for many years—we regret that he is no longer a member of the subcommittee—(the gentleman from Virginia) Mr. Caldwell Butler.

Caldwell.

Mr. BUTLER. Thank you, Mr. Chairman. I appreciate your giving me an opportunity to participate here today. This is not my regular subcommittee, and I'm disappointed I will not be participating in all your deliberations. But I do want to particularly thank the chairman for giving an opportunity for the people from my State to explain their problems and their suggestions to you.

I have been privileged to know substantially all of these witnesses well, and not so well, over the years. And you will find that they are all candid and intelligent people, who—though they may not agree, they are not disagreeable which is part of the way we do business in our State.

But we do appreciate your taking this time to listen to them.

Mr. EDWARDS. Thank you, Mr. Butler.

Our first witness is the Honorable Thomas Bliley, Member of Congress from the Third Congressional District of Virginia.

Congressman Bliley is a former mayor of the city of Richmond and is here, of course, to share his thoughts with us on the Voting Rights Act.

Mr. Bliley, we welcome you.

TESTIMONY OF HON. THOMAS J. BLILEY, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. BLILEY. Thank you, Mr. Chairman.

Caldwell, I want to thank you for granting me this opportunity to appear before you today.

First, as you well know, the entire Voting Rights Act does not expire, only those sections establishing trigger mechanisms in section 4 and preclearance provisions in section 5 expire. It is important to keep this fact in mind during the discussions.

These provisions have served their purpose and should be allowed to expire. The remaining sections should be retained and continue to apply to all States.

Further, I would suggest that you consider expanding definitions of Federal offenses for interfering with a person's right to register or vote, and set forth stiffer penalties for such violations.

Sections 4 and 5, establishing and requiring preclearance, should be allowed to expire next year for the following reasons:

One, Congress should never enact legislation dealing with such a basic right as a person's right to vote, unless it applies universally. These sections, as now written, apply only to a limited number of States and communities. If it is a basic right, then it should be dealt with in such a way that the right is protected throughout the Nation.

Two, once a State is covered, there is almost no way to get out of it. Virginia has been under the act since its inception, some 17 years now. Yet there has not been one claim of a person being denied the right to register or vote since that time. Voter registration has consistently increased, as has the number of voters participating in elections.

Three, in 1965, when the act was passed into law, Congress did not realize it would be extended to cover annexation. Indeed, it was not until the Supreme Court decided, *Perkins* v. *Matthews*, in January of 1971, that it was established that annexations are covered by the act.

In Virginia, cities are completely independent of counties, and have been since the time of Thomas Jefferson. Likewise, until recently, cities such as Richmond have had the power to annex through State courts.

In the course of her 200-year history, Richmond has used the procedure more than 10 times. As recently as 1969 this procedure was used, so that on January 1, 1970, Richmond acquired some 23 square miles of a neighboring county.

In May 1970, a council election was held on an at-large basis, with both old and new residents voting.

In 1971, following *Perkins* v. *Matthews*, the city submitted the annexation to the Justice Department, and the Justice Department noted an objection, instructing the city to go to a ward system,

electing councilmen from single-member districts. The city objected, for also in 1971 the courts and the Justice Department approved a plan for electing five delegates to the General Assembly of Virginia from Richmond on an at-large basis. In addition, they approved a floater seat for all of Richmond and all of the adjoining county.

The city asked a question: If the addition of new citizens is nondilutive in a general assembly election, why should it be so in a councilmanic election? However, the Justice Department maintained its position, blocked an election scheduled for May 1972, and the matter was litigated for 5 years, with no election, until it was settled in 1977.

My colleagues, I don't believe that the Congress ever intended for this situation to occur, but it has and is, throughout the areas covered by the act. Richmond has had four forms of government: The commission form; the strong mayor-bicameral council; the council-manager, with nine elected councilmen-at-large; and the council-manager with nine council elected from single-member districts. Each of these was approved by the citizens of Richmond in referendum, except the last, which was ordered by the Justice Department.

This country was founded on the principle of "government by the consent of the governed," and I think it is time we returned to that principle.

There may be some who claim that were Virginia let out of the act that Richmond would return to at-large elections. This is not necessarily so. Richmond and other cities do not have home rule, and any change in city or town council elections is, as required by the Virginia General Assembly, subject to the approval of the voters of the locality in question.

No matter what improvements or internal controls are established, Virginia has virtually no opportunity to be bailed out of the Voting Rights Act preclearance provisions, until the applicable time period, now 17 years, expires next August. I believe that Virginia has shown that the provisions which encumber her should indeed be allowed to expire.

I endorse the permanent provisions of the Voting Rights Act and applaud the significant role it has played in escalating the exercise of the franchise throughout the land. I appreciate that these provisions are applied nationally and equilaterally, and hope to continue its protections by enforcing our commitment to equality as a nation, by originating laws from Washington equitably and impartially in meting out justice throughout the United States.

Preclearance has served its purpose. It has erased the State-to-State differences in registration and voter turnout. The permanent provisions of the Voting Rights Act will continue to guarantee equal access to the ballot box, as provided in sections 2, 11, 12, and others. Indeed, violations of the act, as defined in these sections, are punishable as felonies. This provision should continue by all means. If the members of this committee desire to expand those penalties, I will be willing to work with the committee in that effort.

No less an instrument than the Constitution of the United States provides that "the right of citizens of the United States to vote

shall not be abridged by the United States or by any State on account of race, color, or previous condition of servitude."

Let us carry forth this national commitment. (See p. 2153 for prepared statement.)

Mr. EDWARDS. Thank you very much, Mr. Bliley, for a splendid testimony.

The gentleman from Virginia, Mr. Butler?

Mr. BUTLER. Thank you, Mr. Chairman. I, too, appreciate the testimony of our colleague. Mr. Chairman, before he was a Member of Congress, and worked for a living, Mr. Bliley was the mayor of the city of Richmond and also a mortician, which explains, I think, why the Justice Department so long held up the further elections in the city of Richmond—because they thought it was the purpose of Mr. Bliley, rumor has it, to put the city under perpetual care. [Laughter.]

He may affirm or deny that today. But I notice in your testimony, Mr. Bliley, that you speculate on what would happen if we went out of preclearance in Virginia if it were no longer a requirement. And you say it is not necessarily so that Richmond would return to at-large elections.

Would you have a view as to—what do you think the odds are on returning to at-large elections?

Mr. BLILEY. I think there quite possibly might be a referendum on the question. But I point out, in 1964, before the act ever came into being, the then city council passed a resolution requesting a charter change. You were probably a member of the general assembly at the time—requesting that Richmond go to staggered terms. Rather than having all nine members of council elected every 2 years, they would be on a staggered basis. The minority political committee in the city objected to this. The general assembly adopted the amendment, subject to the fact—that the voters approve it in referendum. The voters rejected it by a considerable margin in 1964.

So what I am saying is simply because there might or might not be a referendum, whether it would be approved is subject to speculation. And there is no guarantee one way or the other.

Mr. BUTLER. That was before annexation.

Mr. BLILEY. That was before annexation; that's right. Since annexation, I might point out that we have five members of the general assembly elected on an at-large basis from Richmond. Two of them are black, and had the black political organization endorsed the Republican lawyer, who was running in the last election, he would have won. He only lost by less than 2,000 votes.

Mr. BUTLER. Do you have any other information that you would like to share with this committee?

Mr. BLILEY. I think, to get away from Richmond for a minute, you are very familiar with your own city of Roanoke, in which Roanoke has its council and its mayor elected at large, and both the mayor and the vice mayor are black, and were elected on an at-large basis. And yet only 20 percent of the population of Roanoke is black.

Mr. BUTLER. And they're fine representatives. Of course, one of them is a Republican, and that may have been responsible for electing him. [Laughter.]

Mr. BLILEY. I'm sure your help was decisive.

Mr. BUTLER. I have no questions, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Butler.

Mr. Bliley, how was Richmond hurt by the Voting Rights Act?

Mr. BLILEY. First of all, it was hurt in that Congress has left to the State, historically, the right to decide, for example, where a polling booth is to be placed. Today, we have to submit for preclearance, if, for example, a church finds it no longer convenient to act as a voting place, as happens fairly regularly—before it can be moved to another location you have to prefile. Richmond is under that situation, as is Virginia—and it's unnecessary. There have been 117 submissions in Virginia and there have been no objections.

And as I pointed out earlier, after 17 years, almost a generation, there's not been a single complaint of a person being denied the right to register or to vote, which was the original purpose of this act.

Mr. EDWARDS. What percent of Richmond is black?

Mr. BLILEY. I haven't seen the latest figures, but I would say it's at least 50-50, and it could be slightly more than that.

Mr. EDWARDS. What's your guess as to how that 50 percent of the population being black in Richmond would feel if we asked them, collectively, do they want the section 5 extended?

Mr. BLILEY. I would say that they would probably—may want it to go on. But following me before you will be the present mayor of Richmond, who is in a far better position, perhaps, to answer that question, than I.

Mr. EDWARDS. Well, you did say in your testimony—your excellent testimony—on page 2, that Congress did not realize it would be extended to cover annexations. But we have found since that time that a very convenient way of discriminating is through annexations, and that's why we have—one of the reasons why Congress enacted section 5, so as to catch those new devices.

But your testimony is that Richmond and Virginia generally is not going to use annexations or any of these new devices for discrimination, so therefore, section 5 of the act should be allowed to expire.

Mr. BLILEY. Mr. Chairman, the best way to judge the future is to look at the past. Virginia has had this situation for almost 200 years. As I mentioned, earlier in my testimony, Richmond has expanded its boundaries in excess of 10 times. When cities are completely independent, the only way that they could expand their tax base is through annexation. During the course of our 5-year litigation, this charge was brought up, that the purpose of this was to be dilutive.

The testimony in the case that was heard by the courts, and the courts agreed, showed that the city had gained in excess of $3 to $4 million a year in excess revenues from the territory it took in, than it expended, and thereby helped alleviate the tax burden on the rest of the city. And that was why it was allowed to stand.

I might point out that in 1965 the city had received another annexation award, which would have added 15,000 suburbanites to the city's list of citizens. However, the city rejected this in 1965, because the courts set what the city felt was an excessive price tag, and that the return, as far as they could determine, would not

justify the expenditures they would be required to make, and they would gain very little land for future development.

Mr. EDWARDS. Thank you.

Counsel?

Ms. DAVIS. Thank you, Mr. Chairman.

Representative Bliley, as to the question of annexations, neither the Supreme Court nor the Justice Department in the Richmond case held that the annexation per se was unconstitutional; is that correct?

Mr. BLILEY. That's exactly right.

Ms. DAVIS. As a consequence of that litigation the court, as did the Justice Department, suggested that the annexation could stand if the city of Richmond made changes from at-large to ward districts; is that true?

Mr. BLILEY. That's true.

Ms. DAVIS. Have you found that that has negatively affected the operation of the city? Isn't Richmond still a thriving city?

Mr. BLILEY. It has not affected the tax base; however, it has increased racial tension, in my opinion, brought about by the fact that there is no pressure to compromise, not on the whites from the districts that they represent, and not on the blacks from the districts that they represent.

When you have an at-large situation, each member of council, regardless of whether he is minority or majority—black or white—had to consider the total city, and could not desire—could not reject out of hand the desires, needs, or aspirations of all of the citizens.

Ms. DAVIS. Using your phrase, and looking at the past in Virginia, to your knowledge, were there any black elected officials, either in the House of Delegates or the Senate in Virginia, prior to the 1965 Voting Rights Act?

Mr. BLILEY. I don't believe that there were—I don't think that there were.

But there were on city council.

Ms. DAVIS. My understanding is that the four members of the House of Delegates, and one black senator in Virginia at this time, were elected after 1975.

Mr. BLILEY. Not after 1975, no. The State senator, who will follow me, and certainly remembers vividly the day he was elected—he was elected on an at-large basis from the entire city of Richmond. Two members of the general assembly from Richmond, today, are on an at-large basis; two blacks.

And as I pointed out earlier in my testimony, had the black political organization endorsed a third from another party, he would have won.

Ms. DAVIS. And they were elected before 1975?

Mr. BLILEY. No. This is since. But it's on an at-large basis, not on a ward, or single-member district basis.

And indeed, in the 1960's, and maybe before 1965—I'm not sure at this point, but the senator would probably know better than I—we had a situation in which we had a floater seat between Richmond—all of the city—and all of the suburban county, which was overwhelmingly white—had a physician who represented this district and who was black.

Ms. DAVIS. Do you have any explanation as to why there weren't black representatives in the State legislature prior to the Voting Rights Act; has the Voting Rights Act, in your view, in some way been responsible for electing those officials subsequent to 1975?

Mr. BLILEY. I think that the provisions that would deal with the poll tax, the elimination of that, I think, no question, had a bearing in the voter registration efforts. And they have had many, many more registrants come on the line. Those provisions are not—I point out, will continue to be, fortunately, contained in the act, provisions that prevent reimposition of such—of devices such as that.

Ms. DAVIS. You do recognize, as Members of Congress in 1965 in enacting the Voting Rights Act, and members of this committee, have stated during these hearings, that the right to vote is the right to have access to that vote, and that that vote counts.

Are you suggesting that those annexations or the dilution of the voting power of the minorities is something which should not be subject to review of the Voting Rights Act?

Mr. BLILEY. I think that annexations, if they are obviously done for unlawful purposes, certainly should be subject to petition.

Ms. DAVIS. But if they have a discriminatory effect, should they also be viewed as——

Mr. BLILEY. I think you get into the question of the intent. You cannot annex today—any core city cannot annex anywhere in the country in which you're going to add people when you add territory, and almost every city, if you add contiguous city—and most annexations require you to do that—you're going to bring in citizens who are usually going to be——

Ms. DAVIS. Both the Justice Department and the courts' interpretations of annexations under section 5 is that those annexations are subject to challenge when the addition of white voters has occurred without an addition of minority voters as well—that constitutes the dilutive effect. And it's in those instances where there have been objections under section 5.

Mr. BLILEY. Well, as I said, the act does not apply everywhere in the United States. That in itself——

Ms. DAVIS. Section 5 does not?

Mr. BLILEY. Section 5; that's right. And it should not apply anywhere, unless it applies everywhere. And for those reasons alone——

Ms. DAVIS. Your recommendation would be that section 5 should be applied in every jurisdiction?

Mr. BLILEY. I would recommend, in the case of Virginia, that Virginia be allowed out of the act after 17 years without a complaint of a person not having the right to register or vote; that that is ample evidence of good faith and compliance.

I mean, if I were here, for example, and you had a bill before you dealing with crime, people who commit Federal crimes, of robbery or such of those nature, and I were to come in here and testify that you pass mandatory legislation that would require that a judge impose the maximum penalty in every instance, and never allow parole, you would think I was being particularly harsh.

But here, we have a situation in which you have almost a generation of an act in which there have been no claims of people that

violated it, and yet, under the terms that have been suggested, we would be extended a further 10 years. I think that's unreasonable.

Ms. DAVIS. Thank you, Mr. Bliley.

Mr. EDWARDS. Mr. Washington, the gentleman from Illinois.

Mr. WASHINGTON. Yes, Congressman. Just one question. I'm looking at your submission here, page 1, subsection (1). In your statement you just repeated to the effect that Congress should never enact legislation dealing with such basic rights—a person's right to vote, unless it applies universally. Is that what you're saying?

Mr. BLILEY. Yes, sir.

Mr. WASHINGTON. Give me the rationale again. I came in late for that.

Mr. BLILEY. The rationale is, it's the sections 4 and 5, I believe it is. Certainly, section 5 does not apply universally across the United States. There are only a limited number of States. For example, I believe there's talk of redistricting in Illinois this year. The plans that the Illinois Legislature adopts will not be subject to review or preclearance from the Justice Department. Why should they be from Virginia?

Mr. WASHINGTON. There were problems that brought about section 5 application to several States and certain subdivisions in certain northern States. The problems didn't exist throughout the entire United States, as such. They were peculiar to certain geographical areas, including yours. That was the reason.

Mr. BLILEY. I agree. But after 17 years, and you have a State in which you haven't had a single complaint, why should you be further subjected?

Mr. WASHINGTON. You're shifting ground. You started off by saying it should apply universally throughout the country.

Mr. BLILEY. I agree.

Mr. WASHINGTON. I'm submitting to you the reason it wasn't because it was not needed.

Mr. BLILEY. I disagree with that.

Mr. WASHINGTON. There may be pockets where section 5 should have been applied, but it wasn't. But generally speaking, it was applied where it should have been, in those States which had a pattern of denying black citizens their right to vote through one dodge or another, that was the basic and fundamental reason for section 5.

Mr. BLILEY. What I'm saying is, fine, if they didn't have a problem, then they wouldn't have had any problem in complying with it. If it was necessary for Congress to enact it, they should have had it apply universally.

Mr. WASHINGTON. You don't concede the point that Congress had a right pursuant to the 15th amendment to make certain that the pattern of denying blacks the right to vote in those States should not have ended?

Mr. BLILEY. I agree with that, but what I'm saying is they should have made it apply to all States.

Mr. WASHINGTON. Why?

Mr. BLILEY. Because there have been claims in other States of people's votes not being counted and certain other irregularities.

Mr. WASHINGTON. That's not the problem of the charge that brought about section 5. What brought it about was the denial of

black citizens the right to vote, based upon some historical reasons, which you could probably articulate better than I. That was the reason.

Mr. BLILEY. The provisions that were in the act then will go in the act, in my opinion, address those situations. I do not think that the other provisions should continue as they are, particularly, in the case of Virginia, which is the only situation with which I'm thoroughly familiar, in which you have had 17 years without a complaint.

Mr. WASHINGTON. That's a separate argument. I was trying to separate the two, so we could deal with them one at a time.

Mr. BLILEY. It's only one act. If it's reenacted, it's going to be in effect regardless of what other argument you may have. The effects are going to be there.

Mr. WASHINGTON. I'm trying to do justice to your argument. You stated that section 5 should apply throughout the United States.

Mr. BLILEY. Yes; Congress should never enact legislation——

Mr. WASHINGTON. I am suggesting to you it wasn't applied throughout the United States, because it wasn't felt that it was needed throughout the United States.

Mr. BLILEY. Well neither you nor I was here.

Mr. WASHINGTON. That's not the point.

Mr. BLILEY. You're certainly entitled to your opinion, but what I'm saying is that it was wrong, if that was their intention then only to make it apply, as apparently it was, because that's the way it worked out. But it should apply. Any legislation that Congress enacts, particularly with the basic rights, such as the right to vote. It should apply universally.

Mr. WASHINGTON. I yield the balance of my time.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman.

Congressman, with regard to the 1971 annexation, weren't there certain corporate headquarters located in part of Chesterfield County, which was annexed?

Mr. BLILEY. There may have been. There was some business annexed by Chesterfield County, in Chesterfield County, but at that time Chesterfield's development was not as far along as it is today, and the areas that the city sought were based upon ability, particularly of water and sewage. And you have a fall line. Part of Chesterfield County is in a drainage that flows into the James River, which is the same as the city's, and another goes into the Appomattox drainage basis, which is south of the city and west. And generally the territory that the city sought was within that boundary, that fall line, so that they would not have to engage in extra expense, plus the fact of distance.

Mr. BOYD. That annexation has proved to be a considerable boon to the city of Richmond; has it not?

Mr. BLILEY. Testimony in the courts were that at that time it was producing in excess of $3 to $4 million. And of course, at the time the city was under obligation to make extensive improvements which were financed through debt service of 20-year bonds. When the bonds are paid off, of course, the return to the city will be even greater.

Mr. BOYD. Last April the Supreme Court decided a case, *the City of Rome* v. *The United States,* which held the city of Rome, Ga., would be unable to bail out under the preclearance coverage of section 5, because the State of Georgia, as a whole, was covered by the 1964 trigger. The same test would apply to Richmond, with regard to Virginia's coverage under the 1964 trigger.

Do you think at the very least Congress should consider a more moderate or more liberal bailouts procedure, to jurisdictions like Rome which have had few if any objections over the years, to bail out?

Mr. BLILEY. I would think that that certainly would be helpful, but I think that the preclearance provisions in toto ought to expire.

Mr. BOYD. You were elected, Congressman, to the mayoral position in Richmond on two occasions; were you not?

Mr. BLILEY. Once. I was vice mayor once, and mayor the other time. But that is not a popular election by the people. That is election by council.

Mr. BOYD. But you had to remain in office for some 5 years; didn't you?

Mr. BLILEY. I could have resigned at any time, but I did remain in office 7 years.

Mr. BOYD. Thank you. I have no further questions.

Mr. EDWARDS. Are there further questions from any members? Staff?

[No response.]

Mr. EDWARDS. Thank you very much, Mr. Bliley.

Mr. BLILEY. Thank you, Mr. Chairman, members of the committee.

Mr. EDWARDS. We now will have a panel presentation by three distinguished Virginians, the Honorable Henry Marsh, mayor of Richmond; Michael Brown, who is field director for the branches of the Virginia State Conference, NAACP; and the Honorable Doug Wilder, Virginia State senator.

Our first speaker will be the mayor of Richmond, the Honorable Henry Marsh.

TESTIMONY OF HON. HENRY MARSH, MAYOR OF RICHMOND, VA.; MICHAEL BROWN, FIELD DIRECTOR FOR BRANCHES, VIRGINIA STATE CONFERENCE, NAACP; AND HON. DOUG WILDER, VIRGINIA STATE SENATOR

Mr. EDWARDS. Gentlemen, you are all welcome. And before you speak, I would like to yield to the gentleman from Virginia, Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman, I want to take this opportunity to also welcome my colleagues. Senator Wilder, I was there on that memorable day when Virginia elected him senator to Virginia, which was very early, and he immediately made his presence known, and a major contribution to our government since that time. Mayor of the city of Roanoke, was elected to city council when I was in Richmond—what'd I say, Roanoke? We've got a nice mayor in Roanoke, too. The mayor of the city was elected to city council there, so I have been able to follow the careers of these two gentlemen for a long time. And I urge you to listen closely to what they have to say.

I was also a member of the general assembly for 10 years during the experience of the Voting Rights Act, and we had a major revision in our election laws in the State of Virginia in 1969 and 1970, which removed many of the problems that we had in the past. During that same period of time we disposed of the poll tax. I have to admit, we, the Republicans were anxious to get rid of it, but it took the courts and the others to do it, but we did get rid of it.

We had the voting options where a whole lot of registration is supposed to be easier. I was disturbed to read about Mr. Brown's testimony that there are still areas of the State which we do not seem to be getting the requirements of ample opportunity to register to vote. But these provisions are things that it seems to me that I, as a member of this committee, ought to examine more closely. That's the reason I asked for this time to speak, not being a member of this subcommittee. I had other commitments today, and I will quietly steal away sometime in the middle of this testimony, but I don't want the panel to think that it's out of a lack of interest or, Mr. Chairman, a lack of interest in the work of the subcommittee, and I appreciate the chance to be here.

Mr. EDWARDS. Mr. Butler, you always make a huge contribution. As I said earlier, Mr. Butler was a member of this subcommittee for a long time, and we miss his presence.

The first person to testify will be the Honorable Henry Marsh, mayor of the city of Richmond.

Mr. MARSH. Thank you, Mr. Chairman, members of the subcommittee, and Mr. Butler.

My name is Henry Marsh, and I am presently the mayor of Richmond, Va.

Accompanying me today are the Honorable Douglas Wilder, State senator from Virginia, representing Richmond, and Michael Brown, the coordinator of branch and field activities for the Virginia State Conference of the NAACP.

I'm appearing today before the Subcommittee on Civil and Constitutional Rights to voice my wholehearted support for the extension of the Voting Rights Act. Specifically, I support H.R. 3112, the Rodino bill which would extend the preclearance provisions of the act for 10 years and remedy the long history of conflicting interpretation of section 2 of the act. The Rodino bill would clarify section 2, so that it permits an effects test rather than an intent test, in order to prove voter discrimination.

Prior to the Supreme Court decision in *Mobile* v. *Bolden,* plaintiffs in voting rights cases could present a variety of factors to show that a voting law had the effect of discriminating against blacks. Should the intent standard prevail, however, it would be extremely difficult to prove voter discrimination absent a confession of intent by a voter official. I support the extension of the bilingual provisions of the act which are due to expire in 1985 so that they are coterminous with the original provisions of the act.

I have held elective office in the State of Virginia for the last 16 years. I first ran for elected office in 1966 and gained a seat on the nine-member Richmond City Council. In 1970, I was elected vice mayor by my colleagues at the same time that Mayor Bliley was

elected mayor, and I held that position until 1977, when I was elected by the council to serve as mayor.

Had it not been for the Voting Rights Act, it is doubtful that I or any other black person could be the mayor of Richmond, even though Richmond has a substantial black voting population. Right now it's at 51.5 percent. Because of my personal success, however, and because of my length of public service, I would like to describe the experiences of Richmond under the Voting Rights Act. In doing so, I'd like to highlight the problems black voters face in Virginia, and the several reasons why the State of Virginia should continue to meet the section 5 preclearance requirements of the act.

In 1966, Richmond was using at-large election schemes for all of the nine seats on the city council. The city had used at-large elections since 1948. In answer to the question about whether blacks could be elected before the act, only one black since the original election in 1948 had been elected, and that was in 1964, when that black was endorsed by the white power organization.

In 1966, I was one of three blacks who ran for the council. We all won seats, even though I ran as an independent candidate, and the other black candidates were part of a predominately white well-financed team. Two years later in 1968, the other two black candidates lost, so that I was the only black member of the city council at that time.

Richmond's black population during the period from 1966-1970 grew to 52 percent of the total population. Along with its growth came a greater demand for representation in elective office. Voter registration and education became a priority. Because of the election of blacks to the city council the voter registration was stimulated as was the desire for better community services, schools, and a more responsive government, became a reality.

Just as the enthusiasm grew in 1969, the mayor of Richmond and a few members of the city council decided to compromise a pending suit to annex portions of Chesterfield County, Virginia, with the sole purpose of diluting the black vote. I knew that this change was racially motivated, because the news accounts and public statements during that period demonstrate the predominant desire of the negotiators of this compromise was to acquire 44,000 additional white citizens for Richmond.

In explaining the need for the annexation compromise, Mayor Phil Bagley was quoted at public events stating, "I don't want niggers to take over the city." He said that on several different occasions. Another indication of their intent was the fact that Mayor Bagley and others who spearheaded the plan moved so quickly that they sacrificed several benefits of expansion, such as lucrative industrial sites, tax revenues, and utilities, in order to gain 44,000 white voters by the 1970 elections.

In addition, the negotiations made no arrangements for schools for the new citizens of Richmond, so the children had no place to go.

The leaders of the annexation movement failed to consult with the city boundary expansion coordinator and with those of us on the city council who were unlikely to agree with the plan. In fact, we did not learn of the change, nor was it submitted to the Justice Department until 1971, over a year after the annexation was adopt-

ed, and after the 1970 city council elections. These elections took place in clear violation of the Voting Rights Act.

I submit to the committee that had it not been for the annexation of white voters, Walter Kenney, a black candidate for city council in 1970, would have won. Election returns showed that Kenney received a clear majority of votes in the old city boundaries. The Justice Department lodged an objection to the annexation or sustained an objection which had been lodged by the black citizens, but the decision was appealed to the district court and finally the Supreme Court of the United States. After the 1970 elections, the Supreme Court enjoined all city council elections until litigation was completed in 1977.

The city of Richmond was allowed to retain the annexed portions of Chesterfield County, in view of the fact that the city had shifted from at-large elections to single member districts as recommended by the Justice Department. Since 1977, Richmond has a nine-member city council, five of whom are black.

The point of my discussion of the Richmond annexation suit is to demonstrate that despite the preclearance requirements of the Voting Rights Act, the voting rights of blacks in Richmond were abridged, diluted or otherwise violated for 7 years, because of the determination of the preexisting government.

Some Virginia legislators will argue that my story about Richmond is history, and that Virginia no longer needs preclearance. While progress has been made it is very recent. Indeed, progress came only because of the protections of the act, some 107 years after the passage of the 15th amendment. Four years of the opportunity to effectively participate in the electoral process in the town is hardly indicative of an act that has outgrown its usefulness.

Other sections of Virginia continue to benefit from the Voting Rights Act. In the city of Petersburg, Va., for example, the city government attempted to annex 14 square miles of the surrounding area in 1970. The effect of the annexation would be to reduce the percentage of the black population from 55 percent to 46 percent, from a majority to a minority.

The annexation combined with the system of at-large elections and a historical pattern of racial bloc-voting had the effect of eliminating the opportunity for black representation. This change was submitted to the Justice Department under section 5. The Department interposed an objection; the city appealed their decision to the district court. The district court as well as the Supreme Court agreed with the Justice Department.

The Department stated in their brief in *Petersburg* v. *United States:*

> In readopting the at-large election system in the context of a significant change of population from black to white majority and simultaneously rejecting a proposed ward system, the potential for an adverse and discriminatory voting effect has been written into the Petersburg election law.

410 US 962, 35 L.Ed 2d, 93 SCT 144 (1973).

Petersburg now has ward rather than at-large elections. It has a seven-member city council, and three of the council members are black. And the number has fluctuated from three to four over the past three elections.

When one contrasts and examines the experiences of Richmond and Petersburg under the Voting Rights Act, one has to conclude that the Voting Rights Act provides the opportunity for blacks to have a choice as to who represents them. Prior to the Voting Rights Act, blacks in Petersburg and Richmond had no choice because the at-large election schemes, racial bloc voting, discriminatory annexation, precluded their right to participate effectively in the electoral process.

Even though Richmond and Petersburg eventually adopted single member or ward elections while blacks were a majority of the population, blacks now comprise a majority of the council in Richmond and a minority in Petersburg. The Voting Rights Act does not guarantee proportional representation of blacks nor does it require quotas. It serves as a deterrent to further discrimination.

Richmond and Petersburg are not indicative of the rest of the State. As my colleague, Michael Brown of the NAACP, will attest, there are large pockets of black voters throughout the State who cannot effectively participate in the process because pre-1965 discriminatory practices and schemes were grandfathered into the Voting Rights Act.

The only way of remedying these schemes is to file suit in Federal District Court under section 2 of the Voting Rights Act so that these discriminatory election laws are eliminated and to bring subsequent voting changes under the protection of section 5.

Norfolk, for example, continues to hold at-large city council elections, and until the last reapportionment dispute in the Virginia legislature, had at-large representation in the house and the senate. As Doug Wilder, the only black State senator in Virginia, can explain, the 1981 reapportionment debate centered on single-member district versus at-large representation for Norfolk. The predominant incentive for adopting single-member districts was the threat of a Justice Department objection. However, the State legislature cannot control the election practices of the Norfolk City Council. The victims of discrimination, black voters, must carry the burden of proof and attempt to remove discriminatory at-large elections.

Unfortunately, as a lawyer, I can attest to the fact that this kind of litigation is very costly, and the rights of the victims can be whittled away through the course of litigation. As a member of a law firm which handles a number of civil rights cases, I know that some of these cases take 10 years to wind their way through the Federal courts and thousands of dollars that most black or Hispanics cannot afford. Most importantly, however, this is not the way to treat a fundamental constitutional right, the right to vote.

Because litigation alone is not a reasonable alternative to section 5 preclearance, I must oppose legislation proposed by Representative Henry Hyde, H.R. 3198, which would permit preclearance only if imposed by the court after a finding of pattern or practice of voting rights abuse. While Representative Hyde's legislation does provide for an effects test, the test only applies to laws enacted after 1982. His bill deprives those of us in covered jurisdictions of an expedited, fair, and effective administrative pre-clearance procedure.

Throughout the last century, Virginia's political leadership, the elected leadership of Virginia has had many opportunities to remove the legal barriers to equality. In most cases, however, they maintain political structures that work to exclude blacks. The Voting Rights Act serves as a necessary reminder that the right to vote regardless of race, creed, and national origin is not an option; it is a requirement of our Constitution.

I would like to make this statement a part of the record and would be happy to respond to any questions.

[The complete statement follows:]

PREPARED STATEMENT OF HON. HENRY MARSH, MAYOR OF THE CITY OF RICHMOND

Mr. Chairman and members of the subcommittee, my name is Henry Marsh and I am presently the Mayor of Richmond, Virginia. Accompanying me today are the Hon. Doug Wilder, State Senator from Virginia, and Michael Brown, Coordinator of Branch and Field Activities for the Virginia State Conference of the NAACP.

I am appearing today before the Subcommittee on Civil and Constitutional Rights to voice my whole hearted support for the extension of the Voting Rights Act. Specifically, I support H.R. 3112, the Rodino bill which would extend the preclearance provisions of the Act for ten years and remedy the long history of conflicting interpretation of section two of the Act. The Rodino bill would clarify section 2 so that it permits an effects test rather than an intent test in order to prove voter discrimination. Prior to the Supreme Court decision in *Mobile* v. *Bolden*, plaintiffs in voting rights cases could present a variety of factors to show that a voting law had the effect of discriminating against blacks. Should the intent standard prevail however, it would be extremely difficult to prove voter discrimination absent a confession of intent by a voter official. I support the extension of the bilingual provisions of the Act which are due to expire in 1985 so that they are coterminous with original provisions of the Act.

I have held elective office in the State of Virginia for the last 16 years. I first ran for elected office in 1966 and gained a seat on the nine-member Richmond City Council. In 1970 I was elected Vice-Mayor by my colleagues on the Council and held that position until 1977 when I was elected by the Council to serve as Mayor.

Had it not been for the Voting Rights Act it is doubtful that I or any other black person could be Mayor of Richmond, even though Richmond has a substantial black voting population. Because of my personal success, and because of my length of public service, I would like to describe the experiences of Richmond under the Voting Rights Act. In doing so, I'd like to highlight the problems black voters face in Virginia and the several reasons why the State of Virginia should continue to meet the Section 5 preclearance requirements of the Act.

In 1966 Richmond was using at-large election schemes for all of the nine seats on the city council. The city had used at-large elections since 1948. In 1966 I was one of three blacks who ran for the council, we all won seats even though I ran as an independent candidate, and the other black candidates were part of a predominately white well-financed team. Two years later the other two black candidates lost, so that I was the only black member of the City Council.

Richmond's black population during the period from 1966–1970 grew to 52 percent of the total population. Along with its growth came a greater demand for representation in elective office. Voter registration and education became a priority. Because of the election of blacks to the city council the voter registration was stimulated as was the desire for better community services, schools, and a more responsive government, became a reality.

Just as the enthusiasm grew in 1969, the Mayor of Richmond and a few members of the city council decided to compromise a pending suit to annex portions of Chesterfield County, Virginia with the sole purpose of diluting the black vote. I knew that this change was racially motivated because the news accounts and public statements during that period demonstrate the predominent desire of the negotiators of the 1969 annexation settlement was to acquire 44,000 additional white citizens for Richmond.

In explaining the need for the annexation compromise, Mayor Phil Bagley was quoted at public events stating "I don't want niggers to take over the city." Another indication of their intent was the fact that Mayor Bagley and others who spearheaded the plan moved so quickly that they sacrificed several benefits of expansion such as lucrative industrial sites, tax revenues, and utilities in order to gain 44,000 white

voters by the 1970 elections. In addition, the negotiations made no arrangements for schools for the new citizens of Richmond so the students had no place to go.

The leaders of the annexation movement failed to consult with the City Boundary Expansion Coordinator and with those of us on the City Council who were unlikely to agree with the plan. In fact, we did not learn of the change was not submitted to the Justice Department until 1971 over a year after the annexation was adopted, and after the 1970 City Council elections. These elections took place in clear violation of the Voting Rights Act. I submit to the committee that had it not been for the annexation of white voters Walter Kenney, a black candidate for city council in 1970 would have won. Election returns showed that Kenney received a majority of votes in the old city boundaries. The Justice Department lodged an objection to the annexation, but the decision was appealed to the District Court and finally the Supreme Court of the United State. After the 1970 elections, the Supreme Court enjoined all city council elections until litigation was completed in 1977.

The City of Richmond was allowed to retain the annexed portions of Chesterfield County in view of the fact that the City had shifted from at-large elections to single member districts as recommended by the Justice Department. Since 1977 Richmond has a nine-member city council, five of whom are black.

The point of my discussion of the Richmond annexation suit is to demonstrate that despite the preclearance requirements of the Voting Rights Act, the voting rights of blacks in Richmond were abridged, diluted or otherwise violated for seven years because of the determination of the pre-existing government. Some Virginia legislators will argue that my story about Richmond is history, and that Virginia no longer needs preclearance. While progress has been made, it is very recent. Indeed, progress came only because of the protections of the Act, some 107 years after the passage of the 15th Amendment. Four years of the opportunity to effectively participate in the electoral process in the town is hardly indicative of an Act that has outgrown its usefulness.

Other sections of Virginia continue to benefit from the Voting Rights Act. In the City of Petersburg, Virginia, for example the city government attempted to annex 14 square miles of the surrounding area in 1970. The effect of the annexation would be to reduce the percentage of the black population from 55 percent to 46 percent (from a majority to a minority.) The annexation combined with the system of at-large elections and a historical pattern of racial bloc-voting had the effect of eliminating the opportunity for black representation. This change was submitted to the Justice Department under Section 5. The department interposed an objection, the City appealed their decision to the District Court. The District Court as well as the Supreme Court agreed with the Justice Department. The Department stated in their brief in *Petersburg* v. *United States:*

". . . in readopting the at-large election system in the context of a significant change of population—from black to white majority—and simultaneously rejecting a proposed ward system, the potential for an adverse and discriminatory voting effect has been written into the Petersburg election law." 410 US 962, 35 L.Ed 2d 93 SCT 144 (1973).

Petersburg now has ward rather than at-large elections. It has a seven member city council, and three of the council members are black.

When one contrasts and examines the experiences of Richmond and Petersburg under the Voting Rights Act, one has to conclude that the Voting Rights Act provides the opportunity for blacks to have a choice as to who represents them. Prior to the Voting Rights Act, blacks in Petersburg and Richmond had no choice because the at-large election schemes, racial bloc voting, discriminatory annexation, precluded their right to participate effectively in the electoral process. Even though Richmond and Petersburg eventually adopted single member or ward elections while blacks were a majority, of the population, blacks now comprise a majority of the council in Richmond and a minority in Petersburg. The Voting Rights Act does not guarantee proportional representation of blacks nor does it require quotas. It serves as a deterent to further discrimination.

Richmond and Petersburg are not indicative of the rest of the state. As my colleague, Michael Brown of the NAACP will attest, there are large pockets of black voters throughout the state who cannot effectively participate in the process because pre-1965 discriminatory practices and schemes were grandfathered into the Voting Rights Act. The only way of remedying these schemes is to file suit in federal district court under Section 2 of the Voting Rights Act so that these discriminatory election laws are eliminated, and to bring subsequent voting changes under the protection of section 5. Norfolk, for example, continues to hold at-large city council elections, and until the last reapportionment dispute in the Virginia legislature, had at-large representation in the House and the Senate. As Doug Wilder, the only black state senator in Virginia can explain the 1981 reapportion-

ment debate centered on single member district versus at-large representation for Norfolk. The predominant incentive for adopting single member districts was the threat of a Justice Department objection. However, the state legislature cannot control the election practices of the Norfolk City Council. The victims of discrimination, black voters, must carry the burden of proof, and attempt to remove discriminatory at-large elections.

Unfortunately, this kind of litigation is costly, and the rights of the victimized can be withered away throughout the course of litigation. As a member of a law firm which handles a number of civil rights cases. I know that some of these cases take 10 years to wind their way through the federal courts and thousands of dollars that most blacks or hispanics cannot afford. Most importantly, however, this is not the way to treat a fundamental constitutional right, the right to vote.

Because litigation alone is not a reasonable alternative to section 5 preclearance, I must oppose legislation proposed by Rep. Henry Hyde, H.R. 3198 which would permit preclearance only if imposed by the court after a finding of pattern or practice of voting rights abuse. While Rep. Hyde's legislation does provide for an effects test, the test only applies to laws enacted after 1982. His bill deprives those of us in covered jurisdictions of an expedited, fair and effective administrative preclearance procedure.

Throughout the last century Virginia's political leadership has had many opportunities to remove the legal barriers to equality. In most cases, however, they maintain political structures that work to exclude blacks. The Voting Rights Act serves as a necessary reminder that the right to vote regardless of race, creed, national origin is not an option, it is a requirement of our Constitution.

Mr. EDWARDS. Thank you, Mayor Marsh. I believe we will ask all members of the panel to deliver their statements first. And I believe it is the wish of the panel that Mr. Michael Brown testify next.

Mr. Brown, you are recognized. Without objection, all the statements will be made a part of the record.

[The complete statement follows:]

PREPARED STATEMENT OF MICHAEL G. BROWN, COORDINATOR OF BRANCH AND FIELD ACTIVITIES, VIRGINIA STATE CONFERENCE, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. Chairman and members of the Subcommittee. My name is Michael G. Brown and I am the Coordinator of Branch and Field Activities of the Virginia State Conference of the National Association for the Advancement of Colored People.

The Virginia State Conference of the NAACP is grateful that the Committee is holding these hearings on the extension of the Voting Rights Act and we strongly support H.R. 3112, the Rodino bill in its entirety.

The Voting Rights Act, which has been hailed as one of the most effective civil rights laws ever passed, has had a remarkable effect on the State of Virginia.

The number of black elected officials in the state increased from 36 in 1970 to 126 in 1981. There are 3,599 elected officials in Virginia and progress has been slow, but steady. The number of black registered voters has increased.

Mr. Chairman, I noted a few minutes ago that there has been some success in the state as a direct result of the Voting Rights Act. I hasten to state that we still have a long way to go since the State has a black population of 19 percent and in 1981, only 4 percent of the more than 3,500 elected officials are black. This fact is a major reason why Virginia must remain a covered jurisdiction under an extended Voting Rights Act with its preclearance provision intact.

Let me cite some examples why the Voting Rights Act is still needed with the preclearance provision. Virginia's General Assembly recently completed the process of redistricting and reapportionment. There is no black elected official out of the 10 Congressional Districts, although, Virginia did have a black Congressman in 1890 during Reconstruction. The State now has only 1 black Senator out of 40 state senatorial districts, and a mere 4 delegates out of the 100 House of Delegates Districts. Prior to the passage of the Voting Rights Act there were no black state elected officials. All four of the black members of the House of Delegates were elected since 1975 when the Voting Rights Act was last extended.

The NAACP is so concerned about the composition of the new House of Delegates districts that it is in the process of filing a complaint with the U.S. Department of Justice. Our contention is that the new districts are unfairly drawn and have the effect of fragmenting black political strength in some cities and counties.

In formal statements submitted to the Justice Department, we have stated that our objections to the new districts is due to the failure of the House of Delegates to adopt single member districts for the Cities of Richmond and Norfolk. These two major Virginia cities—Richmond (51 percent black) and Norfolk (35 percent black)—prior to redistricting, had five and one-half and seven delegates respectively. As a result of population loss, their delegate strength will be reduced to four and five respectively, thereby reducing the chances of a black being elected to office.

Three of the four blacks presently serving in the House of Delegates are from Richmond and Norfolk and they represent 3 percent of the State's 19 percent black population. Without the Voting Rights Act, the possibility of these blacks being re-elected to the House of Delegates is tenuous, at best.

The failure of the House to have single-member districts for the cities of Portsmouth, Chesapeake, Virginia Beach, Hampton and Roanoke, is also a reason for NAACP opposition to the redistricting plan. If single-member districts were adopted for those cities, blacks could have a greater influence in the election outcome of the several districts. In the City of Portsmouth, which is 45 percent black and entitled to two delegates, blacks could elect a black delegate under a single-member district plan. In Hampton, a black could possible be elected, and in other cities, blacks could undoubtedly affect the outcome of elections.

The U.S. Supreme Court, in *Howell* v. *Mahan*, ruled that the State could justify the need to respect political jurisdictions in redistricting; however the Court did not state that delegates within those jurisdictions could not be elected from single-member districts. Therefore, it is the NAACP's position that the cities and counties, entitled to more than one delegate, could be divided into single-member districts thereby increasing the opportunity for representation from minority group members.

In NAACP comments to the Justice Department, it points out that there is more than a 26 percent overall deviation from the ideal district population—more than what the Supreme Court said is a tolerable limit (some 10 years ago, Virgina sets its deviation at 16.5 percent). It is our position that the "one man, one vote" principle transcends the argument for maintaining the sanctity of political boundaries. Further, we believe that an overall percent of deviation that great has the effect of diluting the potential voting strength of some districts.

The NAACP's main objection to the redistricting process used for the state senatorial districts is that the lines for the two districts were drawn North and South in Norfolk splitting the black community, thereby diluting its political strength. An amendment offered on the Senate floor to change the line from a North-South line to a East-West line was overwhelmingly defeated, because as one Senator said:

"In Virginia, we traditionally draw lines North-South." If an East-West line had been drawn, the Southern Senatorial District would have been more than 50 percent black and a black could possibly have been elected to the Senate Chamber to join the lone black Senator in that august body of 40.

You can see, Mr. Chairman and members of the Subcommittee, that we, in Virginia, have just begun to fight the battle of redistricting. Several cities with single-member districts and 94 of the State's 95 counties must redistrict as a result of the 1980 Census. Five of those counties are 50 percent black or higher and blacks govern only two of them. Two of the three cities within the 40-percent range have only one black each on the City Council and the other city has three. Of the six cities with 30 percent black population, all but one (Martinsville) has a black on its City Council. There are other counties within the 40 percentile. Four of those counties have no blacks on the board of supervisors; five with just one black on the board and one with three blacks. There are 13 counties that fall within the 30-plus percentile and 9 of those counties have no blacks as county elected officials.

If we, in Virginia, did not have Section 5 of the Voting Rights Act to require those counties to submit their redistricting plans for preclearance, it is our considered judgment that the picture of political participation I have presented here today would be extremely bleak indeed and that blatant and innovative methods of manipulating the election system and diluting the black vote, reminscent of post-Reconstruction, would be used. Without Section 5 coverage, Mr. Chariman, the most fundamental right that a citizen can have would be relegated to the costly, time-consuming litigative process instead of use of an administration remedy obtainable within 120 days. My organization, and others, I daresay, would find it an impossible burden to challenge every unfair redistricting plan or election change in court. We must retain this important section in the Voting Rights Act to do the job that the 14th and 15th amendments were supposed to do.

Since 1975, there have been 2,039 voting changes in Virginia submitted to the Justice Department under Section 5 of the Act. Three of the changes have been

objected to—annexation in Lynchburg, staggered terms in Gretna and a decrease in the number of council members in Hopewell. When the Hopewell City Council, in 1980, decided to decrease the number of council members from seven to five, the Justice Department stated it would consider accepting the decision providing the city instituted a ward system. In this instance, as in others, the Voting Rights Act served as a deterrent to an election change that would have diluted the black vote.

You may ask why there have been so few objections to changes proposed by local subdivisions? My response, Mr. Chairman is that Section 5 covers electoral changes only; it does not cover discriminatory practices which existed prior to 1965. Those pre-existing discriminatory practices were "grandfathered" into Section 5. Virginia is full of discriminatory practices which were in place at the time Section 5 was passed. For example, the at-large system in place in Norfolk was a successful post-Reconstruction effort which diluted the black vote. Also, the City of Emporia which is 40 percent black, in 1964, changed its method of electing people at-large all at the same time to an at-large staggered term system. The City of Franklin changed from a system where its council was elected at one time to a staggered term in 1962. Franklin is 55 percent black. The City of Portsmouth, which is 45 percent black, in 1960 decided to have staggered terms for its city council. Emporia has 1 black elected official and Franklin has 1. Portsmouth has had two elected city council officials; however, just last year, five black candidates ran in the city and all lost. These are some examples to underscore our contention that it is under Section 2 of the Act that we must seek to eliminate these preexisting practices. Section 5 is essential to monitor changes—to keep the plight of blacks from worsening by monitoring jurisdictions which have demonstrated their willingness to discriminate against blacks.

Mr. Chairman, let me cite some additional examples of why the Voting Rights Act is still needed in Virginia:

1. A number of registrars are unwilling to establish additional temporary locations for registration. In Waynesboro, the local NAACP branch put in a timely request for temporary registration site, to be informed by the General Registrar that if she went to the requested shopping center, she would be discriminating against shoppers at the other shopping center. The registrar further indicated that if anyone wanted to register they could do so at City Hall "since everyone is in City Hall at least once a month anyway." The registrar's husband is the chairman of the local electoral board.

2. In the County of Nottoway (39 percent black) where the Central Office for registration is in a different part of the County, the local NAACP requested the registrar to establish a temporary site in the two towns that were preparing for a town council election in 1980. The request was denied by the Registrar who informed branch officials that she had been to one of the towns back in 1956 and she did not register that many people there then. A black was running for one of the council seats and lost by a thin margin in the town of Blackstone which is 43 percent black.

3. In Caroline County which is 43 percent black, the local NAACP branch reported that the General Registrar is negative and indifferent and does not demonstrate a willingness to assist prospective registrants, especially blacks.

4. In Hanover County, which is 13 percent black, the local NAACP branch reports that the request of the Hanover Civic Association to have a black deputized as an Assistant registrar was denied.

5. In Pulaski County, our local branch reported that the registrar is unwilling to register voters at places other than her office because she feels that "if people are interested enough, they will come to the office."

6. In Mathews County, the General Registrar's office is located in the Mathews Furniture store. There is no identifying sign outside or inside the store to indicate that persons may register there. The registrar's office is in the back of the store and the storeowner is the registrar.

7. In Southampton County, which is 48 percent black, the General Registrar's office is located next door to the sheriff's office.

8. In Mecklenburg County (40 percent black), the Registrar's office is in a sporting goods store.

It is hardly coincidental that a number of registrar's offices have so signs on the outside of buildings to indicate where the registrar is located; yet many of these same locations have signs indicating the offices of the Clerk of the Court and the County Treasurer.

Other practices and problems connected to the electoral process include:

1. There are only 2 black registrars out of a total of 136 in the State of Virginia.
2. Of the 136 local electoral boards, not 1 has a black majority.

3. There are few assistant or deputy registrars and even fewer blacks serve on the 136 local electoral boards.

4. Most registrars, after purging the rolls, use the single option of posting the names at the courthouse and do not publish the names in a newspaper of general circulation within the jurisdiction.

5. Although the registrar is required to mail a notice to the last known address of the person purged from rolls, failure to mail such notice does not affect the validity of the purge.

6. There are 17 cities and counties where the General Registrar's office is open only 1 day a week and 9 of them are located in cities or counties that are at least 25 percent black or higher. Seven of those cities or counties have only one black elected official; one county has two and the other county has none.

7. There are only four counties that are 33 percent black or higher and the registrar's office is open only 2 days per week. Three of the four counties have only one black elected official.

A major problem in the State is that most registrar's offices in cities and counties are open only 1 or 2 days a week during working hours and some of these are closed during the normal lunch hour.

In Greenville County, which is 57 percent black, and the City of Emporia (40 percent black), the registrar's office is closed even during some regularly scheduled hours. Both locations are open only 1 day per week.

There also remains the problem of securing the ballot. Let me cite one example: In Greenville County, a black man who was hospitalized, applied for an absentee ballot in the 1980 Presidential election. The form was completed and mailed, yet no ballot was received. After leaving the hospital the man inquired why he failed to receive a ballot and was told by the registrar that a ballot had been mailed to him. When he asked to be shown the receipt for proof of mailing, he was told the receipt was inadvertently placed in the registrar's package of cigarettes and thrown away.

Mr. Chairman and members of the Subcommittee, there is no doubt that there is still a need for the Voting Rights Act in Virginia. Practices and procedures in local government subdivisions and entities, as well as on a state level, leave much to be desired. There is need for increased representation of black elected officials at the state level because they have a larger than usual impact on local communities.

In my State of Virginia, there are two methods of appointing school board members. The local governing bodies appoint school board members and secondly, local circuit court judges appoint school electoral boards who are then authorized to fill vacancies on the school board.

Circuit court judges also appoint local electoral boards, which, in turn, hire the registrars. I have recited this litany of relationships, Mr. Chairman so that the Committee can get a grasp of the far-reaching implications of the lack of or token representation of blacks in the total electoral process.

In Greenville County, which is 57 percent black, there is only one black on the board of supervisors in a 60-percent black school system and only two blacks have been appointed to the six-member school board by the four-member board of supervisors.

In Prince Edward County, only two blacks have been appointed to the eight-member school board and the school system is more than 70 percent black. The County has a 39-percent black population.

In Southampton County, only one black serves on the school board in a school system that is more than 60 percent black and a county where 48 percent of the population is black. School board appointments are made by school electoral boards.

Only one black serves on the Nottoway school board in a county which is 39 percent black.

Yes, Virginia has come a long way, but it still has problems which justify coverage under the Voting Rights Act. Many of the 41 cities have at-large elections coupled with staggered terms and blacks are few in a number on those city councils, yet are high in percentage of the citys population.

In closing, Mr, Chairman, the Voting Rights Act has been an important instrument for increasing black political representation and participation in Virginia, but as long as the leading daily newspapers in Richmond remind people in editorials about the importance of voting because if blacks control city councils they will do the redistricting; as long as Mayor Marsh and four other members on the Council are black and are referred to as "King Henry" and his puppets, then the Voting Rights Act is needed intact. As long as Virginia has the lowest number of black elected officials of any of the other Southern States that are fully covered under the Act and ranks next to the bottom of Southern states that are partially covered, then the Voting Rights Act is needed intact.

Mr. Chairman, and members of the Subcommittee, please do not allow the "good ole boys" to turn back the clock and the calendar to the "good ole days" which, in turn, were dark days for blacks in Virginia.

Thank you, Mr. Chairman and members of the Subcommittee, for this opportunity to be heard. We urge you to vote in support of the Rodino bill to extend the Voting Rights Act for an additional 10-year period.

Mr. BROWN. Mr. Chairman, members of the subcommittee, and Congressman Butler, my name is Michael Brown. I'm coordinator of branch and field activities for the Virginia State Conference of the National Association for the Advancement of Colored People.

The Virginia State Conference of the NAACP is grateful that the committee is holding hearings on the extension of the Voting Rights Act, and we strongly support H.R. 3112, the Rodino bill, in its entirety.

The Voting Rights Act, which has been hailed as one of the most effective civil rights laws ever passed, has had a remarkable effect on the State of Virginia.

The number of black elected officials in the State increased from 36 in 1970 to 126 in 1981. There are 3,599 elected officials in Virginia, and progress has been slow but steady. The number of black registered voters has increased.

Mr. Chairman, I noted a few minutes ago that there has been some success in the State as a direct result of the Voting Rights Act. I hasten to state that we still have a long way to go since the State has a black population of 19 percent, and in 1981 only 4 percent of the elected officials are black. This fact is a major reason why Virginia must remain a covered jurisdiction under an extended Voting Rights Act with its preclearance provision intact.

Let me cite some examples why the Voting Rights Act is still needed with the preclearance provision. Virginia's General Assembly recently completed the process of redistricting and reapportionment. There is no black elected official out of the 10 congressional districts, although Virginia did have a black Congressman in 1890 during Reconstruction. The State now has only one black senator out of 40 state senatorial districts and a mere four delegates out of the 100 house of delegates districts. Prior to the passage of the Voting Rights Act, there were no black State elected officials. All four of the black members of the house of delegates were elected since 1975 when the Voting Rights Act was last extended.

The NAACP is in the process of filing a complaint with the Department of Justice, contending that the new districts are unfairly drawn and have the effect of fragmenting black strength in some cities and counties. The house of delegates failed to adopt single-member districts for the cities of Richmond and Norfolk. These major Virginia cities—Richmond, 51 percent black; Norfolk, 35 percent black—both of these had, prior to redistricting, five and a half and seven delegates respectively. As a result of the population loss, these delegate strengths will be reduced to four and five respectively. This will reduce the chances of blacks being elected to office.

There black individuals have been elected to the house of delegates from Richmond and Norfolk, and they represent 3 percent of the State's 19-percent black population. Nearly 20 percent of the population resides in those two cities.

Without the Voting Rights Act, the probability of these blacks being reelected to the house of delegates is tenuous at best. Single-member districts were adopted for Chesapeake, Portsmouth, Virginia Beach, Hampton, and Roanoke. Blacks could have a greater influence in the election outcomes of several districts.

In the NAACP comments to the Justice Department, we point out that there is more than 26 percent overall deviation from the ideal district population, more than what the Supreme Court set as a tolerable limit. Some 10 years ago, Virginia set its deviation at 16.5 percent.

It is our position that the one-man, one-vote principle transcends the argument for maintaining the sanctity of political boundaries. Further, we believe that an overall percent of deviation that great has the effect of diluting the potential voting strengths of some districts.

Where State senatorial districts are concerned, in Norfolk the lines were drawn north and south, splitting the black community. An amendment offered on the senate floor to change the line from a north-south line to an east-west line was overwhelmingly defeated, because as one senator said, "In Virginia, we traditionally lines north and south." If an east-west line had been drawn, the southern senatorial district would have been more than 50-percent black, and a black could possibly have been elected to the State senate chamber to join the lone black State senator in that August body.

You can see, Mr. Chairman and members of the subcommittee, that we in Virginia have just begun to fight the battle of redistricting. Several cities with single-member districts and 94 of the State's 95 counties must redistrict as a result of the 1980 census. Five of those counties are 50 percent black or higher, and blacks only govern two of them.

Two of the three cities within the 40-percent range have only one black each on the city council, and the other city has three. Of the six cities with 30 percent black population, all but one, Martinsville, has a black on its city council.

There are other counties within the 40th percentile. Four of those counties have no black on the Board of supervisors, five with just one black on the board, and one with three. There are 13 counties that fall within the 30-plus percentile, and 9 of those counties have no blacks as county elected officials.

If we in Virginia did not have section 5 of the Voting Rights Act to require those counties to submit their redistricting plans for preclearance, it is our considered judgment that the picture of political participation I have presented here today would be extremely bleak indeed and that blatant and innovative methods of manipulating the election system and diluting the black vote, reminiscent of post-Reconstruction, would be used.

Without section 5 coverage, Mr. Chairman, the most fundamental right that a citizen can have would be relegated to the costly, time-consuming litigative process instead of use of an administrative remedy obtainable within 120 days. My organization and others, I daresay, would find it an impossible burden to challenge every unfair redistricting plan or election change in court. We

must retain this important section in the Voting Rights Act to do the job that the 14th and 15th amendments were supposed to do.

Since 1975, there have been 2,039 voting changes in Virginia submitted to the Justice Department under section 5 of the act. Three of the changes have been objected to—annexation in Lynchburg, staggered terms in Gretna, and a decrease in the number of council members in Hopewell. When the Hopewell City Council in 1980 decided to decrease the number of council members from seven to five, the Justice Department stated it would consider accepting the decision, providing the city instituted a ward system. In this instance, as in others, the Voting Rights Act served as a deterrent to an election change that would have diluted the black vote.

You may ask why there have been so few objections to changes proposed by local subdivisions? My response, Mr. Chairman, is that section 5 covers electoral changes only; it does not cover discriminatory practices which existed prior to 1965. Those preexisting discriminatory practices were "grandfathered" into section 5. Virginia is full of discriminatory practices which were in place at the time section 5 was passed. For example, the at-large system in place in Norfolk was a successful post-Reconstruction effort which diluted the black vote.

Also, the city of Emporia which is 40 percent black, in 1964, changed its method of electing people at-large all at the same time to an at-large staggered term system. The city of Franklin changed from a system where its council was elected at one time to a staggered term in 1962. Franklin is 55 percent black. The city of Portsmouth, which is 45 percent black, in 1960 decided to have staggered terms for its city council. Emporia has one black elected official and Franklin has one. Portsmouth has had two elected city council officials; however, just last year, five black candidates ran in the city and all lost.

These are some examples to underscore our contention that it is under section 2 of the act that we must seek to eliminate these preexisting practices. Section 5 is essential to monitor changes—to keep the plight of blacks from worsening by monitoring jurisdictions which have demonstrated their willingness to discriminate against blacks.

Mr. Chairman, let me cite some additional examples of why the Voting Rights Act is still needed in Virginia:

One, a number of registrars are unwilling to establish additional temporary locations for registration. In Waynesboro, the local NAACP branch put in a time request for temporary registration site, to be informed later by the general registrar that if she went to the requested shopping center, she would be discriminating against shoppers at the other shopping center. The registrar further indicated that if anyone wanted to register they could do so at city hall "since everyone is in city hall at least once a month anyway." The registrar's husband is the chairman of the local electoral board.

Two, in the county of Nottoway, 39 percent black, where the central office for registration is in a different part of the county, the local NAACP branch requested the registrar to establish a temporary site in the two towns that were preparing for a town

council election in 1980. The request was denied by the registrar who informed branch officials that she had been to one of the towns back in 1956 and she did not register that many people there then. A black was running for one of the council seats and lost by a thin margin in the town of Blackstone which is 43 percent black.

Three, in Caroline County, which is 43 percent black, the local NAACP branch reported that the general registrar is negative and indifferent and does not demonstrate a willingness to assist prospective registrants, especially blacks.

Four, in Hanover County, which is 13 percent black, the local NAACP branch reports that the request of the Hanover Civic Association to have a black deputized as an assistant registrar was denied.

Five, in Pulaski County, our local branch reported that the registrar is unwilling to register voters at places other than her office, because she feels that "if people are interested enough, they will come to the office."

Six, in Mathews County, the general registrar's office is located in the Mathews Furniture store. There is no identifying sign outside or inside the store to indicate that persons may register there. The registrar's office is in the back of the store and the store owner is the registrar.

Seven, in Southampton County, which is 48 percent black, the general registrar's office is located next door to the sheriff's office.

Eight, in Mecklenburg County, 40 percent black, the registrar's office is in a sporting goods store.

It is hardly coincidental that a number of registrar's offices have no signs on the outside of buildings to indicate where the registrar is located; yet many of these same locations have signs indicating the offices of the clerk of the court and the county treasurer.

Other practices and problems connected to the electoral process include:

One, there are only 2 black registrars out of a total of 136 in the State of Virginia;

Two, of the 136 local electoral boards, not 1 has a black majority;

Three, there are few assistant or deputy registrars who are black, and even fewer blacks serve on the 136 local electoral boards;

Four, most registrars, after purging the rolls, use the single option of posting the names at the courthouse and do not publish the names in a newspaper of general circulation within the jurisdiction;

Five, although the registrar is required to mail a notice to the last known address of the person purged from rolls, failure to mail such notice does not affect the validity of the purge;

Six, there are 17 cities and counties where the general registrar's office is open only 1 day a week and nine of them are located in cities or counties that are at least 25 percent black or higher. Seven of those cities or counties have only one black elected official; one county has two and the other county has none.

Seven, there are only four counties that are 33 percent black or higher, and the registrar's office is open only 2 days per week. Three of the four counties have only one black elected official.

A major problem in the State is that most registrar's offices in cities and counties are open only 1 or 2 days a week during working hours and some of these are closed during the normal lunch hour.

In Greenville County, which is 57 percent black, and the city of Emporia, 40 percent black, the registrar's office is closed even during some regularly scheduled hours. Both locations are open only 1 day per week.

There also remains the problem of securing the ballot. Let r cite one example: In Greenville County, a black man who was hospitalized, applied for an absentee ballot in the 1980 Presidental election. The form was completed and mailed, yet no ballot was received. After leaving the hospital, the man inquired why he failed to receive a ballot and was told by the registrar that a ballot had been mailed to him. When he asked to be shown the receipt for proof of mailing, he was told the receipt was inadvertently placed in the registrar's package of cigarettes and thrown away.

Mr. Chairman and members of the subcommittee, there is no doubt that there is still a need for the Voting Rights Act in Virginia. Practices and procedures in local government subdivisions and entities, as well as on a State level, leave much to be desired. There is need for increased representation of black elected officials at the State level because they have a larger than usual impact on local communities.

In my State of Virginia, there are two methods of appointing school board members. The local governing bodies appoint school board members and second, local circuit court judges appoint school electoral boards who are then authorized to fill vacancies on the school board.

Circuit court judges also appoint local electoral boards, which, in turn, hire the registrars. I have recited this litany of relationships, Mr. Chairman, so that the committee can get a grasp of the far-reaching implications of the lack of or token representation of blacks in the total electoral process.

In Greenville County, which is 57 percent black, there is only one black on the board of supervisors, in a 60-percent black school system, and only two blacks have been appointed to a six-member school board.

We are presently in Federal district court suing that school system over its testing procedures, which we claim has a discriminatory effect.

In Prince Edward County, only two blacks are appointed to the eight-member school board, and their school system is more than 70 percent black. And the county has a 39-percent black population.

In Southampton County, only one black serves on the school board in a school system that is more than 60 percent black and a county where 48 percent of the population is black. School board appointments are made by the school electoral board.

The same thing applies in the County of Nottoway.

Yes, Virginia has come a long way, but it still has problems which justify coverage under the Voting Rights Act. Many of the 41 cities have at-large elections coupled with staggered terms and

blacks are few in number on those city councils, yet are high in percentage of the city's population.

In closing, Mr. Chairman, the Voting Rights Act has been an important instrument for increasing black political representation and participation in Virginia. But, as long as the leading daily newspapers in Richmond remind people in editorials about the importance of voting because if blacks control city councils, they will do the redistricting; as long as Mayor Marsh and four members on city council are black and are referred to as "King Henry" and his puppets, then the Voting Rights Act is needed. As long as Virginia has the lowest number of black elected officials of any of the other Southern States that are fully covered under the act, and ranks next to the bottom of Southern States that are partially covered, then the Voting Rights Act is needed intact.

Mr. Chairman and members of the subcommittee, please do not allow the good old boys to turn back the clock and the calendar to the good old days, which were dark days for blacks in Virginia.

Thank you, Mr. Chairman and members of the subcommittee, for this opportunity to be here. I urge you to vote in support of the Rodino bill to extend the Voting Rights Act for an additional 10-year period.

Mr. EDWARDS. Thank you very much, Mr. Brown.

We will hear from Senator Doug Wilder.

Mr. WILDER. Thank you, Mr. Chairman and members of the subcommittee.

My name is Doug Wilder and I am currently serving as State senator from the 9th senatorial district in Virginia. In 1969, I was elected at-large to represent the city of Richmond, and now represent the eastern portion of the city. I have the dubious distinction of being the only black senator in the Virginia Legislature, and its first black member since Reconstruction.

It is most important that we address you on this issue that is an essential element of full voter participation in Virginia, the Voting Rights Act of 1965.

Virginia, as you know well, is one of the 22 States covered in all the provisions in the Voting Rights Act. I urge the members of this committee to extend the act, so that the preclearance provisions continue to apply for another 10 years, as recommended by H.R. 3112, a bill introduced by your chairman.

The Voting Rights Act has not only assisted the effort to discontinue discriminatory election practices; it has served as an effective deterrent to such practices.

I can assure this committee that the required submission of all voting qualifications, prerequisites to voting, or voting standards, practices, or procedures to the U.S. Department of Justice or the U.S. District Court for the District of Columbia is a simple but fair enforcement scheme that deters egregious as well as invidious violations of the 15th amendment in the State of Virginia.

This deterrent is still necessary in order to remove the vestiges of racism and white supremacy which are the principal basis for underrepresentation of blacks in elected office in the Commonwealth.

I think, in answer to Mr. Washington's question earlier, Congressman Bliley did not touch on that as such, but unless you go

back to what the need for the act was, and understand what the need for the act was—white supremacy and the underrepresentation of blacks in the Commonwealth of Virginia—you can't cut that any other way.

It's a fact. It's a fait accompli.

And as Mr. Brown has indicated, there is no need to say:

"Well, it happened then, but so what. You guys have come a long way. Look what you've done. You've come so far that it's amazing, in such a short period of time."

In 1971, pursuant to the 1970 census, the State legislature began reapportionment.

Prior to the 1971 redistricting, all of the senators were elected at-large from the city of Richmond and the city of Norfolk. Because of the population growth and the desire for consistency, the senate agreed to adopt single-member districts for these cities. The senate created three districts for Norfolk, as their population required it, and two for Richmond.

My colleague from Richmond, Senator Willey, who has been a member of that body for going on 30 years, had previously been reluctant to go along with single-member districts. But inasmuch as he had been prevailed upon by the chairman of the committee and the chairman of the subcommittee, to show that this was an inconsistent position, that Norfolk and Richmond were being treated differently and there was no reason to continue to treat them differently, he relented.

I agreed—the two of us agreed, and the three Norfolk senators objected.

Now, the reapportionment plan was submitted to the Justice Department, as required under section 5 of the act. The Justice Department objected, because of the configuration of the three Norfolk districts.

If you had looked at them, you would have seen why they would have objected. One was called "Porkchop." Another one was called "Sirloin." And the other one was called something in between.

Upon the explanation by the committee, the Department withdrew its original objection and the plan was approved by the Justice Department.

This revised plan, in my judgment, would certainly have permitted a black senator to have been elected from Norfolk. My colleague in the house at the time, the Honorable William P. Robinson, who is since deceased, who was elected at the same time I was, in 1969, had indicated that he was preparing to run for that seat.

But Norfolk was not allowed to retain single-member districts, because a suit was brought declaring that apportionment unconstitutional.

In *Howell* v. *Mahan,* a former lieutenant governor and gubernatorial candidate on so many occasions, Henry Howell—a good friend of mine, but misguided in these things, as I say to him—alleged that the city of Norfolk was unconstitutionally split into three districts.

The issue, however, was the assignment of approximately 36,700 naval personnel to the 5th senatorial district, who were homeported at the U.S. Naval station in Norfolk. Although they were counted on the official census tracts and stationed at Norfolk, 18,000 of

these military personnel lived outside the 5th district, but within the Norfolk and Virginia branch areas.

Because of the resulting malapportionment, the Federal District Court in the District of Columbia established one multi-member district composed of the 5th, 6th, and 7th districts, encompassing Norfolk and a portion of Virginia Beach.

The Supreme Court said that to the extent that the military personnel were not properly accounted for, single-member districts should not be allowed.

Thus, the elections were held in 1971, on an at-large basis.

Once again, during the 1981 reapportionment debate, Norfolk was the focus of the senate. Because the rest of the State had single-member districts in the senate, consistency again required that the Virginia General Assembly award single-member districts to Norfolk.

Between 1970 and 1980, two important developments emerged.

First, the population decreased from 307,951 in Norfolk to 267,000 people; and the percentage of blacks increased from approximately 35 percent to 37 percent. Second, the Federal Government clarified the means of counting naval personnel, for the purposes of redistricting, as far as that city was concerned.

Unlike the 1971 debate, I had a more active role in the 1981 senatorial reapportionment. I am presently a member of the senate privileges and elections committee, which has jurisdiction over reapportioning.

The committee held hearings on the question of how Norfolk should be divided, and invited public witnesses. Although Norfolk is 37 percent black, the committee had submitted a redistricting proposal for Norfolk to the full senate, without the input of the black community, despite assurances from our good friend and senator and colleague on the committee, Senator Joseph T. Fitzpatrick, to the contrary.

Nevertheless, the committee decided to divide the districts by drawing a north/south-type boundary.

This type of apportionment had the effect of splitting the black community so that 38 percent is in one district and 31 percent is in another. Although I opposed this plan and offered amendments in committee and on the senate floor, recommending the adoption of an east/west district plan, I was resoundingly defeated each time.

It would be the understatement of the century to say that it was the intent of the architects of the north/south plan to undermine the creation of a black senatorial seat.

For instance, they said:

> Let's have a north/south plan as a fallback position. What we really want, however, is an at-large election. If the Justice Department objects to the at-large election, we will have this north/south plan. This is what the people really want.

When these people came before our committee—these people who said they wanted this—ostensibly the black leadership in Norfolk, who came before the public hearing in Norfolk, through the NAACP, who said they did not want an at-large, but wanted single-member districts, east/west, that never got into the gristmill.

When the members of the Old Dominion Bar Association, a predominantly black organization in the Commonwealth of Virginia, appeared before the committee, they said the same thing.

The only black member of the city council came before the privileges and elections committee and said:

I'm opposed to the north/south plan because that dilutes our strength. I would much prefer that we had an at-large situation, because if you put us in a north/south situation, with 31 percent here and 38 percent here, we lose the effect of our 58 percent, which would have been in one district.

I asked him, did he have any input. And then I asked him a series of questions. I asked him—he's a member of the clergy and a black member of city council—I said: "Reverend Green, let me ask you this question. How many blacks have you ever had serving on the city of Norfolk City Council, at any one given time in history?"

He said, "One."

"Have you ever had any black member of the senate from the city of Norfolk in Virginia?"

"No."

"Have you ever had more than one black in a city the size of Norfolk"—which had about 93,000 black people at this time—"serving more than one at a time in the city council or in the house of delegates?"

The answer was no.

"How many constitutional officers do you have?"

"Five."

"Are any of them black?"

"None."

"Can you tell us what the reason could be for that? Is it that you people are lazy? Is it that you people don't want? Is it that you people cannot maximize?"

"No."

Our friends countered that by saying: "We've had the black man who was elected to the house of delegates lead the ticket one time. He came in second one time."

And yet, they did not tell you that the six blacks who also were serving in the house of delegates received the endorsement of that black organization, that was accountable for that one person being elected.

So the tradeoff is very, very poor.

Yes, we will massively get behind one black out of seven. And that's what they had in the city of Norfolk.

The architects of the plan have said one thing. When the reapportionment plan came to the floor of the senate, the senators from Norfolk offered an amendment to revise the privileges and elections committee bill, and to maintain multimember districts for Norfolk.

The majority leader of our senate, Hunter B. Andrews, opposed the amendment. I want to make it clear, he does not favor single-member districts. But because the Justice Department would reject at-large systems for Norfolk, because it would clearly diminish black voting strength—and it was carried in all of the newspapers and was very widely heralded in the Washington Post, Andrews said:

As surely as we send this bill there to the Justice Department for approval, it should have to be rejected because any clear evaluation would show that the possibilities of any black to be elected to the senate in Norfolk have not only been diluted, but almost destroyed.

And it got wide coverage.

The north/south plan that I described passed in the house and was approved by the Governor.

Now, I have joined with the NAACP and other black civic organizations to ask the Justice Department to oppose this plan.

I urge this committee to extend the Voting Rights Act. Anyone who has had a fleeting familiarity with Virginia politics knows that it has had an inglorious past. The use of devices such as the poll tax and blank paper registration made it impossible for blacks and some poor whites to effectively participate in the election process.

What painstaking gains we have made will find their basis resting in quicksand if they are abandoned now.

The current climate is such that Federal regulation in any field is considered by some to be an intrusion on States' rights.

However, the Voting Rights Act is not just another Federal regulation or law. It is a means of extending to racial and ethnic minorities the unfettered rights that most white people have enjoyed and taken for granted for generations.

If there is nothing to fear from the expressions of these rights, then we must let this newfound equanimity follow through.

[The complete statement follows:]

STATEMENT OF HON. LAWRENCE DOUGLAS WILDER, MEMBER OF THE VIRGINIA STATE SENATE

Mr. Chairman and distinguished members of the Subcommittee on Civil and Constitutional Rights. My name is Lawrence Douglas Wilder. I am currently serving as state senator from the ninth senatorial district of Virginia. In 1969 I was elected at-large to represent the City of Richmond and now represent the eastern portion of the City. I have the dubious distinction of being the only black senator in the Virginia legislature and its first black member since reconstruction.

I am honored to address this panel on an issue that is an essential element of full voter participation in Virginia: the Voting Rights Act of 1965. Virginia is one of the states covered in all of the provisions of the Voting Rights Act. I urge the Members of this Subcommittee to extend the Act so that the preclearance provisions continue to apply for another 10 years, as recommended by H.R. 3112, a bill introduced by Chairman Peter Rodino (D-NJ).

The Voting Rights Act has not only assisted the effort to discontinue discriminatory election practices, it has served as an effective deterrent to such practices. I can assure this Committee that the required submission of all voting qualifications, prerequisites to voting, or voting standards, practices, or procedures to the United States Justice Department or the United States District Court for the District of Columbia is a simple but fair enforcement scheme that deters egregious as well as invidious violations of the 15th Amendment in the State of Virginia.

This deterrent is still necessary in order to remove the vestiges of racism and white supremacy which are the principal basis for underrepresentation of blacks in elected office in the Commonwealth.

In 1971, pursuant to the 1970 Census, the state legislature began reapportionment for our body. Prior to the 1971 redistricting, senators were selected at-large from the City of Richmond and Norfolk. Because of the population growth, and the desire for consistency, the Senate agreed to adopt single member districts for these cities. The Senate created three districts for Norfolk and two for Richmond.

The reapportionment plan was submitted to the Justice Department as required under Section V of the Voting Rights Act, but the Justice Department objected to single member district for Norfolk because of the unusual configurations of the districts. The Justice Department was concerned that the shape of the districts would adversely affect black voting strength. Upon explanation by the legislature the Department withdrew its objection, and the plan was approved. This revised plan would permit a black senator from Norfolk.

Norfolk was not allowed to retain single member districts, however, because a suit was brought declaring the apportionment unconstitutional. The plaintiffs in *Howell* v. *Mahan*, 330 F. Supp. 1138 (E.D. Va. 1971) alleged that the City of Norfolk was

unconstitutionally split into three districts. At issue was the assignment of approximately 36,700 naval personnel to the Fifth Senatorial District who were "homeported" at the U.S. Naval Station in Norfolk. Although counted on the official Census tracts, and stationed at Norfolk, 18,000 of these military personnel lived outside the Fifth District, but within the Norfolk and Virginia branch areas. Because of the resulting malapportionment, the Federal District Court in the District of Columbia established one multimember district composed of the Fifth, Sixth, and Seventh Districts, encompassing Norfolk and a portion of Virginia Beach. The Supreme Court said that to the extent that the military personnel was not properly accounted for single member districts should not be allowed. Thus, the elections were held at-large.

Once again, during the 1981 reapportionment debate Norfolk was the focus of the Senate. Because the rest of the state had single member senatorial districts, consistency required the Virginia General Assembly to award single member districts to Norfolk. Between 1970 and 1980 two important developments emerged. First, the population decreased from 307,951 to 267,000 and the percentage of blacks increased from 35 percent to about 37 percent. Second, the federal government clarified the means of counting naval personnel for the purpose of redistricting.

Unlike the 1971 debate, I had a much more active role in 1981 senatorial reapportionment. I am a member of the Senate Privileges and Elections Committee which has jurisdiction over reapportioning. The Committee held hearings on the question of how Norfolk should be divided, and invited public witnesses. Although Norfolk is 37 percent black, the Committee submitted a redistricting proposal for Norfolk to the full Senate without the input of the black community despite assurances from Norfolk Senator, Joseph T. Fitzpatrick to the contrary.

Nevertheless, the Committee decided to divide the Districts by drawing a North/South boundary.

This type of apportionment had the effect of splitting the black community so that 38 percent is in one district and 31 percent is in the other. Although I vigorously opposed this plan, and offered amendments in Committee and on the Senate floor, recommending the adoption of an East/West district plan, I was resoundingly defeated each time.

It would be the understatement of the century to say that it was the intent of the architects of the North/South plan to undermine the creation of a black senatorial seat. Indeed, the architects of the plan were so determined to avoid that result that they allowed a population difference in order to achieve their ends. In my view the Norfolk plan adopted by the Senate lacks credibility because of what it does to the black voters of our largest city.

When the reapportionment plan came to the Floor of the Senate, the Senators from Norfolk offered an amendment to revise the privileges and Elections Committee and maintain multimember districts for Norfolk. The Majority Leader of the Senate, Hunter B. Andrews opposed the amendment, not because he favored single member districts, but because the Justice Department would reject at-large system for Norfolk because it would clearly diminish black voting strength.

The North/South plan passed in the House and was approved by the Governor. I have joined with the NAACP and other black civic organizations, in asking the Justice Department to oppose this plan.

I urge this Committee to extend the Voting Rights Act. Anyone who has had a fleeting familiarity with Virginia politics knows that it has an unglorious past. The use of devices such as the poll tax and blank paper registration made it impossible for blacks and some poor whites to effectively participate in the electional process. What painstaking gains which have been made will find their basis in quicksand if they are abandoned now.

The current climate is such that federal regulation in any field is considered to be an intrusion on "state's rights." However, the Voting Rights Act is not just another federal regulation or law. It is a means of extending to racial and ethnic minorities the unfettered rights that most white people have enjoyed for generations. If there is nothing to fear from the expression of these rights, then we must let this new found equanimity follow through.

Mr. EDWARDS. Thank you, Senator. And thank you to all members of the panel. All of your testimony was in depth, thoughtful, and very helpful.

The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. Mr. Brown, do you see a correlation or a connection between the attack on the contention of the authorization of the 1965 Voting Rights Act and the pullback of troops from

the South during the Reconstruction period, where the right to vote of black people was placed in jeopardy by virtue of two things: One, the rise in the Klan and, two, the retreat of the troops, shall we say. Is there a correlation here? Is there a connection? Have we seen this before?

Mr. BROWN. Yes; we most certainly have. And without retaining the Voting Rights Act, without retaining the preclearance provision of that particular part, we will find that Virginia will surely slip back into that post-Reconstruction period, which will not be in our best interests at all.

Mr. WILDER. Mr. Washington, may I respond briefly to that?

Virginia at one time had some five black members of its senate. Virginia at one time had 13 black members of its house. The removal from the act would have the effect of the Hayes-Tilden compromise, wherein they said, "If you do this, we'll do that"—now, I, as I said in my statement, have the dubious distinction of being the only black senator in the Commonwealth of Virginia, with 20-25 percent of its population being black. It's a mark. It's a black mark.

And quite frankly, if we do accomplish this, it would be tantamount to the Hayes-Tilden compromise, wherein the troops came out and the Klan rose. The Klan is still riding in Virginia and other places, and your observation is most astute.

Mr. WASHINGTON. It doesn't make me happy to continue to try to embellish this point, but I think it should be made clear. You are saying, all three of you, that the forces and factors which existed back in the 1870's exist now, perhaps more subtly, perhaps not, but certainly exist. And if we, in our good sense, fail to extend this act, all of its parts, then clearly and obviously there's going to be tremendous slippage, nonrepresentation of black people in many, many States in the South. That's for the record.

Mr. MARSH. That's correct.

There is a difference in that in those days the purpose was expressly stated. Today it is clothed in language like "The act should be made nationwide," and the persons who would make that statement would know that in the *United States* v. *South Carolina* the reason why the Supreme Court sustained the act was that it felt that Congress had tailored a relief which fit the violation. And if we made it nationwide, there's a possibility that the Supreme Court would not sustain the act, in the sense that there is no justification for having a nationwide legislation. Same thing with the *United States* v. *Rome.*

So, I think we need to be careful about these suggestions that it should be nationwide, and rather than to say that people are against voting rights of black, they make their opposition known by asking for statewide—nationwide coverage.

Mr. WASHINGTON. Unfortunately, some people on this committee fall into that same trap. Not only that, even if an attempt was made to make it nationwide, there are some States which have not been guilty, historically, of denying blacks voting rights. And their hour would be up, so you just magnify opposition to the basic act, which is designed to cover certain States for historic reasons.

So, there are all kinds of reasons why that argument is spurious at best, but unfortunately is gaining credence in some quarters.

And I think it's important that this record be made clear, that people like yourselves, sitting under the gun, so to speak, right there, know exactly what's going on.

I was listening, not with rapt attention, but some degree of attention, to Congressman Bliley. He gave the impression that all was safe and well in Virginia. And if I hadn't been there in some time, I might be lulled into a false sense of security. But that's a lot of hogwash, isn't it?

Mr. MARSH. It certainly is. I think the numbers belie that, the statistics—and even beyond the statistics. The purpose of the preclearance provision really is to serve as a deterrent effect, and it's almost impossible to measure, in quantitative numbers, the importance of having that deterrent effect there.

When I was on the council and in the minority, whenever a polling place was changed—and it's easy to do, you just submit the effect of the change and the reason for it to the Justice Department—the members of the council would always consider what the Justice Department would do, and they would be afraid to move a polling place to the corner, the far corner of the precinct, because they knew the Justice Department would object.

So that having section 5 preclearance there, it serves as a tremendous deterrent. And if it's removed all of a sudden, then that tendency to violate the rights of blacks would then be realized.

Mr. WILDER. Mr. Washington, let me comment briefly on that, also.

If you notice, when Mr. Bliley was commenting, he said, in response to one of the questions, as to what effect it had—I don't know whether counsel asked that question or whether you asked it yourself—but he said the election of the five blacks through a ward system, or what have you, had heightened racial tensions. And he gave no reason for it.

I'll tell you what the reasons were. One of the things that the new council did when it got into office was to have the temerity and audacity to fire a city manager who happened to be white. And things haven't been the same since.

So, when he said that has heightened racial tensions, that's the only reason that you can give for it. No other single piece of evidence has been offered or suggested or even attributed in the press as to why blacks could not and should not be able to run a city. It has still continued to grow, but all is not safe and well.

Mr. WASHINGTON. It's not always happy to be a black person in the land of the free and the home of the brave.

Mr. Brown, you pointed out, on page 6, something we all knew, but I suppose we hadn't focused on, that was that the reason why there were so few objections filed in the State of Virginia was because discriminatory practices had been in place for some time and therefore were not affected by the 1965 act.

Mr. BROWN. Right. The Voting Rights Act—the section 5 part of the Voting Rights Act only deals with the those electoral changes that have been made or in the process of being made now. But these things, like what is taking place in Emporia, in Danville, in Martinsville, in the 9 cities, as a matter of fact, that are some 30 percent black or more, they were instituted prior to the Voting Rights Act. Many of them, I would suspect, were instituted because

they knew the Voting Rights Act was getting ready to pass and those systems would be grandfathered into the act, and it was only going to deal with changes after the passage of the act.

Mr. WASHINGTON. Why hasn't section 2 been utilized more, to get at those?

Mr. BROWN. Costly litigation.

Mayor Marsh is a civil rights lawyer. He might want to respond.

Mr. MARSH. Yes; I'd like to respond to that, because I'm one of the lawyers that handled the *Allen* v. *The State Board of Elections,* in which the Supreme Court outlawed the black registration form as a violation of the Voting Rights Act.

It's extremely expensive and difficult to bring litigation. And the resources simply aren't there. It's very time-consuming. And I think that the thing that's being overlooked is that section 5 is a very moderate and mild piece of legislation. It doesn't aggressively seek to rout out violations of the rights of blacks. It's a passive piece of legislation. It maintains the status quo.

And I think the persons who are criticizing section 5 have been doing so unjustly. In order to trigger Section 5, someone has to institute a change. And if that change does not harm blacks, that change would be approved in a very efficient, effective manner.

So, what Congress is asked to do is simply to continue the one piece of legislation that did what the 15th amendment was supposed to do and did not do for 100 years.

And I just disagree very violently with those persons who call the Voting Rights Act, the section 5, a radical piece of legislation. It simply is not radical. It's very passive, and it doesn't deal with those changes that have been put into effect long before the Voting Rights Act.

All of the at-large districts that are prevalent in Virginia, they were there before 1965, and nothing can change them without very protracted litigation, which may even be lost in the present climate of the courts.

So, I think it's important to put section 5 in the Voting Rights Act into perspective. It is the one piece of legislation that doesn't guarantee anything to anybody, but it does enhance the opportunities for blacks to effectively participate. And that's all it does, and that's all it's intended to do. And that's the one thing that sets this country apart from other countries.

And I would hope that Congress would not try to tamper with that very mild piece of legislation.

Mr. EDWARDS. The time of the gentleman from Illinois has expired.

The gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you, very much.

Just so the panel knows where I'm coming from, I do support an extension of section 5 of the Voting Rights Act, but I'm a little bit concerned about section 2 of the Rodino bill, which some have interpreted as establishing a system of proportional representation, in that it would be a violation of the Voting Rights Act if either more minorities than the total percentage of the population were elected or fewer minorities than the percentage of the total population were elected.

Will any of you gentlemen support a system of proportional representation?

Mr. BROWN. Sir, the NAACP does not support proportional representation or quota representation. But at the same time, blacks would like to be able to govern, as well as be governed. And that's the kind of problem that we have in the State of Virginia, 4 percent of a 19-percent population certainly proportional or even fairly equitable in our State.

Mr. MARSH. I think what the Voting Rights Act attempts to do, in my mind, is not to guarantee proportional representation, but to insure the opportunity for blacks to participate and to elect the persons of their choice.

In many cases, black voters will elect white officials and will reject black officials.

During the period from 1966 to 1977, on many occasions I ran with white officials on my team and ran against black officials. And the black voters of Richmond rejected black officials, turned them out of office in favor of white officials, who purported to represent their interests.

So, I think we do need to clear up what the Voting Rights Act is all about. It does not guarantee that blacks will elect blacks, but it does guarantee, in my judgment—it should guarantee that blacks will have the opportunity to elect persons of their choice.

And it's up to the candidate to appeal to the voter to convince the voter that he or she should be elected. Our system is based on the wisdom of the judgment of the voters, and that's the way it ought to be. And I don't think the bill intends to change that, but to guarantee that the voters in any particular would make the choice.

Mr. SENSENBRENNER. This subcommittee has received some legal analyses that indicate that section 2 of the Rodino bill would establish a proportional representation system. And given the way the courts—particularly the lower courts—have danced around on the one-man/one-vote requirement for redistricting, don't you think that section 2 of the bill ought to be amended so that it's quite clear that the courts would not have jurisdiction in a lawsuit if, say, an area that was 37 percent elected 40 percent black elected officials or elected, say, 35 percent black elected officials?

Mr. MARSH. I don't think I could answer that without being made privy to that legislative history that you have. I would have to examine that to answer that.

I think, you know, one lawyer's judgment differs from another. I would have to examine that before I could respond to that.

Mr. SENSENBRENNER. I guess that's my concern, since this is a new part of the act, and we're writing the legislative history now.

Certainly, I don't condone any kind of electoral system that would effectively freeze black candidates out of a change of being elected in a district where black voters and white voters would be attracted to voting for that type of a candidate.

But it seems to me that, looking at the history of 20 years of reapportionment lawsuits—which was a move that I also supported—that we had better make the legislative history quite clear, lest some Federal judge someplace in the country starts using a strict percentage system.

I think that what I am getting out of the comments that you have made is that you are against the strict percentage system, as well as I, just so long as black candidates who are running in districts that have a substantial population have a good chance of being elected.

Mr. MARSH. I think this history of the 17 years under the Voting Rights Act, if you look at the States covered under the act, and the percentages of blacks in those States and in those electorates, you will see the number of black elected officials is so beneath the potential of blacks in those States to elect officials that that issue is not germane; it's something that's way down the road. And the question is, giving blacks the opportunity to effectively participate in the process—3 percent in Virginia of the elected officials is certainly not threatening, or quota representation, when blacks are 19 percent of the State's population.

And I think that that is—you know, the history under the act—in some States, the black population approaches 30 percent or 35 percent, but the black elected officials are in the area of 5 and 6 percent. And I really think it's a red herring to say that we're going to have a quota representation of elected officials.

The thing that's important is that the electoral process be set up in such a way that the blacks would have the opportunity to elect persons of their choice. If they're black, fine; if they're white, fine.

Mr. SENSENBRENNER. I would just like to point out that in a number of Southern States there is another minority that is discriminated against by these creative redistricting plans, and that minority is called "Republicans."

I yield back the balance of my time.

Mr. EDWARDS. Mr. Lungren?

Mr. LUNGREN. Thank you, Mr. Chairman. I appreciate the panel for their testimony here. It is certainly helping us to understand the covered States with respect to the situation as it now exists, as we attempt to decide whether we should continue the preclearance.

I think it was Mayor Marsh who suggested that if we went to a nationwide application, it would perhaps defeat the underpinnings of the act because the Supreme Court had upheld preclearance requirements, because they said Congress had tailored the remedy to the specified circumstances of those areas that were covered.

Mr. MARSH. In the *Katzenbach* v. *South Carolina* case, and in the *Rome* case, the Court looked at what Congress had before it, and it had a 100-year history of violations of whites against blacks, in particular areas. It had a record that showed those violations were going on in the areas covered by the act—and said that Congress was correct in fashioning a relief which met the record before it.

The implication was that Congress had tried to go beyond the scope of the facts; that it certainly might have been—the results might have been different.

And I suggest that in the current climate of the courts, for Congress to pass an act that goes beyond the record in the violations before it, and tries to cover the whole country, some courts could very well rule that Congress exceeded its powers.

Mr. LUNGREN. That's a point I would like to pick up. If we don't, on this panel, make a detailed analysis of the covered States, and the jurisdictions within those States, aren't we apt to fall into the

same problem? That is, if we just accept the fact, without real inquiry, that every community within every covered State is to be considered basically in the same situation it was presumably in 17 years ago, and therefore not even consider the possibility of allowing political entities within the covered States a means of bailing out, don't we sort of fall into the same problem there?

Mr. MARSH. No; I don't believe so, because a State is an entity that's recognized by the Constitution. The State has the right to change its subdivisions, to carve up its subdivisions, and to——

Mr. LUNGREN. We have counties covered now without the State being covered.

Mr. MARSH. I understand that now. But the 14th amendment speaks to the States. And I think it would be a serious mistake to permit jurisdictions in the State to have the right to bail out and to escape the provisions of the act because of the situation in a particular jurisdiction. For example, the redistricting process that is going on now affects the entire State.

Mr. LUNGREN. Correct. That would be something different.

Mr. MARSH. If you permitted a jurisdiction to carve itself out of the act, an ingenious State could separate a jurisdiction and create a new jurisdiction out of an existing jurisdiction, now, divide it in half, and say the violation occurred in the southern half, so the northern half could be exempt from the act.

Mr. LUNGREN. That would be State action.

Mr. MARSH. I'm not being facetious.

Before section 5, and before the Voting Rights Act, as fast as one practice would be outlawed, the covered jurisdictions and the States find additional practices. That's why the Voting Rights Act was necessary in the first place.

It's very important to keep the act intact, and not try to deal with individual jurisdictions.

Mr. LUNGREN. Another question I have is sort of along those lines. That is this: We see the facts as they are presented to us. For instance, Mr. Brown, in your statement, you mention that since 1975 there have been 2,039 voting changes in Virginia submitted to the Justice Department, and only three of the changes objected to—which comes out, in quick math, to less than—a little bit more than one-tenth of 1 percent.

Mr. BROWN. But, sir, I would say——

Mr. LUNGREN. Let me just follow up before I ask you to respond.

Are you saying that those figures really are not relevant, because these people only make good faith efforts in their law changes because you've got the hammer hanging over their heads?

Mr. BROWN. That's looking at it a little to simplistically. In terms of the three changes that have only been objected to by the Justice Department, they have been significant in the reasons as to why, when you're looking at going to staggered terms in a city or a town that is some 42-percent black.

At the same time, it has served as a deterrent effect to other jurisdictions who have thought about or considered doing certain kinds of things.

Mr. LUNGREN. You see, what I am trying to figure out is we've got a situation here—we're supposed to justify reauthorization of an act. We have got to have some findings to stand up to court

determinations as to whether we have exceeded our authority or not. If what happens, people come before me and give me facts, and say, "But those facts are irrelevant or insignificant, because you can't rely on those facts," my question to you is what are the significant facts that would help us to determine whether, in fact, the preclearance requirement—the necessity for it, is continuing?

Or are you telling me that there are no ways we can quantify such an analysis, such that we take it on faith that there hasn't been a real change in the covered States, and in fact, 10 years from now we will take it on faith again that there haven't been changes because there's nothing we can grasp on to say, "Has there been a change which would allow these communities or a State or communities within a State to bail out of coverage?"

Mr. MARSH. I think the facts we have presented in our testimony today are facts that you can consider. The specific examples given by Mr. Brown are examples of practices which show, on their face, that were it not for the Voting Rights Act, even more drastic practices would take place.

I think the facts themselves show the need for the continuation of the Voting Rights Act. The instances that we have related in our testimony, what those numbers say to me is Virginia officials have been more careful than officials in some other States. They have not been as reckless in their attempt to violate the act.

There will be testimony later on today of how Virginia officials have tended to compromise on occasion to avoid a test. And looking at it from the point of view of the person trying to encourage black participation, his result is not necessarily to make a record for this Congress, for this committee, but to get the job done. So when a compromise is made by an election official, many times the blacks involved would accept a compromise as a half a loaf, better than none.

What we are saying to you—and we have been out on the firing line—is that from our judgment and from the facts that we bring to you, these officials have not changed. And if the Voting Rights Act were—preclearance were eliminated, there would be massive attempts to minimize the effect of blacks' participating in the process. And the current redistricting process which is going on right now, the problems we're having with that, certainly, are clear evidence that the preclearance should not be removed. That's going on right this minute.

Mr. EDWARDS. The time of the gentleman from California has expired.

The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. I thank you, Mr. Chairman. And I apologize for missing a lot of the testimony today on these very important hearings. We had a delegation meeting with the Secretary of Defense, trying to get some Defense business up in the Snow Belt, away from you people in the Sun Belt. I don't know how successful we were, but it was a worthy effort.

Mr. EDWARDS. Too much snow.

Mr. HYDE. Too much snow. We can't change that.

I would just like to make a few points here, so there's a minimum of misunderstanding.

I don't know of anybody in the House who wants to make the act, as it presently is drawn, nationwide, because that would strengthen it to death: It would make it impossible to administer, to have 50 States and all the subdivisions have to get preclearance. That is not suggested by anybody, at least in the House. I can't speak for the other body. I don't know of any bill that's pending to do that. I don't know of anybody who is suggesting that. So that's No. 1.

No. 2, nobody wants to eliminate preclearance. I certainly don't want to eliminate preclearance, and I don't know of any pending legislation that does so. Preclearance is always available under section 3(c). For the isolated instance of voting rights abuse, a court may impose preclearance, retaining equitable jurisdiction, and that stays in. Nobody wants to touch that.

Now, my alternative, which concededly is less than the—less strength than the bill now provides. But it is better, I think, than total expiration of the preclearance sections of 4 and 5; does provide for court action, where a pattern or practice—and that means more than one, and we trust to make legislative history to mean a whole environment, not just prospectively on that. A court then can impose preclearance for 4 years. We're not married to 4 years. It can be 5 years, 10 years. You know, that is negotiable.

The real problem that I think you have with that is you would rather keep the expedited, efficient process, locking in these jurisdictions that have been in for 17 years, for another 10 years, because it sure is expedited, and it sure is effective—reasonably effective—and I can understand that.

But my approach to this is, is it fair? Is it fair? Now, you can get a lot of things done in a hurry if you forget due process. We know that. You can solve a lot of controversies if you say, "You have got 10 minutes. Make your case, and that's it." You can move things along. Expedition is important, and it sure can be effective. But again, is it fair?

Now, if I am hit by a train, I have got to go to court. I may have to wait a few years, but my whole life and that of my family hangs in the balance. A lot of people have to go to court.

Now, I grant you, there's a lot wrong with our court system. You and I know judges that could work harder. We know lawyers that can move cases along. A lot of things ought to be done to make our court system more expeditious and fair. But the difference is, in court, both sides get a hearing. There are rules of evidence that have been developed over, literally, centuries, to protect people.

And to exempt voting rights abuses from the court system and say, "Let's submit it to an assistant attorney general and let him make his mind up," I question whether that's fair. I grant you, it's expedited, and it's effective. But I should think if we were to have access to the courts more available, not have a financial burden, have attorneys' fees available, have—private citizens can go in there, the Attorney General can go in there, maybe toughen up the penalties if we find intent, because we're talking criminal now, we're not talking civil action. But if it could be shown that a jurisdiction intended to deprive people of the right to vote, we might put some criminal penalties in there. That's a nice sanction, believe me. I should think it would be.

But at some point in our history, we're going to have to say, "Let's look to the future, let's give credit where credit is due," and I'll concede to you that there are places in this country, in the South, and in the North, and in Chicago, my hometown, where if they don't count your vote, I think that's as bad as not letting you register to vote, frankly. Or a vote for a dead man. I don't mind being voted for after I'm dead, provided it's on the right side.

But I just want to make it clear that nobody wants to do away with all the good things that are in this bill. And they are good, and they're useful. But at some point—and maybe this isn't it. That's what these hearings are for—maybe we do need another 10 years with the same jurisdictions locked in.

But I want to explore a middle ground that permits the people whose behavior has been good, and they've been, as I've said, in the penalty box long enough, to get out from under. OK. But don't denigrate the court as a way to solve these problems. Let's try to make it work a little better.

Mr. MARSH. May I respond? I think you raised a legitimate question. And the problem I have is it would shift the burden to the victim of the alleged practice.

You raise a question: "Is it fair?" And I think it is fair. I think it's a legitimate question, however. And if you look at, on the one hand, we're talking about the voting rights of individuals, on one side of this equation——

Mr. HYDE. Let me just jump in there. I don't mean to interrupt you. That's a very important one. You say, "Is it fair?" It may be fair, but it may be unfair, without the protections of evidence and the rules of evidence.

Mr. MARSH. That's what I was about to do.

On the one hand, you have the voting rights of the individual victims. On the other hand, you have the slight inconvenience to the officials who would want to bring about a change.

And if you look at what has happened in the past 17 years, the inconvenience has been slight, indeed. The record is very good as to how fast these things are expedited.

Mr. HYDE. Excuse me. The inconvenience of sitting in the back of the bus was an inconvenience. But it was very bad.

Mr. MARSH. That was more than an inconvenience.

Mr. HYDE. I suggest that treating South Carolina differently from Nebraska is more than an inconvenience to a sovereign State.

Mr. MARSH. I respectfully disagree, because to ask someone to get up out of his seat on a bus to let someone else sit down, solely because of race, in my judgment, is more than an inconvenience. It is so dehumanizing as to be put in a different category than an inconvenience.

Mr. HYDE. I'm just suggesting to you that you said anybody can mail—you know, it's a slight inconvenience to mail your proposed law to Washington. You're talking about the physical end of it. Yeah, you put it in an envelope and you mail it, and you wait. That's no big deal. And neither is moving around in a bus a big deal.

But there's more to it than that. It is the discriminatory stigma that is attached because of your color, and because a State has had a racial history that has been poor prior to 1964. I say we must

look beyond the physical inconvenience, and look at the stigma that was attached to having to move to the back of the bus. It was just as evil as it could be. And looking at some States are more equal than others.

Mr. MARSH. The other point is, one would have to prove a pattern and practice in the courts. I'm a lawyer; I've litigated since 1961. I have litigated cases that took 10 years of active litigation to get a result.

Now Congress determined that voting rights are so basic and so precious that they should be exempt from that requirement.

Mr. HYDE. You have a very good point, and I concede to you that 10 years, 5 years, 2 years, 1 year may be too long where people's voting rights are involved. Now I grant you that. And the courts—lawyers are to blame sometimes, too, but you're right, and that's a problem we have.

Mr. MARSH. I think the one problem with the suggestion that you make is that the courts are already clogged up. The backlog is tremendous even now.

Mr. HYDE. Is that true of your Federal courts?

Mr. MARSH. The Federal courts, even with the new judges and the reforms. The way I understand your proposal, it would throw an awful lot of new litigation into the court system. It would be expensive, and it would cost money because——

Mr. HYDE. Let me ask you this. What do you think of expediting—and we're just talking about this; as I say, after these hearings, I may think my idea is not good.

Mr. MARSH. I hope so. [Laughter.]

Mr. HYDE. I don't know. But what would you think of expediting voting rights cases?

Mr. MARSH. That wouldn't work either. Title VII cases are expedited by law, and they still take 10 to 15 years. And you would get——

Mr. HYDE. Ten or 15 years?

Mr. MARSH. In fact, I have cases I filed in 1968, and they are still active.

Mr. HYDE. I hope you get interim fees.

Mr. MARSH. I think the problem is, you would also get diverse results. And I'm not criticizing the Federal Judiciary here, but you would not get uniform results. Under the present system with the three-judge District Court in the District of Columbia as the court of initial result, we have tended to get a certain amount of uniformity, which is important for the effective enforcement of the Voting Rights Act. And your proposal would cause tremendous amounts of attorneys' fees to States and to jurisdictions defending these practices, if they lost. And I just think that the present procedure has proven so effective, we should not change it—not now. I'll talk to you 10 years from now, and we'll see if there's any to change.

Mr. HYDE. All right. You and I could go back and forth on this. I think there is some—I don't think our court system is ready to be abandoned for adjudicating people's rights, but I do concede there is a problem with time.

You've been very generous with me, Mr. Chairman.

Mr. WILDER. Let me respond briefly, if I could, Mr. Chairman, to two things.

Mr. Bliley, when he first spoke this morning, first of all he questioned whether voting is a basic right, and he concluded by saying, if it is a basic right, then it should be dealt with in such a way that the right is protected throughout the Nation. So that's one Member of Congress who obviously espouses the application of the law to be national. I heard him publicly say that he wants it to be a national application.

Mr. HYDE. He hasn't got a bill in yet, if he does.

Mr. WILDER. He's a freshman. He has to work his way, and, you know, it takes time.

Mr. HYDE. But he's made a great impression, I'll tell you.

Mr. WILDER. I hope it isn't that great. [Laughter.]

But let me make my other observation. I understand I am reading what is your amendment to the bill, which would suggest that the Attorney General take some action.

Mr. HYDE. The Attorney General or a private party or both.

Mr. WILDER. But in your case, you indicate that he may do it.

Mr. HYDE. A private party can always do it. The NAACP, any group that wants to, any individual can always do it. Now the AG may come in if it's an important case.

Mr. WILDER. And my question, then, there would be no mandated Government responsibility in the instance at all in your case. It says he may do it. In the absence of him saying that he does it, what happens? Nothing, nothing.

Mr. HYDE. Well, the Attorney General has to have some discretion. He can't involve himself in every case in every jurisdiction in the country.

Mr. WILDER. And the Justice Department has discretion presently under the law, and they have to involve themselves in every case that's brought to their attention.

Mr. HYDE. That's correct.

Mr. WILDER. Under your set of facts, if the matter is brought to his attention, he can operate just as you said. He has to have some discretion. And he can say, "I'm not interested in it."

Mr. HYDE. I can say that the judge will listen as much to you as he will to an Assistant Attorney General, and you can get attorney's fees, too.

Mr. WILDER. You've got to have a client willing to pay in the first instance.

Mr. HYDE. You can get attorney's fees.

Mr. MARSH. The other point I forgot to mention is that a covered jurisdiction already has the right to go to court to get relief. Under the present system, it can appeal *de novo* to the court of appeals if the Attorney General objects, but it's the victims who now don't have the right to say it's OK.

Mr. HYDE. The victim can file a lawsuit under section 3(c).

Mr. MARSH. Yes, under 3(c). But he has to show—he has to take the initiative.

Mr. HYDE. He has to prove—he who alleges must prove, that's the way it's done.

Mr. MARSH. Voting rights have to be taken out of that category.

Mr. HYDE. OK. But just for some States that have been bad since prior to 1964—I guess I'm asking you, when are you going to let up on them?

Mr. WILDER. When they stop doing some of the things we talked to you about today.

Mr. HYDE. That's a good answer.

Mr. WILDER. When they stop drawing up lines like they did in Norfolk, when they stop doing things like the annexation of Petersburg and Richmond; when they stop, cease, and desist, then we will ask you to let them go.

Mr. EDWARDS. The time of this gentleman has again expired.

Mr. HYDE. In the knick of time. [Laughter.]

Mr. EDWARDS. Tell me, Senator, what would be the impact on the black people of Virginia if Congress failed to extend the Voting Rights Act, and of course the heart of the act is section 5.

Mr. WILDER. Right now—and I'm certainly not attempting to respond in a partisan posture—but what with certain basic rights being threatened to be cut off here and what with people suggesting that the future is likewise bleak, if Congress were to remove this, in my judgment, as I indicated previously, what few painstakingly slow gains we've made would be resting on quicksand. The rug would be pulled out for no other reason than to assuage the feelings of those people who are saying, "OK, we have sinned before, but we're not really intending to sin now; forgive us."

The Voting Rights Act isn't that cumbersome. The Voting Rights Act is not just a mailing; I understand that. You've got to compile, you've got to put all the things in it. But for people who still hold to hope and who look to participate in Government, who have been denied that opportunity to participate in government, for Congress to do this at this juncture would, in my judgment, cause them to lose hope and quite frankly it would cause me to lose hope in people in high places doing things for all the people.

Mr. EDWARDS. Mayor?

Mr. MARSH. I would like to add to that. I think some of us have been working in the political process and the legal process for many, many years, and we have been concerned over that time with the slow nature of the process, the fact that even the Warren Court took several chances. It refused to advance the school desegregation case in 1956 when it had a chance, in 1959 when it had a chance, and in 1965 when it had a chance. And it wasn't until 1968 that it began to make those advances.

When we have an election like we've just had where the margin of victory was 50 percent on one side and the other side scattered, we see a war on affirmative action. We see a war on minority judges when we already have such a frightfully small number. We see the Federal Government's procurement policies already at 1 percent, and yet people are complaining about that. It is a concern as to whether or not our system—our fragile system is going to hold together. I would say that the Voting Rights Act is so important, because to bring about change in the voting process, it takes a lot of years. We started in 1966, and it wasn't until 1977 before we were able to get meaningful input into the Government. It takes a long time. People have to believe in the American system to use a political process to bring about change. And I think for Congress to

tamper with that act on the basis of what happened in November or any other basis, I think it would be very harmful to the American system.

I think it's the greatest system that's ever been devised; I believe in it. But I think it's in jeopardy if we begin to tamper with basic legislation like this.

Mr. EDWARDS. Mr. Brown, you pointed out that in these counties—and I imagine these counties aren't very large—how big is Pulaski, Mathews, Mecklenburg—how big are those counties?

Mr. BROWN. Some of those counties have 15-20,000 people.

Mr. EDWARDS. It's hard to imagine that there would hardly be registration problems at all, in counties of that size.

Mr. BROWN. But they still need registration.

Mr. EDWARDS. In addition to that, they don't go out of the way to make it easy for all of their residents to register.

Mr. BROWN. Exactly.

Mr. EDWARDS. You would think they would have floating registrars and do all of the things that States do that are interested in having people vote. They don't, do they?

Mr. BROWN. No, they do not.

Mr. EDWARDS. So isn't that some sort of evidence that they're not particularly interested in having blacks vote in those counties?

Mr. BROWN. Yes, it is. You know, blacks in Virginia still look toward the Federal Government as the protector of its rights and not the State of Virginia, with the kind of attitude that the State government and many of the local governments have expressed in the past and even today.

Mr. HYDE. Would the gentleman yield?

Mr. EDWARDS. Of course.

Mr. HYDE. Of course, this indolence, if we call it that, on the part of the Pulaski County registrar applies to whites as well as blacks. If they don't have mobile registration booths to go out to the neighborhoods, I daresay it's an inconvenience for both, is it not?

Mr. EDWARDS. No; it's not. Since it's my time, it's much more of an inconvenience for people who are working in the fields, who are working people who can't come during working hours, like most of the white people can. Registration, double registration, triple registration, purging—all of those ideas have been used for years in every part of the country to keep off the voting rolls people they don't want to vote.

Mr. HYDE. These are rural counties, are they not, Mr. Chairman?

Mr. BROWN. They are rural counties.

Mr. HYDE. They're rural counties, so it isn't like you have a town where everyone can walk over and register. Everybody's in the fields in these rural counties.

Mr. WILDER. No, no. The same people are in the fields that were there before.

[Laughter.]

Mr. HYDE. Are all the plantation owners in town sipping mint juleps all day?

Mr. WILDER. Kentucky isn't the only one that breeds them; we've got a few in Virginia.

Mr. EDWARDS. I think we should move on.

Mr. WASHINGTON. Mr. Chairman?

Mr. EDWARDS. Mr. Washington.

Mr. WASHINGTON. One brief remark for the record in response to a suggestion by Representative Hyde, that under his bill cases would be expedited.

Let me just say for the record that the Administrative Conference on the U.S. Courts as well as the Attorneys General under the last two administrations have taken the position that because of the overload in the Federal courts, Congress should pass no more legislation requiring expedited handling by the courts. I believe this was also the position of the Chief Justice of the Supreme Court.

Mr. EDWARDS. Yes, Mr. Lungren?

Mr. LUNGREN. I just want to thank the panel for their testimony. I think they've done the best job of anybody we've had so far in giving me a better perspective. I don't want to take any more time. I just would like maybe if you can give me some written comments when you have a chance, not following necessarily the bill Mr. Hyde has presented, but amending the present bill to have a bail-out provision for jurisdictions, counties, or cities within a covered jurisdiction, so that they are treated the same way as our counties in my home State that are covered but have an ability to get out from under.

In other words, the onus would be on the community to prove to the satisfaction of a Federal court that they should be able to bail out.

I understand the chairman wants to move along. We have other witnesses. But if you'd give me some written testimony, I'd really like to hear your thoughts on that.

Mr. MARSH. I would be pleased to.

Mr. HYDE. May I make a closing comment? I associate myself with the thoughts of my colleague. You used the term "tamper with the voting rights legislation." If we do nothing, it expires.

Mr. WILDER. We don't mean "tampering" in that regard.

Mr. HYDE. I just wanted to make sure that you didn't think——

Mr. WILDER. We want you to grab it and hold it. [Laughter.]

Mr. WILDER. Don't tamper with it; hold it. Don't play with it.

Mr. HYDE. Yes. But if we do nothing—and there's a great disposition on those of us who are sincerely trying to do something that may not be what, you know—if you can't get dinner, get a sandwich.

Mr. WILDER. We understand.

Mr. HYDE. If we get beat over the head, sometimes we decide we'll just relax and see what happens. So that's good; I'm glad we understand each other.

Mr. EDWARDS. Ms. Davis?

Ms. DAVIS. Thank you, Mr. Chairman.

I have a separate question for each of you, so please indulge me as we try and move along.

Mayor Marsh, is it your understanding that the intent of the Rodino bill in amending section 2 is to have an intent or effects test, as it is presently applied in section 5 of the Voting Rights Act?

Mr. MARSH. I think he is trying to get an effects test. I don't think, as I understand the Rodino bill, it is not to have quotas but to correct the situation.

Ms. DAVIS. You're jumping ahead of me just a little bit. I want to clarify. Your understanding is he would use intent or effect, as it is presently used in section 5?

Mr. MARSH. As it's presently used in the act.

Ms. DAVIS. Based on your experience as an attorney doing voting rights litigation, is it your understanding under section 5 that courts have refused to interpret section 5 as requiring proportional representation or quotas?

Mr. MARSH. Absolutely correct. The courts have not required quotas. It has applied a test that has been applied in other areas where you have intent or effect. And I think the court has not applied—I think the quotas is a red herring. That is not provided for in the Rodino bill, and the courts have not made that interpretation. I would certainly not endorse that.

Ms. DAVIS. Mr. Brown, as you have heard, our members are trying to grapple with the statistics of Virginia. You indicated that the population of the blacks in Virginia is somewhat smaller than it is in some of the other covered jurisdictions in the South.

If we compare the number of submissions versus the number of objections in Virginia to the other covered jurisdictions, Virginia is lower. How do we interpret those statistics based on what the reality is in Virginia.

You certainly have indicated that the need for the Voting Rights Act is still here, for at least another 10 years. What is it about Virginia that creates this kind of——

Mr. BROWN. Virginia was smart enough to institute things prior to the passage of the Voting Rights Act. And that has hurt us, extremely, in our State, and is something that all of us are going to have to take a greater look at and see what we can do, and utilize the section 2 provision of the Voting Rights Act to deal with it.

Ms. DAVIS. Senator Wilder, you have indicated in your testimony, based on your experiences with the privileges and election committee and your experience in the senate, you have certain concerns about the reapportionment debate that went on very recently, this year, as I understand it—is that true, 1981?

Mr. WILDER. Yes, that's correct.

Ms. DAVIS. Based on your experience, are you suggesting that there are problems currently in the State of Virginia which require that the Voting Rights Act be extended?

Mr. WILDER. Yes, ma'am. I might say this: I have been on the committee for about 10 years now. At the conclusion of each session, someone in the Justice Department usually calls and asks as to what bills have been passed, and how we view them, how they affect minorities and what is our view of it. Without the Voting Rights Act, they wouldn't do that.

And we are in a position to say, "Well, these bills are harmless," even though they may appear, on the surface, to have done thus, and so. Before most of the bills even run that gamut, the chairman usually suggests that some of us look at them. I have counsel go with me; unfortunately I'm the only black there.

Yes, there are problems, great problems, in the House now, that we didn't touch on here, but the Justice Department is going to be hearing about them. They won't be the subject of the Voting Rights Act as such, but the variances in legislative districts will be, in

some instances, 23 to 25 to 28 percent. So we have problems, a great number of them, some of which we have alluded to here today.

Ms. DAVIS. Thank you.

Thank you, Mr. Chairman.

Mr. EDWARDS. If there are no further questions, we thank the panel, and emphasize what the gentleman from California, Mr. Lungren, said, that you have been most helpful. We appreciate it.

Mr. WILDER. Thank you.

Mr. EDWARDS. The last witnesses we have today are a panel presentation from Virginia. The Reverend Curtis Harris of Hopewell, Va.; and James Gay, Esq., Norfolk, Va.

And I believe you have one other witness? Reverend Williams. We welcome you, too, sir.

[The complete statements follow:]

PREPARED STATEMENT OF REV. CURTIS W. HARRIS, HOPEWELL, VA.

My name is Curtis W. Harris. I am President of the Southern Christian Leadership Conference for the State of Virginia. I live in Hopewell, Virginia. The population of Hopewell is 23,000, of which about 22 percent is black. I am the minister of Union Baptist Church in Hopewell. Since 1961 or 2, I have run for elected office in Hopewell. I ran for City Council six times. I ran for Congress twice; House of Delegates once. I still owe $4,000 from my 1974 Congressional campaign. Only once did I even come close to winning, and that was in the City Council race where I came in fourth in a field of 8 candidates. However, then only 3 Council seats were vacant and even though I was number four, there was a huge gap between me and the number three winner.

I have been the victim of racial block voting in each of my election efforts. In Hopewell we have at-large elections. The largest precinct is twice as large as the others and is 99 percent white. Ninety percent of the time the winner in this precinct, number 4, is the winner in the election. That is where white people live and I get very few votes in that precinct. 30 percent of the population of Hopewell lives in that precinct, and they don't vote for me. Six of the seven Council Members live in that precinct (within 2 blocks of each other).

I am the only black person who has run for office in Hopewell. Other blacks have been discouraged because they see no chance of winning.

A few years ago the City Council passed a resolution, against the objection and protest of the black community, to reduce the size of the council from seven to five members.

The City's first position was that it was not necessary to submit to Justice this change. Only after the black community contacted Justice did the City submit the change for preclearance.

Justice warned the City that it would object to this change if it passed such a referendum unless the City instituted a ward system instead of the at-large system.

The City did not want such a result. The same people who originally proposed the reduction in City Council size then campaigned against the proposal because they did not want to change from an at-large system to a ward system. As a result, the referendum failed and Hopewell still has an at-large method of election.

The black community has now attempted to put a proposal on the ballot to change to a ward system. In Virginia, a judge can order a proposed change to be put on the ballot. Although the judge has done this before at the request of a similar citizens group, when the black community petitioned the judge in 1980 with 1,000 signatures (10 percent of the registered voters), he said he could not do it. He said he did not have jurisdiction and had made a mistake when he did it before.

We finally got the City Council to petition the judge to put this change to a ward system on the ballot. We will be voting on it in November.

If we are not successful in Virginia in changing to a ward system, we will continue in Hopewell to have a city government that is all white. There have been no blacks ever elected in Hopewell. And the City Council appoints all boards and commissioners of the City.

The at-large system in Hopewell which has been in effect since before the 1965 Voting Rights Act, does not give the black community in 1981 the opportunity to

elect representatives of its choice due to the long-standing pattern of white bloc voting.

PREPARED STATEMENT OF JAMES F. GAY, ATTORNEY, NORFOLK, VA.

Good afternoon, Mr. Chairman and members of the Subcommittee on Civil and Constitutional Rights. I am James F. Gay, an attorney in private practice in Norfolk, Virginia with the firm of Gay & McGowan.

I appreciate this opportunity to express my strong support for maintaining the Voting Rights Act which is one of the most important pieces of civil rights legislation ever passed by Congress.

This Act serves as a covenant of reassurance to thousands of blacks and other minorities that they can share in the political process of this land. I well remember participating in voter registration drives in the early 1960's in Virginia when the blank sheet registration, poll taxes, and 9-5 central registration hours were utilized to prevent and/or discourage blacks from registering to vote.

Unfortunately, in Virginia, many of the same whites who thought of these methods for preventing blacks from registering are still in power or positions of influence and stand ready to turn back the clock if given the opportunity. The failure of Congress to extend the Voting Rights Act would provide a signal that it is now safe for them to return to their former ways of devising schemes to reduce the participation of blacks in the electoral process. Please don't give them this signal.

During the recent special session of the Virginia legislature to reapportion the state of Virginia, various plans were submitted for consideration, many of which would have had the effect of reducing the impact of black voters in the state. The one factor which deterred the legislators from adopting those schemes was the Voting Rights Act. Many state senators and delegates were quoted as saying that these plans should not be enacted because the Justice Department and the courts would not approve them.

This should be sufficient proof that the Act is still needed as a deterrent for a large number of whites in authority who would like to disenfranchise blacks.

The Norfolk Electoral Board and boards in other cities in Virginia have demonstrated that they are unwilling to take any action which would substantially increase black voter registration. They have steadfastly refused to deputize citizens to register individuals at home, or to establish permanent registration places in black neighborhoods with evening hours. An article appeared in the February 1, 1981 edition of the Virginian Pilot which stated that the Norfolk Electoral Board was considering opening four satellite registration offices at the following locations: Norfolk State University, Old Dominion University, Wards Corner and Ocean View. On the surface, this would appear to be a move which would increase voter registration in the city without regard to race. However, a careful examination of the proposed locations indicate that these satellite offices will benefit the white population of Norfolk more than its black citizens.

Norfolk State University is predominately black and located in a black neighborhood. However, most of the permanent residents of Norfolk who live near the college are registered. It should also be noted that many houses in that area have been torn down because of expansion of the University. On the other hand, Old Dominion University, Wards Corner and Ocean View are predominately white neighborhoods and should facilitate the registration of whites. The fact that only one of the four proposed offices is in a predominately black neighborhood where most blacks are already registered affirms my contention that the Electoral Board is still seeking to give the appearance of fairness but, in reality, its actions would be of little benefit to blacks.

When the above proposed locations are viewed in light of the reality that the black population of Norfolk is approaching 50 percent (excluding military personnel stationed on board U.S. Naval Ships) and only one of four proposed satellite offices will be located in a predominately black neighborhood, it should become very apparent that the proposed new offices were selected to increase the number of white voters while giving the appearance of fairness of all.

This is the most recent example of how the all white Electoral Board acts in a manner to favor whites at the expense of blacks. This is all being done while the Voting Rights Act is operative. It does not take a great deal of imagination for one to project what the situation would be in the absence of the Voting Rights Act. It is my sincere opinion that in the absence of the Act, all of the proposed satellite offices would have been located in predominately white neighborhoods. My office has sent a letter to the Electoral Board expressing objections to the proposed locations on the ground that an office should be located in a predominately black neighborhood where there are large numbers of unregistered voters. If the Electoral

Board goes through with the proposal, I plan to file a formal objection with the Justice Department under the Voting Rights Act.

Another example which shows how the Electoral Board has attempted to hinder the registration of blacks while giving the appearance of being fair is the manner in which night registration hours are conducted. Up until a few years ago, the Electoral Board did not consider evening registration hours unless compelled to do so by citizen groups who had to meet with them and discuss in detail the type of voter registration activity planned. The Board would usually advise the group that it would take the matter of evening hour registration under consideration. A few weeks prior to the deadline for registering, the board would announce evening registration hours at the public libraries. Thus, there would be very little time to coordinate an effective voter registration drive. Also, an examination of the locations of the public libraries revealed that seven of the ten branch libraries are located in predominately white neighborhoods. Thus, the utilization of the libraries as the place for evening registration clearly favors the registration of whites at the expense of blacks. A fairer plan would be to locate satellite offices with evening hours in any section of the city where there are large numbers of unregistered voters.

This type of behavior clearly shows that the all white Electoral Board in Norfolk and other cities in Virginia are not interested in increasing the number of black registered voters and will go as far as the law will allow them to go in order to keep the number of black registered voters small while giving the appearance of neutrality, fairness and impartiality.

Another sign which clearly shows that many white elected officials are still motivated to minimize the impact of blacks participating in the electoral process is seen in the manner in which the white members of the state legislature banned together in order to continue the practice of electing members of the House of Delegates in at-large elections and attempted to continue this practice in electing members to the state senate. When it became inevitable that a multi-member senatorial district could not pass the legislature, those in power turned their attention to drawing the legislative lines in Norfolk in such a way as to minimize the influence of black voters in the city. In the past, the city's senatorial districts were made up by drawing the lines from north to south. However, with the population shift, a division of the city by a line running north to south would have the effect of creating a senatorial district which would be predominately black.

In order to minimize the possibility of having a black senator elected from Norfolk, the legislature adopted a plan wherein the city was divided by a line running east to west. This has the effect of more evenly dividing the black population of the city and eliminating the possibility of either senatorial district's having a black majority. If the legislature is willing to be this bold in attempting to dilute and minimize the effectiveness of the black vote, one can be certain that in the absence of the Votings Rights Act, the members of the legislature would take even greater liberties to reduce the impact of blacks voting in the city.

Statistics have been widely accepted to prove discrimination. Only one black out of forty has been elected to the state senate in Virginia since Reconstruction and that took place only after the passage of the Voting Rights Act. No black has been elected from Norfolk or any other city in the Tidewater area to the state senate since Reconstruction. An examination of black representation in the House of Delegates from Norfolk reveals that only one black out of Norfolk has been elected to the House of Delegates from Norfolk since Reconstruction. This also occurred after the passage of the Voting Rights Act. This statistic becomes even more appalling when one realizes that the black population of Norfolk has varied between 30-45 percent during the past 20 years. Had the Act not been passed, it is doubtful that any black would have been elected from Norfolk. This is due in part to the fact that Norfolk uses the technique of at-large elections which has the effect of diluting the black voter in the city. During the recent special reapportionment session of the Virginia legislature, consideration was given to dividing the city into separate legislative districts. If this had been done, at least two of the House of Delegate districts would have been predominately black. Therefore, the legislature managed to adopt a scheme which would allow the city to continue electing members of the House of Delegates on an at-large basis. Due to the decline and population of the city of Norfolk, the total number of delegates which the city is allotted was reduced from seven to five. Thus, if a ward system for electing delegates had been adopted in the city, two of the five wards would have been predominately black. This would give effective representation to the city in as much as the black population of the city is currently just over 40 percent, and it would also increase the number of black representatives from one to two.

I would like to point out that the Voting Rights Act has been extremely beneficial in bringing blacks into the political process in Virginia. However, there are those who are still actively working to reduce the effectiveness of blacks in the political process and much work remains to be done in order to bring blacks into the mainstream of the politics in Virginia. This goal will be difficult to achieve even with the extension of the Voting Rights Act, and the overwhelming evidence is that it will not be achieved without it. Therefore, I urge you to support the extension of the Voting Rights Act.

Thank you, Mr. Chairman and members of the Committee for allowing me this opportunity to speak to you on the importance of the extension of the Voting Rights Act.

STATEMENT OF DR. I. JOSEPH WILLIAMS, PASTOR OF ANTIOCH BAPTIST CHURCH AND NATIONAL PRESIDENT OF THE UNITED CHRISTIAN FRONT FOR BROTHERHOOD ON THE VOTING RIGHTS ACT

Mr. Chairman and members of the Subcommittee. I am Dr. I. Joseph Williams, pastor of the 3,000 member Antioch Baptist Church, Norfolk, Virginia, president of International Fellowship, National President of United Christian Front for Brotherhood and moderator of the Old Dominion Missionary Baptist Association.

I have served as President of the Washington, North Carolina branch of the National Association for the Advancement of Colored People, and the Norfolk Branch NAACP. My church, the Antioch Baptist under my administration has purchased six life memberships.

Mr. Chairman, we would like to thank the Committee for making these hearings possible and for your continuous introduction and support of legislation extending the Voting Rights Act for the next 10 years. More specifically, we support the Rodino bill. I would like to personally thank you for the opportunity afforded me to speak before this Subcommittee.

In the United Christian Front For Brotherhood the Department of Voter Registration, we have conducted voter registration drives throughout the United States (New York, Pennsylvania, Colorado, District of Columbia, Maryland, Virginia, North Carolina, South Carolina, Louisiana, and California). We found that voter participation among blacks and other minorities is declining. One of the primary reasons is that blacks and other minorities are working on jobs from 9 a.m. to 5 p.m. They leave home too early in the morning to go to the Registar's Office, and return too late in the evening to register. These inconsistent hours denies to the working man the right to register to vote. (1) denial of nighttime voter registration, (2) denial of satellite voter registration offices and mobile unit registration (this is where a mobile bus moves daily throughout the city, posting in the daily newspapers the time, place and area the mobile unit will be stationed), (3) denial of mail-in registration.

The Voting Rights Act is one of the most powerful and effective pieces of legislation passed since 1965. In many states the Registar's Office are housed in privately owned businesses, where Registar's come on selected days, maybe once or twice a week. Primarily, these places are in the outskirts of town or the suburbs, as the majority of blacks reside in the inner city. This places a hardship on those persons who have no transportation and especially on young women with children, senior citizens, handicapped persons, etc., The Voting Rights Act gave people the right to vote, but the states have not given the people the accessibility of the facilities.

Pool tax, property tax and educational testing—these were some of the phrases that wreaked havoc on the poor and black citizens for hundreds of years in the United States of America. The founding fathers built this country on the premise that "all men are created equal"—all but black men and women that is—thus, the birth of civil rights and voting rights legislation.

Hundreds of Americans, black and white have paid the supreme price for these right—"life". And, now at the close of the nineteenth century minorities in this country still face the prospects of being disenfranchised.

Mr. Chairman it has been 16 years since the Voting Rights Act was passed. An Act that was aimed at securing the fundamental rights of freedom to blacks minorities: and yet today in 1981 we are not free. For the right to vote is still denied to thousands in the land of the free and home of the brave.

I have cone here today, not as an individual, but with all of the hopes, dreams and aspirations of millions of Americans and more personally the thousands who are under my immediate leadership—the Antioch Baptist Church—the Old Dominion Missionary Baptist Association and the United Christian Front for Brotherhood. I speak for these thousands of Americans whose hopes for fairness and equity

require an extension of the Act. We support the bill introduced by Chairman Rodino.

My father fought in World War I, my brother and I fought in World War II, and I served this country in the Korean Conflict.

I thought that when I came home from the war that we had won freedom for all Americans regardless of race, creed, or color.

I am here because I feel it is my duty, but I am embarrassed to have to come here in my own country's capital and lobby for something that should have been settled with the Emancipation Proclamation.

Let there be no mistake about where I stand on this issue. I support the Voting Rights Act with all of my being.

Let us go forth from this place with renewed strength. For America can never fulfill her dream as long as the politically strong take advantage of the politically weak, or, the politically strong fail to represent the weak, or to secure their rights within their own strength.

In the midst of this dark hour in our country when one of the greatest cities, Atlanta is being held hostage by fear and is under the seige of attack, where the spirit of freedom seems to counterfeit the rehearsal of death.

I must say as I stand in the midst of men (and women) with great power invested in them and say: God bless America, land that I love, stand beside her and guide her thru the night with a light from above. From the mountains to the prairies, to the oceans white with foam, God bless America my home sweet home.

Mr. Chairman and members of the Committee, thank you.

TESTIMONY OF REV. CURTIS HARRIS, HOPEWELL, VA.; JAMES GAY, ESQ., NORFOLK, VA.; AND REV. I. JOSEPH WILLIAMS, NORFOLK, VA.

Mr. EDWARDS. Who is first?

Mr. GAY. I am first. Good afternoon. My name is James Gay, and I am a practicing attorney in Norfolk, Va., with the firm of Gay & McGowan. We are engaged in private practice.

With me is Reverend I. Joseph Williams, who has just joined us. He is pastor of Antioch Baptist Church in Norfolk, and also the national president of the United Christian Front For Brotherhood. On my right is Reverend Curtis Harris, who is the State president of the Southern Christian Leadership Conference, and also pastor of Union Baptist Church in Hopewell.

Mr. EDWARDS. Without objection, your statement will be made a part of the record.

Mr. Gay, you may proceed.

Mr. GAY. I certainly appreciate this opportunity to express my strong support for maintaining the Voting Rights Act, because, as others who have preceded me, I feel that this is one of the most important pieces of civil rights legislation that has ever passed Congress. This act serves as a covenant of reassurance to hundreds of thousands of blacks and other minorities that we can share in the political process in this land.

I very well remember the time that I was in college, participating in voting registration drives, and there was wide use of blank sheet voter registration papers, the poll taxes, and 9-to-5 voting hours. Many of these things have previously been discussed, and I shall not dwell on them at this time. All of these activities and actions were designed, of course, to prevent or discourage blacks from registering to vote, or participating in the voting process.

Now, unfortunately, in Virginia today, we still have many whites in authority or in positions of influence who were in positions of influence at that time. And they are still sitting, waiting, looking, and hoping for any opportunity to devise a technique which can

prevent or lessen the influence of blacks in participating in the electoral process.

They would look upon your failure, for example, to extend the Voting Rights Act, as a signal that now it's safe to return to the former days, and the former ways of implementing those things which have adversely affected blacks in the past. Of course, we would certainly hope that you would not give them this signal that it is safe to return to their former ways.

Now, we have had a lot of discussion today on what took place in the special session of the Virginia Legislature during the special session on reapportionment, by Senator Wilder, and I shall not dwell on those things that have already been stated.

However, I would like to emphasize that the one theme which was recurring—by most of the senators, and State delegates, when they were considering various plans of reapportionment, was, we cannot adopt this one, because the Justice Department may not approve of it.

Now, that's very significant, because they did not say, "We can't adopt this plan because it's wrong," "We can't adopt this plan because it will disenfranchise blacks." They merely said, "We can't do it because Justice Department won't approve it." They had no concern for whether it was morally wrong or whether it was disenfranchising blacks. I think that speaks to the attitude of the people who are now in positions of influence and power. And therefore, the Voting Rights Act itself still has to act as a deterrent to prevent white legislators in Virginia from disenfranchising or attempting to lessen the impact or influence of black voters in the State.

Now, I live in Norfolk, and practice law there. The Norfolk Electoral Board has shown that it is unwilling to set up a system and procedure for allowing blacks to participate fully in the electoral process there. For example, in the past, whenever we would have a discussion about evening registration hours, the electoral board would say, "Well, we'll take it under advisement, and we will let you know." So we would have to threaten a lawsuit before they would say, "Well, don't bother to do that. We'll give you evening hours."

And then they would announce: "We'll have evening hours 2, maybe 3 days a week, 2 weeks prior to the close of the registration period."

Well, our committee, our community, does not have a lot of money to litigate all of the wrongs and injustices that are going on. So we would simply accept half a loaf, or slice, which was being offered, and go along with the two or three evenings of registration, just to try to get as many additional new voters registered as we could do.

But certainly, the attitude of the people on the electoral board, we feel, was not conducive—or was not proper, and certainly wasn't conducive for increasing the number of black registered voters, nor did it show any concern for the lack of black voters in the city.

I would like to say, statistically, Norfolk's population is approximately 266,000. Of that, just under 100,000 are black. Yet we only have—we have less than 20,000 blacks registered to vote, and the

total number of registered voters is 78,000. So less than, or approximately 20 percent of the registered voters are black. The real black population of Norfolk is clearly somewhere between 37 to 45 percent, depending upon whether one omits the sailors who are at sea, or whether one includes them, and the watered-down figure of 37 percent is used when you add in the military.

If you exclude those individuals, then the real, permanent population, black population, of Norfolk is actually closer to 45 percent. Yet we have only one black in the House of Delegates, only one black out of seven on the city council.

Now, the local electoral board did recently announce—I believe it was in the February 1, 1981, edition of the Virginian Pilot—that they were going to set up four satellite offices around the city. Now, this seemed like a good idea. It sounded, when I first read the article, as if they were listening to what we were saying. We needed offices scattered around the city.

Then I looked at the locations of those offices. They suggested locating one at Norfolk State University. The other three were located in predominantly white areas. Norfolk State is a predominantly black school. And this would have been in a black area, or would be in a black area. But most of the blacks who live around Norfolk State are already registered. So it really isn't that convenient in terms of registering unregistered blacks.

It would have been better to have set up a satellite office in an area where we have a large number of unregistered blacks, and have a balance, as far as the number of offices are concerned. If four offices were needed, maybe two should be in predominantly white areas, and two in predominantly black areas. But certainly if they're going to only put one in a predominantly black area, it should have been where the problem was, not where blacks are already registered.

So, you see, here's another example of a very subtle scheme which the electoral board has implemented and utilized to give the appearance of being fair, just, and nondiscriminating. But in reality, the impact would be adverse upon us as blacks.

So, we think that this, along with the method in which they have handled the evening registration, shows that even today, we have a very, very serious problem in terms of how the electoral board will view its role in stimulating black voter registration or allowing blacks to fully participate in the electoral process.

Now, there was a great deal of talk previously concerning the number of blacks who are in the house of delegates, and Doug Wilder, who just testified, is the only black senator. In spite of the size of Norfolk, there are no black senators there. There is only one black who is in the house of delegates. And this has occurred simply because Norfolk utilizes the technique of at-large elections. There have been many blacks who have run for office unsuccessfully.

Somehow, there is a hard core of approximately 55 percent of the voting population which happens to be white, and in the at-large elections, unless you are able to get the support from that segment, a minority just does not have a chance of winning.

We think that certainly because the at-large elections were in place previously, they were grandfathered into the act, and we

have no way of challenging that particular system, except, of course, through ligitation, which would be very expensive and very costly.

The community did, for example—when I say "the community," some of the black citizens in Norfolk—did consider bringing such a suit 3 years ago. They wanted the city divided into wards. They approached our firm about handling the litigation. We expressed an interest in doing it, and we said we would do it for a small retainer. We would be willing to go forward, if the community could bear the other expenses of litigating.

At the same time, there was a serious problem of discrimination in the fire department in Norfolk. There were only 19 black firemen out of 430. And it was thought that maybe a class action suit should be filed against the city on behalf of the black firefighters. So here, we were put to choose between jobs on the one hand or voting on the other. The black community didn't have the money to litigate both—or the blacks in the community did not.

So we decided to litigate the firefighters' suit. And I would like to say that in the district court we were dismissed for failure to state a cause of action, interestingly enough; however, we did appeal that, and that decision was reversed by the fourth circuit, and remanded. And we are getting relief now.

But my point here is that it's very expensive to litigate these cases. People in the community do not have the money to hire attorneys and there are very few attorneys who are in a position to handle these types of complex cases on small retainers, hoping, of course, to receive attorneys' fees once the cases are decided in our favor.

So I would like to point out in closing that the Voting Rights Act has been extremely beneficial in bringing blacks into the voting process in Virginia. However, there are those who are still actively working or seeking to reduce the impact or effectiveness of black participation in the voting and political process.

We must bring or allow blacks to come into the mainstream of the political process in Virginia. This goal will be difficult to achieve, even under the Voting Rights Act. I daresay it will be impossible to achieve in the absence of it. Therefore, I urge you to support extension of the Voting Rights Act, and I thank you for this opportunity that you have given us to appear before you. I would like to ask Reverend Curtis Harris to make his presentation at this time.

Mr. WASHINGTON [presiding]. Thank you, Mr. Gay. Mr. Harris, will you proceed?

Reverend HARRIS. Thank you, Mr. Chairman and members of the subcommittee.

My name is Curtis W. Harris. I'm president of the Southern Christian Leadership Conference in the State of Virginia. I live in Hopewell, Va. I am also pastor of the Union Baptist Church in the city of Hopewell.

The population of Hopewell is some 23,000, of which about 22 percent is black. Since 1961 or 1962, I have run for elected office in Hopewell. I ran for city council six times. I ran for Congress twice and ran for the house of delegates once and State senate twice. I still am paying for my run for Congress in 1974. Only once did I

even come close to winning, and that was in the city council race where I came in fourth in a field of eight candidates; there were three seats available. Even then, the only three council seats that were vacant were taken by white candidates.

I have been the victim of racial block voting in each of my election efforts. In Hopewell, we have at-large elections. The largest precinct is twice as large as some of the other precincts. It is 99-percent white; 90 percent of the time, the winner in this large precinct, No. 4, is the winner in the election. That is where white people live, and I get very few votes in that precinct. Thirty percent of the population of Hopewell lives in that precinct, and they don't vote for me. Six of the seven council members live in that precinct within two blocks of each other.

I am the only black person who has ever run for office in Hopewell. Other blacks have been discouraged because they see no chance of ever winning.

Last year the city council passed a resolution, against the objection and protest of the black community, to reduce the size of the council from seven to five members. Previous to this action in 1977, there had been a referendum which passed by some 126 votes to raise the size of the council from five to seven. The city's first position was that it was not necessary to submit to the Justice Department this change. Only after the black community contacted the Justice Department did the city submit the change for preclearance.

The Justice Department warned the city that it would object to this change, if it passed such a referendum, unless the city instituted a ward system instead of at-large elections. The city did not want such a result.

The same people who originally proposed the reduction in the city council size, then campaigned against the proposal because they did not want to change from an at-large system to a ward system. As a result, the referendum failed, and Hopewell still has an at-large method of election.

I might point out that the person who instigated the proposal to change had been a member of the city council some 20 years and had been off for 4 years and then reelected on a platform that he would introduce the resolution to change the size of the council. This same individual owned a restaurant prior to the 1964 Civil Rights Bill and its passage, and in the window of that restaurant while he was yet a member of the council, there was a sign that said "For Whites Only." That kind of attitude prevailed in Hopewell, and that kind of attitude still prevails, and it is the dominant attitude on the city council in Hopewell, which gives the impression that if Virginia was removed from the Voting Rights Act, Hopewell would do drastic things in the electoral process to prevent black people from serving in elected office, even beyond what's going on with the at-large system.

The black community has now attempted to put a proposal on the ballot to change to a ward system. In Virginia, a judge can order a proposed change to be put on the ballot. Although the judge has done this before at the request of a similar citizens group, when the black community petitioned the judge in 1980 with 1,000 signatures, 10 percent of the registered voters, he said

he could not do it. He said he did not have jurisdiction and had made a mistake when he did it before.

We finally got the city council to petition the judge to put this change to a ward system on the ballot. We will be voting on it in November. If we are not successful in Hopeweli in changing to a ward system, we will continue in Hopewell to have a city government that is still all white. That is, if we cannot change the system in Hopewell through the use of the Voting Rights Act as it is now instituted, we will remain without representation on the city council.

There have been no blacks ever elected in Hopewell, and the city council appoints all boards and commissioners of the city. The at-large system in Hopewell, which has been in effect since before the 1965 Voting Rights Act, does not give the black community in 1981 the opportunity to elect representatives of its choice, due to the long-standing pattern of white block voting.

We submit to you that if the Voting Rights Act and especially section 5, which requires preclearance, is not kept intact, that in the city of Hopewell and in the State of Virginia, people will suffer tremendously in their efforts to gain election to political offices. They will also suffer in their effort to gain voter registration so that they can vote for the candidate of their choice, whether that candidate be black or white.

Thank you very kindly for this opportunity to make this presentation today.

Mr. WASHINGTON. Thank you, Mr. Harris.

Our final witness is, I think, Reverend Williams.

Reverend WILLIAMS. Mr. Chairman and members of the subcommittee, I am Dr. I. Joseph Williams, pastor of the 3,000-member Antioch Baptist Church in the city of Norfolk, Va.; president of the International Fellowship and national president of the United Christian Front for Brotherhood, and moderator of the Old Dominion Missionary Baptist Association.

I would like to submit my entire statement today and just offer extracts from it, and I would also like to personally thank you for the opportunity afforded me to speak before this subcommittee.

In the United Christian Front for Brotherhood, the Department of Voter Registration, we have conducted voter registration drives throughout the United States—the States of New York, Pennsylvania, Colorado, the District of Columbia, Maryland, Virginia, North Carolina, South Carolina, Louisiana, and California to name a few. We have found that voter participation among blacks and other minorities is declining.

One of the primary reasons is that blacks and other minorities are working on jobs from 9 a.m. to 5 p.m. They leave home too early in the morning to go to the registrar's office and return too late in the evening to register. These inconsistent hours denies to the working man the right to register and vote—No. 1, denial of nighttime voter registration, and No. 2, denial of satellite voter registration offices and mobile unit registration. This is where a mobile bus moves daily throughout the city, posting in the daily newspapers the time, place and area the mobile unit will be stationed; and denial of mail-in voter registration.

I have come here today not as an individual, but with all of the hopes, dreams, and aspirations of millions of Americans, and more personally the thousands who are under my immediate leadership—the Antioch Baptist Church, the Old Dominion Missionary Baptist Association, and the United Christian Front for Brotherhood. I speak for these thousands of Americans whose hopes for fairness and equality require an extension of the act.

We support the bill introduced by Chairman Rodino. Thank you, Mr. Chairman.

Mr. WASHINGTON. Thank you very much, Reverend Williams. Your entire statement, of course, will be incorporated in the record. And thank you three gentlemen.

The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. I just want to briefly say, I have been very impressed by the statements of all three of you. I just sit here with a sense of mounting outrage at the refusal of people who have the power, the authority, to let other people exercise a basic right to vote—I mean, they let you vote, but they make it tough for you to vote, and then by at-large elections, your vote doesn't get you any representation, and that's not what this country is all about. And I want you to know that I share your anger and outrage at this.

Don't think that you have people here who aren't sympathetic with the plight that you are evidently in. You have been very effective in communicating it to us. The search for another answer isn't simply out of a desire to adulterate what you have told us has been an effective act. It isn't to send signals that we are retreating or retrenching, but it's just trying to adjust to the political reality that the other body has to deal with this, too. And there are some people over there who don't feel as perhaps we do.

But we hear you, is what I'm saying. And it's been very effective.

Thank you.

Reverend WILLIAMS. Mr. Chairman.

Mr. WASHINGTON. Yes, Reverend Williams.

Reverend WILLIAMS. Could I please read the last two paragraphs in my statement—and I have a very special reason for that. That's on page 4.

In the midst of this dark hour in our country, when one of the greatest cities, Atlanta, is being held hostage by fear and is under the siege of attack, where the spirit of freedom seems to be counterfeiting the rehearsal of death, I must say, as I speak to you, the men and women with great power invested in you:

God bless America, land that I love;
Stand beside her and guide her,
Through the night, with a light from above.
From the mountains to the prairies,
To the oceans white with foam,
God please bless America,
My home sweet home.

Thank you, Mr. Chairman.

Mr. WASHINGTON. I think we all concur with you, Reverend Williams.

Majority Counsel.

Ms. DAVIS. Mr. Harris, you indicated that you have run for office more than once in Hopewell. Was the last time you ran in 1974?

Reverend HARRIS. No; I ran in 1980.

Ms. DAVIS. Both of you have suggested that certainly there are impediments to registration in Virginia.

Mr. Harris, you have also suggested that there are certain electoral schemes that dilute the power of black voters in Hopewell. I assume that you would suggest there are other places in Virginia where that's also true?

Reverend HARRIS. Most of the cities in Virginia have at-large elections. At-large election, within itself, is a deterrent to the election of black people. The only way you can get elected as a black person in an at-large election in an area where you don't have at least 60 percent of the population is to make some kind of deal with the white candidates that are running to get on some kind of ticket with the white candidates.

And once you get on the ticket with the white candidate, you also dilute your effectiveness as a black person on the council once you are elected. That's true all across the State of Virginia, in the cities.

In the counties, they have district elections. They have single-member district elections in most cases. In some cases they are multimember. But by and large it's a single-member district in the counties. And in a few cities there are single-member districts, like Richmond, Petersburg, which came into being under court order; Suffolk, which merged with the County of Nansemond. And there may be one or two others in the State of Virginia.

Ms. DAVIS. Some have suggested there has been a sufficient change in the attitudes of those in power in the covered jurisdictions to suggest that the clearance provision of section 5 be allowed to expire.

It's your view that that certainly is not the case, that the attitude in Hopewell continues to be substantially unchanged from what it was prior to enactment of the Voting Rights Act.

Reverend HARRIS. In my office, as president of SCLC, we do get complaints from all over the State of Virginia. And we are aware that it's widespread. Hopewell is a microcosm of what's going on all over the State of Virginia.

Attitudes have not changed, they are the same. Racism is still the same. It just changed its uniform, in terms of how it looks, how it appears to the public.

But underneath, we have the same kind of action/reaction from those in authority to try to either eliminate black participation or, if it is included, to develop some kind of program or deal so that it will be noneffective in terms of bringing about the kinds of changes that will benefit those who have been outside of the area of benefits across the years.

Ms. DAVIS. Mr. Harris, you indicated there are no black elected officials in Hopewell—there have been no black elected officials in Hopewell. Are there any blacks that hold appointive office in Hopewell?

Reverend HARRIS. Yes; there are some blacks who hold appointive office in Hopewell. I hold an appointive office in Hopewell on the planning commission. But wherever there is a black holding appointive office, it is more or less tokenism. He's the only one—or she—and no others are appointed until that one has finished his

term. Then he's replaced with another black. The housing authority, for instance, has had about three blacks, but no two of them served at the same time.

So the problem is that you get appointed to an office on a board or commission where there are five persons or seven persons and you are the only black person on that board, and generally you are not able to perfect anything.

The other thing that bothers us in Virginia is that when this kind of situation takes place, the selection of the person to serve is not made by the black community. Those persons who have the power pick their own black person to put on the committee, usually somebody who has other kinds of pressures, like where they are employed, are they in the school system—they use a schoolteacher, a principal, or somebody who is employed in a situation where his livelihood would be in jeopardy if he really took a strong position against the majority on the board or the commission.

Ms. DAVIS. One final point, and I direct this to all of the panel members: Would you agree, as Mr. Harris has pointed out, that one of the consequences of the failure of blacks to truly participate in the politics of their communities has been a decline on their willingness to register to vote, for example, or to continue to seek public office?

Mr. GAY. I think that's certainly true. You know, historically, unfortunately, in the black community there's been a saying that "My one vote won't count anyway, so there's no need to bother to register."

And when people look around and see that no new blacks are getting elected, just the same one who the white community anoints and votes for, it does create a sense of powerlessness to do anything about change.

So it is a hindrance to the entire voter registration process.

Ms. DAVIS. Is it your belief, having, I assume, lived in the State of Virginia for all or certainly a substantial portion of your life, that the problems which you describe are problems which are still attributed most often to racism? I know many of us do not like to hear that term, but is it race or other factors which cause these impediments.

Mr. GAY. I think that's exactly what it is, just pure, unadulterated racism. But it has taken a different appearance, because more subtle techniques are utilized. But the underlying motivation and the real cause of the problem is simply racism.

Mr. WASHINGTON. Minority counsel has a question or two.

Mr. BOYD. Thank you, Mr. Chairman.

Mr. Gay, when the subcommittee makes changes to the existing act, how would you respond to amendments which would be designed to create a bailout provision which would apply, hypothetically, to covered jurisdictions which would enable them to get out from under mandatory preclearance if:

One, they exhibited over a set period of time no "substantial" objections issued by the Department of Justice.

Two, use no test or devices, as defined in section 4(c) or section 4(f)(3);

And three, took certain affirmative steps, such as switching from at-large voting to district voting, under their own motion, without decree from the court or the Department of Justice.

How would you respond to that sort of amendment?

Mr. GAY. Well, I, first of all, don't think that would be sufficient, because it doesn't address the real problem, which is racism.

Mr. BOYD. What other standards would you incorporate then?

Mr. GAY. If I may continue, I will address the standards.

We look, for example, at the impact of crime when a policeman is present. If a police car is driving up and down the highway, no one speeds; but that does not mean that therefore we don't need State troopers on the highway because everyone is now driving 55 miles per hour.

History shows the minute he goes off the road traffic goes right back up to 65, 75, 80, and accidents occur. And that's exactly what you would have with what you are suggesting—that is, just because with the act present people are acting as if they are now converted and convinced that they should be acting a certain way and give the appearance that they are willing to be fair and reasonable and so forth, we are willing now to do away with at-large elections.

I would say that it would be a sign that a change is possibly occurring, but I don't think it would be, by any means, sufficient in and of itself. I think we would have to look a lot further, not just to what they're doing in terms of the specific things, but attitudes in the community, until we reach a point where, in this society, the white population in the South and in places where I have been, where racism is a problem, that they're willing—whether they like me as a black person or not, they're willing to respect my rights as an American citizen, regardless of my color. Until we reach that point, I think we're going to have a problem.

Now, how we define the symptoms which they will manifest when they've reached that point, I don't know. But I'll be happy to think about it, and I'll be more than happy to send comments.

But I think it would have to go beyond the three things that you mentioned.

Mr. HYDE. I'm just thinking, in terms of a time period, where a community or a jurisdiction has been clean—not only that, say 10 years where they've had no objections to any changes in their laws and, in addition, they have voting rights abuses there; in addition, they have taken some affirmative steps, whatever they might be, mobile registration, from at-large, a list of good things that prove they've done—they would have the burden of proving it over a substantial period of time. Say, "OK," this community, "you are enlightened, and you can bail out." And once they get out, they can come right back in under 3(c).

Granted, that takes a court. I'm just trying to find some way that would appeal to somebody, that it isn't a regional thing, but recognizing that A can be OK and B is not so OK. You can't answer it right now, but it would just be nice to have your input on it.

Let me just say something else. You say racism, and no question about racism—it's a reality that exists. But I find there are many reasons why exclusion exists in the political process, not because of anyone's color; many times it's just you are not with the in group.

In my community, where race isn't an issue, but if you're not a Democrat—and I'm sure it's true in other communities, if you're not a Republican or one of the boys, there is no way you're going to get in, no way they're going to share power. People who have power don't want to give it up and don't want to share it.

It may be obvious in a racial basis, but it also can be on a political basis. Up in my area—and it's every bit as invidious—if you're not with the team, if you don't go along, you don't get along.

Mr. GAY. Again, I would say if it's on a basis that I can have some control over, I don't mind. I don't mind people excluding me if I am not the best attorney to handle the case.

But if they exclude me because I am black and that alone, or because I am only 5'9" and that alone, something that I cannot control, then I feel that's wrong and Congress has to something.

Mr. HYDE. I think it's wrong for any reason not to have equal access to the mechanics of political representation.

Mr. WASHINGTON. Thank you, Reverend Harris, Attorney Gay, and Reverend Williams.

Before we adjourn, I wish, on behalf of the chairman, Chairman Edwards, to enter three mailgrams into the record.

As the committee will recall yesterday, Mr. Robert Brinson former city attorney from Rome, Ga., testified to the effect that Rome had reached a stage, he thought, where it should be permitted to bail out of Voting Rights Act coverage and indicated that the city was quiescent and peaceful and that citizens, black and white, properly supported him.

We had three mailgrams in response to that statement.

I'll just read one of them for the record, but enter all three.

This is addressed to the chairman, Don Edwards:

The Max Meyerhardt Lodge of B'nai B'rith, Rome, Georgia, supports the extention of the Voting Rights Act. We are witnessing, simultaneously, the increased visibiliy of the Ku Klux Klan and the decreased concern for the plight of minorities in this city.

The Jews of Rome, Georgia, historically have supported and fought for full civil equality for all minorities. We have not yet tasted victory.

Now, as much as ever, the City of Rome's minorities desperately need the vigilant protection of the Federal Government to give sustenance to rights guaranteed by federal law.

Max Meyerhardt Lodge, B'nai B'rith, Rome, Georgia.

The second one is from the Rome, Georgia/Floyd County Chapter, NAACP, Jimmy McBee, president.

And the last is from the Rome Council on Human Relations, Myrtle Jones, chairperson.

All in support of the same thing, in support of extending the Voting Rights Act of 1965, as amended, intact. (See p. 2208.)

Mr. WASHINGTON. That concludes our hearing for today, and the subcommittee is adjourned.

Thank you very much.

[Whereupon, at 4:30 p.m., the hearing was adjourned.]

EXTENSION OF THE VOTING RIGHTS ACT

WEDNESDAY, MAY 27, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2 p.m., in room 2237, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Members present: Representatives Edwards, Washington, and Sensenbrenner.

Also present: Representative Billy Lee Evans and Representative Robert McClory.

Staff present: Helen C. Gonzales and Ivy L. Davis, assistant counsel, Thomas M. Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

We are glad to have with us today Congressman Billy Evans, member of the Judiciary Committee from Georgia.

We are delighted to have him here, as well as the ranking Republican on the Judiciary Committee, Congressman McClory, of the great State of Illinois.

Today, we are going to continue our series of hearings on the extension of the Voting Rights Act.

This hearing will focus on the enforcement mechanism for protecting voting rights. In the bill that has been introduced by our colleague from Illinois, Mr. Hyde, the enforcement mechanism is a litigation one. You have to go to the courts for enforcement.

The bills authored by Chairman Rodino and Senator Kennedy would continue the administrative enforcement mechanism set forth in section 5.

Today, we are also going to focus on the factors reviewed in determining voting discrimination: The significance of historical discrimination and the types of voting changes subject to section 5 review and why they can be discriminatory.

We will first hear from a panel presentation of legal experts: Herbert O. Reid, Sr., who is the Charles Hamilton Houston distinguished professor at Howard University and our friend Jack Greenberg, who is director-counsel of the NAACP Legal Defense and Education Fund, Inc. Gentlemen, we are pleased to have you.

Without objection, all of the statements will be made a part of the record.

You will please introduce your colleagues and proceed.

TESTIMONY OF HERBERT O. REID, SR., CHARLES HAMILTON HOUSTON DISTINGUISHED PROFESSOR, HOWARD UNIVERSITY, ACCOMPANIED BY MS. LEZLI BASKERVILLE, MEMBER, DISTRICT OF COLUMBIA BAR; AND JACK GREENBERG, DIRECTOR-COUNSEL, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ACCOMPANIED BY ELAINE R. JONES, STAFF ATTORNEY, NAACP LEGAL DEFENSE FUND, INC.

Mr. REID. I am Herbert Reid, and associated with me in this statement is Ms. Lezli Baskerville, a member of the District of Columbia bar.

Mr. Chairman and members of the Subcommittee on Civil and Constitutional Rights, I have been for 37 years involved in this field.

I have been teaching and litigating voting right cases since 1947, when I first joined the faculty at Howard.

I appear before you today in my capacity as a student, professor and litigator in this field, and on behalf of the National Bar Association and the National Conference of Black Lawyers, professional membership organizations which represent more than 8,000 black attorneys, judges, and law students in the United States, I am here to voice my wholehearted support and the support of the NBA and NCBL for the extension of the Voting Rights Act, the most important piece of civil rights legislation enacted by Congress.

Ms. Baskerville is coauthor of this statement and accompanies me here today.

It is our position briefly, sir, and the position of the organizations we represent, that H.R. 3112, introduced by Congressman Rodino, is the most acceptable proposed extension of the Voting Rights Act.

What we attempt to set forth in our statement is—in the legislative history itself of the 1957, 1960, and 1964 Voting Rights Acts, as well as in the case law—that there is ample documentation of the delay and the frustration of the judicial remedy.

We went up to 1957 with private litigation. In 1957, we were able to get the statute amended so that the Attorney General could bring the suit.

From 1957 to 1965, there was a 9-year period of judicial frustration even after the Attorney General became the litigator in this matter.

I tell you that so this committee will not feel preclearance was drawn out of the sky somewhere. It was only arrived at after a long and arduous history and performance of frustration of the Attorney General's effort to use the judicial process.

Second, the attempts by private individuals and private litigants—of course, Mr. Greenberg can cover that more adequately than I can, because principally it is his organization which has participated in this litigation—how the private suits were frustrated by devices such as—in some cases, I point out where they made it real hard ball; you would go to register and instead of ending up as a registered voter when the sheriff was acting as the registrar, you would be charged with a crime or be assigned to an insane institution for trying to vote—long delays in the judicial process, changing of legislation and changing of administrative personnel during the process to frustrate the judicial pronouncement.

As a former Governor of Mississippi said, the legislature could pass legislation faster than the courts could decide the cases. That would show you the intent of the frustration.

The last thing I tried to bring to your attention, in the statement, was the white primary litigation, principally in Texas. A colleague of mine at the university, Mr. Nabrit, later president of the university, I think, litigated that issue in his lifetime, for about 37 years, from the *Herndon* case down to *Terry* v. *Adams*, just on one issue: opening the democratic primary in the State of Texas and other places.

The brunt of what we are trying to project here is that the judicial alternative is really an ineffective tool in this area. The use of the administrative process on the problem of voting is a common tactic and a common method which Congress saw fit to bring over into this area.

The progress which we have witnessed in this field is the result of having used the preclearance administrative device, and if we lose that, I think we would be turning the clock back, and I hope this committee will look at a quotation we have put in this presentation from Mr. Justice Marshall.

I think one consideration that ought to be before this committee is the fact that black people in this country have developed considerable hope and expectation from this system, and it would be quite a disappointment to turn the clock back.

Thank you, sir.

[Mr. Reid's prepared testimony follows:]

STATEMENT OF HERBERT O. REID, SR., IN SUPPORT OF EXTENSION FOR THE VOTING RIGHTS ACT OF 1965, AS AMENDED

Mr Chairman and members of the Subcommittee on Civil and Constitutional Rights, my name is Herbert O. Reid, Sr. I am the Charles Houston Distinguished Professor of Law at Howard University and a civil rights lawyer of some 37 years. I have been teaching and litigating voting cases since 1947, when I first joined the law faculty at Howard University. I appear before you today in my capacity as a student, professor and litigator in the field; and on behalf of the National Bar Association (NBA) and the National Conference of Black Lawyers (NCBL), professional membership organizations which represent more than 8,000 black attorneys, judges, and law students in the United States. I am here to voice my wholehearted support, and the support of the NBA and NCBL, for the extension of the Voting Rights Act—the most important piece of civil rights legislation ever enacted by Congress.

Miss Lezli Baskerville, Chair of the NCBL Civil Rights/Civil Liberties Committee, is co-author of this statement and is accompanying me today.

It is our position and the position of the organizations which we represent, that H.R. 3112, introduced by Congressman Rodino, is the most acceptable proposed extension of the Voting Rights Act. We urge the Committee's support.

First, Mr. Rodino's bill would provide for a 10 year extension of the administrative pre-clearance provision of the Act (Section 5). Second, the Rodino bill would clarify and reaffirm the Congressional intent in Section 2 of the Voting Rights Act, that proof of intent to discriminate is not the precondition of the Act, but rather, actions which have the effect—discrimination which results in a denial or abridgement of the right of minorities to vote.

H.R. 3473 (formerly H.R. 3198), introduced by Congressman Hyde is objectionable. Mr. Hyde's bill would eliminate the administrative pre-clearance provision of Section 5, and substitute a judicial remedy. Administrative pre-clearance is crucial to preserving the effectiveness of the Act and should be preserved. By eliminating the administative pre-clearance of the 1965 Voting Right's Act, the Hyde bill would turn the clock back to the sorry spectacle of this great democracy assailed in international forums for the effective disenfranchisement of its black population.

The point we wish to emphasize today is the proven ineffectiveness of the judicial remedy to correct denials of the right to vote. The ineffectiveness of the judicial

approach is documented in the case law, legislative history of the 1957, 1960, 1964, and 1965 attempts by Congress to secure the voting rights guaranteed by the 15th Amendment. In addition, my personal experiences since coming to the Howard School of Law Faculty in 1947, attest to the judiciary's impotency to deal effectively with this issue.

The administrative remedy of pre-clearance provided in the 1965 Act evolved only after long and arduous efforts, extending from the adoption of the 15th Amendment up to 1965, to prevent several of the States from effectively disfranchising their black populations. This struggle, involving private litigation and later litigation by the Attorney General, gave clear and convincing testimony of the ineffectiveness of the judicial remedy to guarantee and afford the basic right to vote. The history and background of how Congress arrived at the administrative remedy of pre-clearance is important to an understanding of its present necessity.

From the mid 1940's on, there were appeals made to the Executive and Legislative branches to exercise their powers to ensure the right to vote. The frustration and ineffectiveness of private litigants seeking judicial remedies was recognized by Congress in the passage of the 1957, 1960, 1964, and 1965 Civil Rights Act.

The Civil Rights Act of 1957 authorized the Attorney General to seek injunctions against public and private interference with the right to vote on racial grounds. Perfecting amendments in the Civil Rights Act of 1960 permitted the joinder of States as parties defendants, gave the Attorney General access to local voting records, and authorized courts to register voters in areas of systematic discrimination. Title I of the Civil Rights Act of 1964 expedited the hearing of voting cases before three judge courts and outlawed some of the tactics used to disqualify Negroes from voting in Federal elections.

Despite the earnest efforts of the Justice Department and of many Federal judges these . . . laws did . . . little to cure the problem of voting discrimination . . . voting suits [proved] . . . onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combining through registration records in preparation for trial. Litigation . . . [proved to be] exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings. Even when favorable decisions . . . [were finally] obtained, some of the States affected . . . merely switched to discriminatory devices not covered by the Federal decrees or . . . enacted difficult new tests designed to prolong the existing disparity between white and Negro registration. Alternatively, certain local officials . . . defied and evaded court orders or . . . simply closed their registration offices to freeze the voting rolls. The provision of the 1960 law authorizing registration by Federal officers . . . had little impact on local maladministration because of its procedural complexities. *South Carolina* v. *Katzenbach*, 383 U.S. 301, 313, 314 (footnotes omitted).

The point we wish to emphasize here, is that Congress did not resort to the administrative remedy of pre-clearance until after 9 years of experience by the Attorney General proved the futility of the judicial remedy now suggested as a substitute for pre-clearance, by Mr. Hyde.

This country has a long history of use of the administrative process as a tool more effective than the judicial process. See, for example, rate fixing and rate determinations. The fact of the matter is that even though Congress has seen fit to use the administrative process in matters of commerce and finance, in order to better effectuate the intendment and purposes of Congress and the business and commercial sectors, it has been slow in applying the same administrative techniques in dealing with the problems of the poor, the disadvantaged, and the disenfranchized. Thus, the administrative pre-clearance remedy represents a step forward in applying the administrative process to the problem of disenfranchisement.

One may make political capital by suggesting that sovereign states ought not be compelled to seek administrative pre-clearance, but the administrative process is firmly established in our jurisprudence. The application of that process to this problem has proved the only effective remedy. It was the conduct of the sovereign states that created and perpetrated disenfranchisement in defiance of the 15th Amendment which was intended to effect state sovereignty in its ability to deny the right to vote.

In addition to the ineffectiveness of the Attorney General in litigating voting cases, from 1957 to 1965, private litigation, from 1890 to the present, has also been marked by inefficiency. Private litigation to vindicate the right to vote has proven an ineffective tool for several reasons:

First, because of the length of the trial—resolution often comes after the election;

Secondly, enormous amounts of money are necessary to support the litigation—amounts beyond the capacities of individuals and organizations which support the litigation;

Thirdly, the intimidation of clients by violence and/or economic pressure;

Fourth, record destruction by public officials to prevent the establishment of "pattern and practice";

Fifth, the changing of officials to frustrate judicial relief. In addition, the private suits were subject to legislative and administrative changes to frustrate the judicial pronouncement. As a former Governor of Mississippi observed, the legislatures could enact legislation faster than the courts could decide cases.

In some areas, the officials played "hard ball." When the Sheriff was the registration official, an attempt to register to vote might result in the applicant being charged with a crime and/or committed to a mental institution.

What we are suggesting to this Committee at this point, is that private attempts to use the judicial remedy were ineffective because of the practices indicated above, as well as delay and frustration. Further indication of delay and frustration, if I may add a personal note, I have witnessed and been a part of myself.

I was associated with my then faculty colleague, Dr. James Nabrit, in *Terry* v. *Adams*, decided by the Supreme Court in 1953. Mr. Nabrit had been engaged in white primary litigation in Texas from 1927 to 1953, almost 30 years litigating the same issue—whether blacks could be excluded from the Democratic party. During that time the issue went to the Supreme Court four times before effective relief finally was obtained. After each decision the States would enact legislative or impose administrative hurdles to thwart the decision of the Court. The new techniques had to be re-litigated until the Court concluded in *Terry* v. *Adams*, as it had in *Lane* v. *Wilson*, "that the 15th Amendment was intended to nullify sophisticated as well as simple-minded modes of discrimination.

CONCLUSION

When the members of this august Committee study this judicial and legislative history, it is submitted that the administrative remedy of pre-clearance is absolutely essential to guarantee the most precious of rights in a democracy—the right to vote. Pre-clearance did not just happen, the hard knocks of experience taught the lesson of administrative pre-clearance. Those who would remove this remedy, wittingly or unwittingly, would remove the support beams which were effectively placed by Congress to support the bridge over which blacks marched to the exercise of the franchise for the first time in the history of this Republic. To remove this support would be to place the beneficiaries of the 15th Amendment again at the whim and caprice of the several state legislatures, and administrative officials.

The sorry history of the disenfranchisement of the urban population, from *Colegrove* v. *Green*, to *Gomillion* v. *Lightfoot*, and eventually *Baker* v. *Carr*, ought to be sufficient evidence for this Committee to conclude that power is not divested voluntarily by those who hold and exercise such power. The desire to disenfranchise in this Republic appears persistent, continuous, and ever threatening.

To abolish pre-clearance is to put the struggle by blacks to enjoy the franchise, back where it was from 1890 to 1965. This is not looking backwards. This is a retreat, a rout.

We would like to conclude our testimony with a paraphrase of Justice Marshall, dissenting in the *Mobile* case: If this Congress refuses to honor our long-recognized principle that the Constitution "nullifies sophisticated as well as simple-minded modes of discrimination," it cannot expect the victims of discrimination to respect political channels of seeking redress.

Mr. EDWARDS. Thank you very much. Professor Reid. We will now hear from Mr. Greenberg.

[The prepared statement of Mr. Greenberg follows:]

STATEMENT BY JACK GREENBERG, DIRECTOR-GENERAL COUNSEL, NAACP LEGAL DEFENSE AND EDUCATION FUND

I am pleased to appear before the Subcommittee to testify in support of the extension for ten years of those provisions of the Voting Rights Act which will expire next year. My testimony is also in support of an extension of the bilingual provisions of the Voting Rights Act so that they too will expire ten years from August, 1982. Finally, my testimony is offered in support of an amendment to section 2 of the Voting Rights Act which would enable the courts to invalidate voting practices and procedures whose purpose or effect invidiously discriminates against citizens of minority groups.

As you can tell from this statement of purpose, I am here today to provide the subcommittee with facts and reasons which I believe are sufficient to justify enact-

ment of the bill introduced into the House by Congressman Rodino. That bill has the three features which I described.

As you deliberate on the wisdom of enacting this proposed piece of legislation, I know that you will keep in mind the historic role which the Voting Rights Act of 1965 has played in our society. Without question, it is one of the most important pieces of legislation that any Congress has ever enacted. Its basic purpose is simple, namely, to attack racial discrimination in voting. It operates by prohibiting private and official actions which restrict minority citizens' exercise of the franchise or which perpetuate the adverse effects of pre-existing restrictions on the exercise of the franchise.

The denial or abridgment of the franchise has been the principal method used in this country to relegate generations of persons of color to secondary citizenship. By this means, black citizens were kept politically subservient to a majority which was for centuries insensitive to their basic civil rights. It is only in the last few decades that they, along with other minority groups, have begun to emerge from the political oppression and bondage in which they were kept. The Voting Rights Act played an important part in effectuating this transformation in accordance with the rule of law. It makes clear the nation's commitment to preventing states and localities from depriving free men and women of the right to vote.

For the greater part of the century, the NAACP Legal Defense and Education Fund has been fighting to protect the voting rights of black Americans. We were actively involved in many of the famous voting cases of the early 1900's in which blacks were deprived of the right to vote. During the twenties and thirties, we fought, in cases, such as *Nixon* v. *Herndon*, 273 U.S. 536 (1927); *Nixon* v. *Condon*, 286 U.S. 73 (1932); and *Smith* v. *Allwright*, 321 U.S. 649 (1944), to declare the "white primary" unconstitutional. We also participated during this period in cases such as *Guinn* v. *United States*, 238 U.S. 347 (1915) (brief amicus curiae) and *Lane* v. *Wilson*, 307 U.S. 268 (1939) (suit for damages) to invalidate other unlawful barriers which were raised to deny blacks the right to register or to vote.

In the subsequent years, we continued our strong commitment to the enforcement of voting rights for minorities. Even as I speak here, our cooperating lawyers are working in *Bolden* v. *City of Mobile, Alabama*, a case on remand in the district court from the United States Supreme Court, to establish proof that the City of Mobile has adopted and used its system of at-large elections to prevent blacks from being elected to public office as well as to dilute their voting strength.

We believe that protection of the voting rights of minority citizens is one of the most sacred and difficult of a democracy's moral and political obligations. Effective exercise of the right to vote is a constitutionally protective tool which minorities can employ to advance their social welfare and safeguard their fundamental human rights. There is hardly a person in this room who would deny that the exercise of the right to vote is a precious part of our heritage. It should not be conditioned on the basis of race, color, or nationality.

It is on the basis of the Legal Defense Fund's experience in combating discrimination in voting that I wish to relate to you today our reasons for urging you to enact the Rodino bill. My testimony falls basically in three areas. First, I wish to point out the tremendous impact which the Voting Rights Act has had on the functioning of our democratic institutions. You have undoubtedly heard this all before. I wish, however, to emphasize this point because it puts in context the nature of the need to extend the Voting Rights Act for ten years.

Second, my testimony will center on the need to maintain the preclearance provisions of section 5 of the Voting Rights Act rather than to rely upon judicial means of enforcing voting rights. The bulk of my testimony will be on this issue. Third, I will give you an overview of my opinion on why we continue to need the Voting Rights Act.

A. IMPACT OF THE VOTING RIGHTS ACT

Recently, I had occasion to analyze the effectiveness of the Voting Rights Act. Utilizing materials prepared by the United States Census Bureau, I examined voting and registration statistics for black and white voters, in both North and South, over the course of the last decade. These statistics describe in graphic terms the impact which the Voting Rights Act has had upon traditional patterns of black registration and voting in Southern states.

The Act under consideration by your committee was enacted in 1965. Under the influence of the Act, the number of black registered voters in 11 Southern states increased from 2,689,000 to 4,149,000 during the ten year period 1966 to 1976. This represents a 54.3 percent increase in the overall number of registered black Southern voters. In the covered Southern states and jurisdictions, the percentage increase in registered black voters was greater.

For example, in Georgia, black registration during this decade went from 300,000 to 598,000, a percentage increase of 99.3 percent. In Louisiana, Mississippi, South Carolina, and Virginia, the percentage increases were respectively 73.3 percent, 63.4 percent, 49.2 percent and 54.6 percent respectively. In Mississippi, black voter registration increased in 1964 to 1976 from 29,000 to 286,000, an 886.2 percent increase. Although the percentage of black registered voters in these states continues to trail behind the percentage of white registered voters, the rate of increase in black registration in the covered jurisdictions substantially outdistanced corresponding increases in white registration.

These figures demonstrate the phenomenal impact of the Voting Rights Act on black registration. They show a healthy trend in widening access to the ballot. In addition to increasing voter participation, the Voting Rights Act has increased enormously the number of black elected officials in the South and the nation as a whole. This represents quite a change from the situation existing before 1944, the year in which the Supreme Court invalidated the use of the white primary, when there was hardly a single black elected official in any of the covered states.

In 1979, there were more than 2,700 black elected officials in the South. Of this total, 208 were in Alabama, 237 were in Alabama, 237 were in Georgia, 334 were in Louisiana, 327 were in Mississippi, 222 were in South Carolina, 88 were in Virginia, and 240 were in North Carolina where approximately 40 counties are covered by the Voting Rights Act. More than half of all black elected officials in the United States come from the South. The covered jurisdictions account for approximately one-third of the number of black elected officials in the country. Each year, the number of black elected officials in covered states, like the number of black registered voters, has continued to rise although even today the number of black elected officials in the covered jurisdictions is less than 6 percent of the number of elected officials in those jurisdictions.

We can be proud of these increases, in the extent of black participation in the electoral process. Our country was founded on the denial of voting rights to blacks. Violence, intimidation, terrorism, and laws were used to keep blacks out of the polling booths and to prevent their election to public office. The Voting Rights Act of 1965, along with other federal statutes, has operated to eliminate the vestiges of this unlawful regime.

Section 5 of the Voting Rights Act singles out for coverage those states and jurisdictions which have used discriminatory tests and devices to reduce the degree of voter participation within their borders and in which there was a voting turnout less than 50 percent at the time of the presidential elections in 1964, 1968, or 1972. Those who would let the Voting Rights Act expire in 1982, just when it has brought the fruits of true democracy for the first time to millions of previously disenfranchised Americans, have an extremely heavy burden to bear. The central question before this Committee should be whether or not the opponents of the Act can sustain this burden.

B. THE NEED FOR SECTION 5

It is my understanding that some of the principal opponents of the Voting Rights Act desire to eliminate section 5 from the Act. They would turn the clock back to the time when enforcement of voting rights was dependent upon the prospective voter's ability to obtain immediate and effective judicial relief. This emasculation of the Voting Rights Act is defended on the ground that the courts are able to provide adequate and complete judicial relief for minority citizens complaining of violations of their voting righs. Anyone, however, who examines the state of voting rights in the pre-1965 era will immediately recognize that history proves the inadequacy of individual lawsuits for protecting the voting rights of black and other minority group citizens.

There are several reasons why judicial remedies, in the absence of suitable administrative remedies, were inadequate to protect voting rights. First, judicial remedies are expensive. Second, they are slow and uncertain, especially when procedural obstacles are used, as they are surely will be, to block their successful pursuit. Third, exclusive reliance upon the courts puts the victim of discrimination in the adjudicatory forum where the standard of proof is very high. Fourth, judicial decisions only decides the merits of the particular case before the court. They therefore do not generally decide the merits of other cases involving different facts or different voting practices. Judicial decisions therefore do not prevent a losing defendant in a voting rights case from adopting new procedures to abridge voting rights. Thus, a plaintiff who wins a voting rights case is very likely to find himself, or herself, back in court to invalidate the next effort of the defendant to maintain the previous disfranchisement.

1. The expense of litigation

Anyone who has ever tried a voting rights case knows that lawsuits cost money and that the availability of judicial relief is not always immediately forthcoming. A typical voting rights case for us, for example, can easily cost thousands of dollars. The individual black plaintiffs whom we represent in our voting cases are never able to afford the expense of the costs of the lawsuit. Therefore, if they had to rely upon their own resources, they would have to abandon any effort to vindicate their constitutional and statutory voting rights. Apart from the use of section 5, their only alternative is to depend upon private organizations and the federal government to institute actions on their behalf. This, however, is not a desirable situation since private civil rights groups also tend to be strapped for funds. As for the federal government, it can hardly be expected to carry the litigation burden for the large number of persons whose voting rights have been infringed.

There are several reasons why voting rights litigation is expensive. These are cases in which it is necessary to sue numerous defendants, to litigate successive appeals, to hire expert witnesses, to engage in extensive discovery, etc. These needs drive up the costs of litigation. Even private civil rights groups find the costs of those expenses onerous. If there were no section 5, litigation would be an effective tool for protecting voting rights in only a handful of the cases now covered by section 5.

I point these facts out to you because they show that, as a practical matter, there is no real alternative to continuing the protection of section 5. There simply are no resources available for handling the mass volume of litigation which would be generated if the Voting Rights Act was allowed to expire. On the other hand, it should be kept in mind that section 5 does not impose any heavy or undue financial burdens upon jurisdictions subject to it. This point was conceded only recently by the Attorney General of South Carolina who, at a subcommittee meeting on voting rights of the American Bar Association, testified that section 5 imposed only minimal burdens upon the State and its cities and counties.

2. Delay

Another factor which makes judicial remedies inadequate as a substitute for section 5 is that judicial relief almost always is attendant with delay whereas the vindication of voting rights often requires prompt, immediate relief. This circumstance makes judicial intervention peculiarly inappropriate as a primary, or sole, remedy for voting abuses.

This point is nicely illustrated by one of our voting rights cases, *City of Pensacola, Florida* v. *Jenkins*, which is presently on appeal to the United States Supreme Court. On July 10, 1978, a federal district court entered a judgment in this case that the City of Pensacola had violated the Constitution by adopting a system of at-large elections for positions on the City Council to prevent the election of black officials and to dilute the voting strength of black citizens. The district court also, at a later date, entered a degree in which it adopted, as a remedy, a reapportionment plan proposed by the City. Both judgments of the district court were affirmed upon appeal by the Fifth Circuit.

Despite the invalidation of the City's at-large electoral scheme and the court's adoption of the City's own remedial plan, the City of Pensacola has continued to this day, almost three years after the entry of the original judgment, to use the very same at-large system of elections which the district court held unconstitutional in 1978. Indeed, the City has conducted two elections since the date of the district court's original judgment.

Those who understand the nature of the judicial process will not be surprised to find delays of this sort in voting rights suits. Here, as in other cases involving protracted litigation, the power to delay is often in the hands of the party who stands to benefit from the delay. The history of our voting rights cases is replete with delay of this sort. If black and other minority citizens were forced to rely solely upon litigation to protect their voting rights, then most cases of disenfranchisement would go unredressed. This result would take us back to an era from which we have just emerged. I am sure that no right thinking American seriously wishes to go back to this painful and embarrassing part of our history. As long as we have the protections of section 5, we need not fear such an eventuality. Indeed, section 5 promises, in the long run, to enable minorities to use their own political power to protect their political and civil rights.

3. Standard of proof

The inadequacy of litigation as an all purpose cure for voting rights litigation has been aggravated in the last year by the Supreme Court's recent decision in *City of Mobile, Alabama* v. *Bolden*. As a result of the decision in that case, plaintiffs in voting rights cases must show a clear intent to discriminate invidiously on the basis

of race or color. Moreover, the plaintiffs are not permitted to make this showing by using certain forms of circumstantial evidence which ordinarily might evidence proof of the requisite intent. The decision in *Bolden* will inevitably make voting rights cases more protracted, more difficult, and more expensive.

By contrast, section 5 provides a rather simple, flexible, and inexpensive method by which the federal government can prevent electoral changes from taking places in covered jurisdiction where the purpose or the effect of the change is to deny or abridge the voting rights of minority voters. Unlike the judicial standard, the standard under section 5 takes due account of the past discriminatory history of the affected jurisdiction and its failure to remedy the continuing effects of its past discriminatory actions. Section 5 accomplishes this result by putting the burden on the locality to show that it has legitimate governmental interests to support adoption off the proposed changes in its election practices and procedures.

The *Bolden* case, which is presently on trial again in the district court in Alabama following remand from the Supreme Court, is a good illustration of the difficulties which plaintiffs in voting rights suit can expect to encounter in successfully prosecuting cases in the absence of section 5. The *Bolden* case is one of our cases. We expect to prevail in the district court and expect the judgment to be upheld on appeal. However, the new standards of proof forces us to expend inordinate amounts of money in order to hire historians and others to exaine the history of election laws and procedures in Mobile. This is almost the only way in which intent to discriminate can be proved.

The fact that we may ultimately prevail on the merits in *Bolden* will be cold comfort to the black voters in Mobile who continue to labor under a political regime in which they do not adequately participate.

To the extent that the expiration of the Voting Rights Act would make the courts the primary defense against violations of the right to vote, that course must be rejected. The overclogged dockets of the courts is an argument against sending all claims of deprivations of voting rights to the courts. Moreover, the elimination of section 5 would place the burden of proof on the wrong party. The genius of section 5 is that it places the burden of proof on the party best able to satisfy it since the offending locality normally has the requisite evidence to show its intent in effectuating a voting change or to show that the change does not unjustifiably affect adversely the voting rights of minorities.

4. Circumvention of court orders and the use of subterfuges

Litigation, unlike section 5, is poorly suited to protect disenfranchised citizens from the strategems of officials who try one means after another to restrict the voting rights of minorities. If section 5 were abolished, then we could expect a resurrection of the massive use of subterfuges by local officials who seek to evade compliance with court orders with which they disagree. To illustrate my point, let me give you an example from some of the cases.

In 1915, the Supreme Court, in *Guinn* v. *United States,* held that "grandfather" clauses were unconstitutional. These were clauses in which voting tests were required for registration except for those who were descendants of persons who had qualified to vote in some period of time in which minorities were barred from registering. As a result of the decision in *Guinn,* Oklahoma and other states abandoned the use of the clause. Oklahoma, however, quickly switched to a statute which provided that persons previously barred from registering could register if they did so within a specified twelve-day period. When the issue of the validity of the statute reached the Supreme Court in *Lane* v. *Wilson,* the statutory requirement was invalidated. Justice Frankfurter, in his opinion, emphasized that the Fifteenth Amendment bars "sophisticated as well as simple-minded modes of discrimination."

It is precisely because of the constant use of sophisticated and disingenuous attempts to evade the law's command, that section 5 was created. Rather than force the plaintiff to go back to court again and again, section 5 was created to require the jurisdiction to obtain advance approval that proposed changes in its election laws did not have the purpose of the effect of denying or abridging the right to vote. In the absence of section 5, jurisdictions would try one strategem after another to evade the effect of a court decree. The plaintiffs, as a consequence, would be compelled to institue a series of cases merely to obtain the relief which they had already won.

In my book "Race Relations and American Law," I have sought to describe at length the various artifices which were employed by Southern states and localities to evade compliance with successful court rulings in favor of plaintiffs. I have also described there the various procedural devices which defendants in voting cases used to delay rulings on the merits. Much of what I said then is applicable now. In particular, I believe that my analysis then of the reasons why the pre-1965 voting

laws were inadequate to guarantee full participation by blacks and others in the electoral process, is fully applicable to the situation today.

In analyzing the limits of litigation as enforcement tools to protect voting rights, I hope that I have given you reasons to continue with the Voting Rights Act. To allow this statute to lapse is to run a very great risk. To extend it for another ten years does not create a burden that is substantial, given the history of racial discrimination in many of the covered jurisdiction.

C. ADDITIONAL REASONS FOR EXTENDING THE ACT

There are some, I know, who oppose extension of the Voting Rights Act because they do not believe that discrimination exists today in the covered states. There is no basis for this claim. The NAACP Legal Defense Fund, the Justice Department, and many civil rights organizations, have won numerous lawsuits in which they have established proof of intent by local officials to discriminate. Many of these cases are of recent vintage. As I mentioned before to you, the district court in *Jenkins* v. *City of Pensacola* found that the City Council had discriminated against blacks in adopting and using its system of at-large elections. This judgment was affirmed on appeal by the Fifth Circuit. Moreover, the affirmance occurred long after the Supreme Court's decision in *Mobile*.

We also expect soon a finding of intentional discrimination in the *Mobile* case. Yesterday, was the last day of hearing in this case. It is also anticipated, although forecasting here is problematical, that a finding of intent can be sustained on appeal. The deluge of cases in which the courts have found an intent to discriminate against blacks or against Mexican-Americans constitutes the most reliable evidence of wide-spread invidous discrimination against minorities.

If one examines either the voting right cases brought by the Justice Department or the voting rights cases brought by private organizations, then you will notice that the number of these cases has not diminished in recent years. This constitutes substantial evidence, such as that shown by the increasing number of black registered voters in covered jurisdictions, that there is still a need for the Voting Rights Act.

Similarly, the preclearance reports issued by the Justice Department, although showing a wide range in the number of objections made each year by the Department since 1970, do not demonstrate conclusively the existence of a decline in the number of objections which the Justice Department has made annually to submissions by covered jurisdictions of proposed voting changes. In reviewing the number of objections by the Justice Department, it is important to recognize that each objection means that the Department has uncovered significant evidence of intentional discrimination by the jurisdiction or that the jurisdiction has been unable to justify its proposed choice of a voting procedure, or practice, in the face of a claim that the proposed change has the effect of discriminating against minorities and that there exists alternative ways in which it could achieve its objectives without adversely affecting minority voting rights.

In addition to the above, three other factors must be taken into account in evaluating the significance of the number of objections taken pursuant to section 5 to proposed voting changes. First, the existence of section 5 operates as a powerful deterrent even to the adoption of discriminatory voting laws. This deterrent quality is a normal feature of laws. Second, many covered jurisdictions have not consistently submitted their election laws changes to the Justice Department for approval. This fact is known to the Justice Department. After examining the Justice Department's computer print-out of submissions made to it pursuant to section 5, the Southern Regional Council has identified at least 100 statutes enacted by the legislature of the State of North Carolina which are applicable to covered counties in the State but which have not been submitted for approval to the Justice Department as required by section 5.

Finally, it must be recognized that section 5 has only been effectively used by the Justice Department in the last ten years. In his testimony to this subcommittee in 1975 in support of the extension of the Voting Rights Act, Assistant Attorney General Stanley Pottinger, speaking on behalf of the then Republican Administration, testified that:

"The Congresional hearings on the 1970 Amendments to the Voting Rights Act reflect that section 5 was little used prior to 1969 and that the Department of Justice questioned its workability. Not until after the Supreme Court, in litigation brought under section 5, had begun to define the scope of section 5 in 1969 (*Allen* v. *State Board of Elections*, 393 U.S. 544) did the Department begin to develop standards and procedures for enforcing section 5. Congress gave a strong mandate to us to improve the enforcement of section 5 by passing the 1970 Amend-

ments. . . . Thus, most of our experience under section 5 has occurred within the past five years."

At another point in his testimony, the Assistant Attorney General states that "It was not until the publication of the Department of Justice regulations in September of 1971 that states and political subdivisions were provided with a definite, concrete list of the types of legislation and administrative actions which constituted voting changes with the meaning of Section 5."

Thus, as a practical matter, section 5 has only been in effect for 10 years. This is much too short a time in which to evaluate it or replace it or to declare it a failure. This is especially so since many covered jurisdictions have not complied with either the spirit or the letter of the law. In light of these considerations, I see no reason why Congress should allow section 5 to lapse. Rather, the evidence strongly supports its extension.

In conclusion, I would like to say that the members of this subcommittee and the members of Congress have an important responsibility to fulfull. You must not allow the Voting Rights Act to expire. It must be extended for ten years. To act otherwise would be to break faith with the people of this country who have made, and are making, tremendous efforts to rid the nation of discrimination and its debilitating effects. No argument based on the purported rights of the states should make us blind to the magnitude of the task before us. There is no more honorable course that this Congress could perform than to insure the total absence of discrimination in voting and thus bring us closer and closer to closing a tragic and sorry history in the life of this country.

Mr. GREENBERG. I have prepared a written statement which has been given to the committee. Beyond that, Professor Reid has covered the territory very well, and I would, therefore, not read my statement, but, in the manner of a lawyer making an oral argument and not reading his brief, touch upon some of the high points that I think this committee should particularly take note of.

We are in accord with Professor Reid, and as he stated in his statement, we support a 10-year extension of the Voting Rights Act.

We are for extending the bilingual provisions so they will expire coterminously with the basic act, and, finally, we support an amendment to section 2, which would enable the court to invalidate voting practices or procedures with the purpose or effect of racial discrimination or discrimination against other minorities.

The Voting Rights Act has been extraordinarily effective. As we point out in our prepared statement, in some States the number of minority voting has increased 50 percent. In others it has doubled, and in one case it has increased eight-fold, but that does not mean its work has been done. There is a great deal more yet to be done and a great many threats toward full and equal participation in voting that still exists with which the act must deal.

Professor Reid touched upon the efforts that have been made to deal with the question of voting rights through litigation, through going to court. If we look at the long history of litigation involved in voting rights, we find the cases involving the grandfather clause, the white primary as mandated by State law, the white primary as mandated by party rule, the literacy test, the jaybird primary case in which private clubs were substituted for the Democratic Party, and they nominated the persons who always got the Democratic Party nomination and an endless number of techniques which had to be litigated time and time again.

The thing the Voting Rights Act has done is that it has, to a very considerable extent, taken the issue out of the courts and made it a matter of administrative procedure, and that accounts in substantial part for the extent to which the act has been effective.

Voting rights, I would like to point out, are no different than other civil rights or constitutional rights, or indeed rights in private or commercial law. The procedures by which they are enforced are, to a very considerable extent, determinative of what those rights mean.

One could take any substantive right one wants and couch it in as elaborate, forthright and bold language as one would hope and surround it with procedures which would make it difficult to enforce, and the right would be meaningless.

We have seen this in connection with school integration, for example. The all-deliberate-speed doctrine, which was the means by which the substantive constitutional right went into greater education could be enforced effectively, prevented integration of schools until 1970, and when that was abolished by the Supreme Court of the United States in 1970, the serious, meaningful integration of schools began.

If one turns to an area outside of racial issues to the precious constitutional right of freedom of speech and freedom of the press, there is a procedural doctrine which prevents prior restraints on freedom of speech.

I don't think anyone here, for a moment, would consider saying,

"Yes, there is a constitutional right to freedom of speech, a prior restraint may be entered against it, but then you may go to the Justice Department and ask it to bring a lawsuit to lift the prior restraint.

The procedural assurance of swift justice and swift guarantee of civil and constitutional rights is more important indeed than the substantive assertion of the right, itself.

This would be true whether the judicial remedy would be in the hands of private parties whose resources are limited or indeed the Attorney General of the United States, whose resources are indeed limited, and insofar as the judicial system is concerned, we know that resources of the courts are severely strained at this time with regard to all other issues that come to courts.

As to the question of standard of proof: effect versus intent—it is not easy. In fact, it is impossible to read the mind of a legislature or to read the mind of a community and to determine whether there is an intent to effect racial discrimination; particularly nowadays it is all the more difficult. It is not like it was years ago when sometimes someone would stand up on the floor of a legislature and say, "Yes, we would like to take certain action to deprive certain racial minorities of their fundamental rights." People know not to speak in those terms.

An effect, after all, is what it is we are talking about. We are talking about whether those who have been moved from the political process now may be able to participate in a full and equal way.

The issue is not to establish what has been in the minds of one or more, or to make it more difficult, a majority of the members of a legislature, which is essentially an impossible task.

We are talking about the establishment of a right to equality, not anything like a quota or a remedy which would impose a quota.

In summary, the Voting Rights Act should be continued for another 10 years. It has been effective. It has been important. The need for it continues to be important. We hope that this committee

and the Congress will endorse the proposals which we make here today.

Thank you.

Mr. EDWARDS. Thank you, Mr. Greenberg.

The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. I also want to join the chairman in welcoming these distinguished gentlemen, Mr. Reid and Mr. Greenberg.

I have one question which I think should be directed to Mr. Reid. One of the submissions today will be from Dr. Saye, of the State of Georgia. He intimates in his submission that after the white primary was struck down in 1944, I think it was, there was a question of State enactments and executive edicts of the State, which brought Georgia into the twentieth century relative to voting rights of blacks in the State of Georgia.

Are you conversant with the voting, the history of voting rights in the State of Georgia?

Mr. REID. Not in any detail, Congressman.

In terms of the white primary, the last case, the most recent Supreme Court case in that line, was *Terry* v. *Adams* in 1953, and I have no indication the white primary was cleared any earlier than that in the State of Georgia.

What I was trying to indicate, sir, was that the judicial remedy is inadequate in this area because of the conscious effort on the part of the State legislature and administrative officials to deny the right to vote. It was open and notorious.

As Mr. Greenberg has pointed out, if we have to prove an intent, it will not be as easy as it was at one time, because when they called the convention in 1890, they made it public that the conventions of 1890 to 1915 were called for the purpose of disenfranchising blacks in the newspapers and everything else.

Now, this kind of conduct is not done by open declaration, and intent is much more difficult.

I might say in this connection, Congressman Washington, if I may, we made no progress in the jury cases until the Supreme Court shifted the burden from the plaintiffs to the State government and instrumentalities to prove nondiscrimination.

The effect of that was, the court took the position that you could show jury discrimination by effect rather than intent. It was the only way in which we really opened up the juries to participation by blacks.

I am not informed in any detail as to the progress in Georgia except that I have not heard of Georgia being any candidate for a good conduct medal in this area.

Mr. WASHINGTON. Would you care to comment on that, Mr. Greenberg?

Mr. GREENBERG. I do not come prepared to discuss the particular history of particular States. I have a general recollection of the state of civil rights in Georgia in the middle 1960's, when we were conducting litigation all over the State with regard to public accommodation, jury discrimination, school segregation, and virtually any other right.

I personally have been involved in lawsuits in Georgia which, in the early 1960's, had to desegregate the Atlanta Airport.

I would just guess in view of the fact that voting rights are far behind all other kinds of rights, I would be quite astonished if we had segregation at bus stations, airports, lunch counters, schools, employment, and elsewhere, but that voting rights were a shining exception to all of that.

Mr. WASHINGTON. Let me turn briefly to another area. One of the constant statements reiterated by a member of the committee here, not present, of course, is that the Voting Rights Act, and particularly section 5, is violative of State sovereignty and State rights. We keep getting that argument pounded as though it was a spear into the brains of every person who testified.

I would like for the record to be clear as to where you two gentlemen stood on that concept—State rights/State sovereignty.

Mr. GREENBERG. We live in a Federal Government in which the national government has certain powers and the State governments have certain powers and rights.

The basic constitutional structure was established in 1789, and it was amended in 1865, and for several years thereafter, that basic constitutional structure recognized States rights but also recognizes national primacy over certain areas involving racial equality. It is not violative of States' rights for the national government, pursuant to the 15th amendment to tell the States that citizens ought to be allowed to vote under certain terms, conditions and circumstances, and pursue it in a certain procedure; so the States are not having their rights violated. Rather, the United States is saying, "These are the rights of our citizens."

Mr. REID. Congressman Washington, I would merely like to add to what Jack was saying. What the court said in *Cooper* v. *Aaron* in the school segregation case, was that the States and officials could not wage war under the Constitution.

This is effectively a remedy to prevent that in terms of voting. This only came, sir, after a long history and background of active State activities for one purpose, and that was to disenfranchise people. To that extent, the act, as far as I am concerned, is merely exercising the powers of the 15th amendment, as in the *Sacca-Anna* case, in a way in which Congress has determined to be an effective and constitutional means for insuring the right to vote.

Mr. GREENBERG. Let me add something to the response I gave about Georgia a moment ago. Elaine Jones, who is sitting with me, and is a primary resource for all sorts of information on issues of this sort, has just passed me a note pointing out that since 1975 the Justice Department has objected to some 42 proposed electoral changes in Georgia.

I think it is quite unfair to single out Georgia, and quite unfair to single out the South.

I come from New York, parts of which are covered, and we are not inadvertent to that. One of the principal voting right cases was NAACP against New York, and it was a case my office handled, and so I think it would be quite unfortunate if this was viewed as a sectional issue rather than one which covers all parts of the country which have common characteristics.

Mr. WASHINGTON. It is a matter of degree, though, is it not? I come from Chicago, and I am not proud of the voting procedures,

restrictions, impediments, et cetera, which exist there, particularly for a person of my independent political stripe.

One of the arguments also presented by a member of this committee, also not present, is that the act should be extended, assuming constitutionality, to cover those States and cities where it isn't a question, necessarily, of racial discrimination, but of voter fraud.

I think it is a good thing to ask the question, because it must be put to rest for no other reason than a debating issue: what would you suggest, for example, that this Congress do, if anything, relative to voter fraud situations which are rampant, particularly in my city of Chicago, and in my district, as a matter of fact—certain sections of my district?

Mr. GREENBERG. If the voter fraud issue is really another way of effecting racial discrimination, I would be for covering it with legislation of this sort, but if it is voter fraud, which is indiscriminately affecting members of all races and creeds alike, I think it would be unfortunate to complicate this particular legislation with a lot of other issues, as important as they may be.

I think my view would be that that should be handled separately.

Mr. WASHINGTON. I will yield, Mr. Chairman.

Mr. EDWARDS. The gentleman from Georgia, Mr. Evans.

Mr. EVANS. I thank the gentleman for yielding. I am not a member of this subcommittee, and I appreciate the Chairman's indulgence in allowing me to ask questions.

The Voting Rights Act was passed in 1965. Is anyone on the panel aware of any changes? I am aware of the Justice Department's disagreements with some of the proposed districts and redistricting and changes in charters, et cetera.

I am also aware of a great deal of problems which exist. One matter which is in controversy right now goes to whether the mayor of Atlanta can serve a third term because the Justice Department says they didn't preclear the charter change which limited the mayor to two terms.

I am concerned about a continuation of the administrative preclearance, which is necessary primarily for seven Southeastern States, as well as some other isolated parts of the country.

I would just ask the question if any members of the panel are aware of any particular problems that exist in Georgia and in other Southeastern States that would require continuation of the preclearance that is a part of section 5.

Mr. GREENBERG. I came here to discuss the procedures and techniques of enforcement, and I am not equipped to go into substantive descriptions of voting rights in particular precincts and areas, so I don't know that I can be helpful to you.

I do know there have been over 800 objections throughout the country in recent years, most of them more recently than not, and it is evident of the fact it is a problem which continues to recur and, unfortunately, I think, will be recurring for some time.

Mr. EVANS. I am aware of the political situation in the State of Georgia, and, of course, I did not come here to talk about Georgia in particular. It is just that those questions were raised by my colleagues, and it does address a situation which is very unique in American jurisprudence, and that is to have a law which applies to

some States and does not apply to others, which is the preclearance required in these particular areas.

Although there are objections on the part of the Justice Department to certain redistricting or certain plans, my question is, what justifies now that—in view of the fact that we probably have at least as great a percentage of black elected officials in Georgia, we have a roughly equivalent percentage of minorities registered to vote and voting in Georgia as we do the majority—the problem comes with issues that don't even have to do with voting rights, like the technical things I mentioned earlier: the preclearance required for a part of the charter which says how many terms a mayor can be elected. How can that have any possible relationship to voting rights? It is the same for all, majority and minority.

If the population in Atlanta continues the way it is presently going, you would replace one minority mayor with another minority mayor. What would be the reason to have to preclear a provision that a mayor can only serve two terms?

Mr. GREENBERG. I don't want to step blindly into a Georgia political situation of which I am essentially ignorant, but it would just seem to me if that were submitted and had no racial impact, it would be cleared in a minute, and that would be the end of it.

Mr. EVANS. The problem now is that it wasn't precleared. Therefore, the Justice Department says it wasn't precleared and we are talking about an issue that has been decided some time ago and now because we are talking about a mayor succeeding himself for the third time, that issue comes up, but I say that only to point out the problems that some States have, not with voting right issues, but with ancillary issues which the agency has extended far beyond the intent of Congress in this act.

I would be glad to hear from you, sir, on that.

Mr. REID. I would like to make one or two observations, with your indulgence, please.

This preclearance procedure was adopted after a long history and background that we have talked about.

The preclearance applies in the affected States, and I would like to point out the act applies in 22 States and not just 7 States.

In this preclearance, what they were getting at was any change in the voting rules and regulations after a date, I think it was November 1964, any changes after that. And the reason for that, Mr. Evans, was very clear, which I point out. We had been defeated in our judicial and other efforts by changes in local law and local administrative practices, to frustrate and defeat the right to vote.

Like Mr. Greenberg, I want to stay clear of a Georgia situation about which I know very little, but I do know this, that you didn't have any black elected officials in Georgia, and Jackson and his successor wouldn't have been there without the preclearance provision, and you didn't have anyone to represent that district, the Atlanta district in Washington, until after Baker and Carr and Simms eliminated the unit system, all designed by the State to limit the exercise of the franchise.

Mr. EVANS. I think I know where the gentleman is coming from and I think, had there been no problems, there would have been no need for the 1964 act, but what you are advocating here is the simple continuation for 10 years of this bill, and you advocate the

Rodino bill, which just simply continues it. It doesn't take into consideration those things that could be eliminated from preclearance; it doesn't take into consideration any changes that could be made to improve the act and eliminate a lot of the problems that exist now, a lot of the changes which have nothing to do with voting, but which are now covered by preclearance, and that is what I am addressing in my question. Had I been in Congress at the time, I think I would have supported the Voting Rights Act of 1964 as some of my predecessors did.

I would like to further say for my home city of Macon, I have introduced legislation in the State legislature and passed it which redistricted, in order to include minority representation in the city council, the school board, the water board, and other county governments, by redistricting so that minorities would have the opportunity to be elected.

But that does not mean that I do not object to a continuation of a bill that has problems in it that could be addressed, if we went to the trouble of looking at the experiences and eliminating those things that could be eliminated from the Voting Rights Act by simply recognizing the experience over the last 15 years. That is where I am coming from, sir.

Mr. REID. Mr. Evans, I can appreciate that. I think that was the reason for, I say, what is referred to as a bailout provision, and I think it provides for 17 years. Personally, having talked with Mr. Greenberg and other people—personally, I would have no objection to shortening that period, the bailout provision.

Mr. EVANS. I thank the gentleman, and I might point out that this problem, I think, is correctly recognized by members of the panel as being a nationwide problem which exists. It is just that in the Southern States—we were talking about de jure or official actions as opposed to that which existed all over the country.

Everyone knows the South was an easier target to correct, because they did everything aboveboard. They didn't do it through the backdoor, the way it was done in other parts of the country.

I think the recent situation of the last 2 or 3 years, with the problems in Massachusetts and other areas, with school desegregation, has pointed out this has not been a regional problem, and I hope we can eliminate it all over the country.

Mr. REID. I join with Mr. Greenberg. We would hope this would not be considered a regional bill. It should be applied wherever necessary.

Mr. EVANS. I thank the panel, and I thank the chairman for his indulgence.

Mr. EDWARDS. Thank you, Mr. Evans.

The hearings so far have indicated that one of the problems we are going to have is how to prove that the voting rights bill still is needed, and I am glad Mr. Evans is here today, because his words have been very helpful.

Are we going to keep extending it every 10 years indefinitely? What will have to happen in these various covered jurisdictions to prove to us, to prove to Congress, whoever might be here at the time, that indeed the Voting Rights Act and, in particular, the heart of the act which is preclearance—that is the most important part of the voting rights bill—would no longer be needed.

Are there things that we could point to in a State, some things like Mr. Evans mentioned; for example, efforts at school desegregation locally, proof that public services are equitably handled regardless of race? How do we look forward to the extension in those terms?

Mr. GREENBERG. Just generally speaking, as to the legislative problem, as to the need, as distinct from the framework or mechanism within the bill, I think you have touched on it.

You could look at the proportion of various groups voting, the proportion of those who have been elected to public office or appointed to public office, the quality of education and the extent of integration in education—and in the other important institutions in the community.

Ten years is not a long time. We are talking about a situation which comes from 200 to 250 years of slavery, almost 100 years of racial segregation. It has been only 10 years since the Supreme Court struck down the deliberate-speed doctrine. We talk like the problem has been gone for a generation. We had the right as an abstraction from 1954 to 1970.

Courts are, every day, deciding cases saying there is employment discrimination or housing discrimination. Those are cases in which the burden has been on the plaintiffs, and so we know indeed they establish their cases.

So to say, well, America's race problems, including those parts which are reflected in voting, are now all behind us, I think is a pipe dream.

If I were to be asked, I would say we should err on the side of caution and continue longer just to be safe, but I don't think one even has to take that approach if after the history of centuries that I am talking about, we have made some slight amelioration over a decade, I don't understand why everyone is rushing to scrap the law.

Indeed, if everything were just terrific, I think people might say, well, just let the law become a dead letter; it is not affecting us, anyway. I think the rush to scrap the law is perhaps evidence of the fact that the law is perhaps a deterrent to some things some people would like to do.

Mr. REID. I tend to agree with what Mr. Greenberg has just said. I think 10 years is significant in terms of the census and the reapportionments which follow as a result, and I think it is highly important that this preclearance administrative remedy be available for this period, just for that purpose.

Some of the progress which Mr. Evans points to justifiably with pride comes as a result of the preclearance procedure being present, and there are indications, in the Mobile case and other cases, there is still in some areas some reluctance to accept the progress that everybody is so happy about, and that makes our country look good internationally.

I don't think the extension affects unduly those States that propose to do right in this area; it does discommode some—it frustrates them in their efforts to disenfranchise the population, and I think, sir, it is necessary, because it continues this progress.

When we started the 1965 act, we wanted to have an experience record and see what was happening, and I think the resistance to voting is decreasing, but it is not abolished.

Mr. EDWARDS. Both the testimony of Mr. Greenberg and Professor Reid is, however, that the enforcement mechanisms should not be tampered with, that a litigative enforcement mechanism has been tried.

You had deep experience with that for many years. Is that not correct? And it just doesn't work. The elections are over and by the time you get into court, it is very expensive. Is that the heart of your testimony?

Mr. REID. Yes, sir. And that is documented by the public record.

Mr. EDWARDS. Thank you.

The gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. I have sat in on most of the hearings that have been held on this legislation, extending the Voting Rights Act. One of the complaints that comes up repeatedly from those who criticize the operation of the preclearance section is that there is no provision for the jurisdiction that follows the law, which does not discriminate in voting and election laws to bailout of the preclearance provision of this act.

It seems to me that some of these complaints are legitimate, even though I favor extending section 5 of the act.

Can either of you gentlemen make a constructive suggestion on how a jurisdiction that has been on good behavior can be placed on probation?

Mr. GREENBERG. You are referring to a county within a State which is covered, but the particular county has been on good behavior, even though the State is covered. The State could bail out if it could establish its case, but you are wondering about that——

Mr. SENSENBRENNER. I am particularly referring to the *Rome, Ga.* case, where that jurisdiction could not bail out because the State was covered.

Mr. GREENBERG. I think part of the problem is that many local procedures are mandated by State law. In many States district lines are drawn in the State legislature, and many other procedures. There may be some local procedures which are determined and decided upon solely locally without regard to what goes on in the State legislature, or the State capital.

The problem with that is, you may be creating more of a can of worms by a procedure which seeks to carve out that narrow little area than by letting the situation continue as it is, because you would have some local changes which are totally independent of State law, and then you would have local changes that are dependent upon State law, and without looking at any particular State, I am sure there are some good lawyers around who could find you a gray area in which maybe it was dependent, and maybe it was not dependent, upon State law.

I think the confusion to be created by something like that would be worse than the situation which exists. I can't imagine that it causes any substantial inconvenience.

Mr. SENSENBRENNER. My reading of the case of the *City of Rome* v. *the United States* indicates the State cannot bail out even if it is

on good behavior. I guess I would have to disagree with your analysis of that particular decision by the Supreme Court of the United States.

It is going to be very difficult from a practical standpoint to ask an extension of section 5 of the Voting Rights Act if there was no good behavior escape hatch. This is a nice term for bad behavior which may have taken place a generation ago and there might have been some chance of rehabilitation. The *city of Rome* case indicates under the current law rehabilitation is not an alternative.

Mr. EDWARDS. There were apparently two sides to the *Rome, Ga.* case because we had some very fine testimony from the former city attorney, but then we heard from practically all of the civil rights organizations in the city of Rome, including NAACP, who strongly objected to the thrust of his testimony and said Rome had not been the model in voting rights that was described by the city attorney. Again reclaiming my time, the district court in the city of Rome made a determination there was no showing of any violation of section 5 by the city, but that jurisdiction was covered mandatorily because the State of Georgia was covered.

Here the city of Rome has been found guilty, even though it did not commit any guilty act, and I guess this is the concern that I have in rewriting the law for the next 10 years.

Mr. REID. If I could take objection to your use of the term "found guilty." The city of Rome was not found guilty. The city of Rome was found not to be able to bail out because the bailout provision affects the State for the reason Mr. Greenberg was suggesting, and that the principal source of the rulemaking and lawmaking has been at the State level.

Now the several States may bail out with a showing of no prior discrimination for a period of 17 years since 1974, and we have already had an experience of 18 years. It appears to me the requirement that the State free itself by this redemptive process to which you refer is already provided for in the law. But not unit by unit.

Mr. SENSENBRENNER. Perhaps we are arguing over semantics. The city of Rome is still in jail even though it might not have been found guilty.

I yield back the balance of my time.

Mr. EDWARDS. Professor Reid?

Mr. REID. I would like to beg the indulgence of the committee to terminate my remarks at this point.

Mr. EDWARDS. Counsel, Ms. Gonzales.

Ms. GONZALES. I wonder if maybe the two of you can correct me if I am wrong. My understanding of why section 5 requires preclearance of all election-related changes and not just a few isolated election changes is really based on the fact that prior to 1965, the litigation approach had indicated that no sooner would one particular election change be found discriminatory by the court and struck down than some other new, unique election scheme or procedure might be devised to in fact accomplish the same end. Could you comment on that?

Mr. GREENBERG. That is indeed the case. Earlier in my testimony I went through the whole series of responses to court decisions

which various States had made. They went from the grandfather clause to the white primary required by State law. When that was struck down we had a white primary required by party rule. When that was struck down we had a white primary which came into existence because private clubs such as the Jaybird Association in Texas and elsewhere essentially selected the nominee for the Democratic primary. And when that was struck down there was still also a literacy test and the poll tax and a variety of other things. There is no end of subterfuges which were used.

As I mentioned earlier, because we recognize that procedure is as important as a substantive right, the Congress finally decided upon a procedure which would make it extremely difficult to make changes and essentially to start the game all over again every time a particular practice was struck down.

Mr. REID. I would concur. My illustration in the testimony of the Texas primary litigation that went on for about 37 years indicated just the point that you have raised, Counsel.

The reason we had to come to the Supreme Court on either four or five different occasions was that after the Supreme Court had rendered an opinion, the States changed the law. Also I characterize that procedure by the statement from Governor Coleman [phonetic], State of Mississippi, that the legislatures could pass laws faster than the courts could decide cases.

Ms. GONZALES. One claim that has been made is that one of the problems with section 5 is that it does not provide the due process one would get through the litigative process. Some witnesses and some members have complained about the fact that these jurisdictions are not getting the due process they should get, and that is why they would prefer the judicial route.

Mr. REID. If I may suggest, in the administrative process there has now developed what we call administrative due process, which though different satisfies the requirements of judicial due process.

Also in the administrative process, there is the summary action and the shorter processes. There is adequate protection and due process guaranteed in the preclearance procedure, and if it is not, it might be litigated by the courts under that same procedure, but this—the only thing new here is the application of the administrative process to this field. There is plenty of justification for everything that has happened here in the administrative field. The only thing new is the application of this technique to this field.

Ms. GONZALES. Thank you.

I have no more questions.

Mr. EDWARDS. Counsel, Mr. Boyd.

Mr. BOYD. Mr. Greenberg, your testimony discusses in some depth the extent to which the judicial remedy has been in effect since 1955; is that correct? Your testimony went on to say that with the advent of the act of 1965 and the presence of preclearance as a remedy, the act acquired much more clout; is that fair?

Mr. GREENBERG. Yes.

Mr. BOYD. You and Professor Reid both categorized Mr. Hyde's bill as abolishing preclearance. In the light of section 3 of this bill and its amendments to section 12 of the act, how do you reach that conclusion?

Mr. GREENBERG. What is the conception contained in those sections—by bringing lawsuits you can place jurisdictions under preclearance requirements; is that correct?

Mr. BOYD. That is correct.

Mr. GREENBERG. You would first have to bring the lawsuit. If the lawsuit is going to be anything like the ones I have been in, like *NAACP* v. *New York*—I have forgotten how long that lasted, but it was 5 to 7 years. Or *Bolden* v. *City of Mobile,* it has gone on for 3 or 4 years in the district court, now, and will continue for at least several more years. It is really not preclearance. It is litigation as a prelude to preclearance.

Mr. BOYD. Perhaps it would be useful to carefully categorize Mr. Hyde's bill insofar as the procedures which are utilized by his legislation are concerned. His legislation does in fact replace an administrative procedure with a judicial procedure, but I do not know that we could agree to say it replaces preclearance or according to Professor Reid abolishes preclearance as a remedy.

Mr. GREENBERG. I would not disagree with you. There is first public litigation, and following the litigation then there may be an administrative proceeding rather than the other way around.

Mr. BOYD. It is preclearance which is the most useful remedy in making the Voting Rights Act work?

Mr. GREENBERG. I would call it prelitigation preclearance.

It is not the preclearance we have been talking about until now.

Mr. REID. Preclearance as an administrative remedy is being changed by Mr. Hyde. You are getting preclearance as a part of the judicial process if the courts decide to use that alternative.

Mr. BOYD. It is mandatory?

Mr. REID. You have to bring a lawsuit and prevail. The point we are trying to make on the judicial remedy is that it has been a tool of frustration.

Mr. BOYD. During the period of time the preclearance was not available?

Mr. REID. During the time I have been living.

Mr. BOYD. Your testimony says prior to 1965 when it was so difficult.

Mr. REID. Prior to 1965 and has continued from 1965; the administrative preclearance provision of 1965 has implemented and helped this situation somewhat, but the mere fact the Attorney General has had a number of matters referred to him indicates there is activity in this field.

Mr. BOYD. Thank you.

Professor Reid, you say in your statement that H.R. 3112 is the most acceptable proposal for extending the Voting Rights Act.

Congressman Sensenbrenner touched on the possibility of a bailout procedure as an alternative. Are there any other acceptable alternatives to H.R. 3112?

Mr. REID. I think the State bailout is important as opposed to constituents of the State. I am however in favor of the bailout provision, which is already in the House bill.

Mr. BOYD. Thank you.

Thank you, Mr. Chairman.

Ms. GONZALES. One quick followup question. Mr. Hyde has made a suggestion to improve his litigative approach. In response to

concerns expressed that litigation was too lengthy, he suggested that possibly you could consider requiring that voting rights cases be heard expeditiously. Do you think that would be an improvement at all?

Mr. GREENBERG. I do not think it would be. You would have to ask the judicial conference what they thought about that also, because I think every category of litigation is claiming that it is the most important and should be heard first.

I know there was a period of time in the southern district of New York when they were hearing only criminal cases because they were the most important, and indeed they are, and nobody was hearing any civil cases.

I do not think that would help, but because there is this enormous claim upon the courts' time right now, even if that were adopted, that would not, let us say, make the *Bolden* case or *NAACP* v. *New York* take any less time.

Mr. REID. I know the staff is busy, but somehow or other I feel if this committee examined the history and background of this matter and the frustration of the judicial process it will agree with us.

We went through a period in 1957 to 1964 in which we felt the judicial process—the three-judge court provision and other provisions, with the Attorney General in it, we felt that would remedy the situation. It proved it did not.

Mr. EDWARDS. We thank Professor Reid, Mr. Greenberg, and their colleagues very much for very helpful testimony.

We now have a panel presentation: Prof. Charles Cotrell, Department of Political Science, St. Mary's University; Prof. Richard Engstrom, professor of political science at the University of New Orleans; and I will yield to my colleague from Georgia, for the introduction of the third member of the panel.

Mr. Evans?

Mr. EVANS. Thank you, Mr. Chairman. I am very pleased and honored to have the opportunity to introduce one of the members of our next panel: Dr. Albert B. Saye, professor emeritus of the University of Georgia.

Dr. Saye is a Rhodes scholar. He has enjoyed a long and distinguished career as a scholar, professor, and author, and as an attorney.

He is the author of many books, including the widely used political science text, "Principles of American Government," the seventh revision of which is presently being completed. The public text deals with constitutional law and the constitutional history of Georgia.

Dr. Saye has served on several constitutional revision commissions of the State of Georgia and is often consulted by political leaders who recognize his expertise in the field of constitutional law.

Mr. Chairman, I am proud to introduce a distinguished American and a friend, Dr. Albert B. Saye.

Mr. EDWARDS. Thank you very much, Mr. Evans.

I join my colleague in welcoming Dr. Saye.

TESTIMONY OF A. B. SAYE, PROFESSOR, UNIVERSITY OF GEORGIA; CHARLES COTRELL, PROFESSOR, DEPARTMENT OF POLITICAL SCIENCE, ST. MARY'S UNIVERSITY OF SAN ANTONIO; AND RICHARD ENGSTROM, PROFESSOR OF POLITICAL SCIENCE, UNIVERSITY OF NEW ORLEANS

Mr. SAYE. Thank you, Mr. Edwards.

I appreciate this fine introduction from one of my former students. I had the honor of teaching him.

Mr. EDWARDS. He is a good lawyer, too.

Mr. SAYE. I think so. He is a good debater, also. He was elected president of the Demosthenes Literary Society of the university of which I was faculty adviser.

I have another one of my students in the House of Representatives, Charles Hatcher. He has just come this year. I think you'd best keep an eye on him. He has lots of ability, and he will be adding a great deal to the search for truth. And I think that is what we are all here about, learning the truth.

I think my prepared remarks are entered in the record. If so, I shall not bother to read. Is that true?

Mr. EDWARDS. Yes; that is true, sir.

Mr. SAYE. Actually, in listening to the testimony, I think there is a wide gulf between theory and philosophy and fact. We are all very wise, and I like to think that most people are very well-meaning, but sometimes the gulf between theory and fact is so very, very wide that you reach erroneous conclusions.

The previous panel was not prepared—in fact, they rather objected to going into the single State of Georgia, and when it came to specific questions about it, one professed ignorance of this. But I think it is unfortunate to legislate and to make recommendations on things to which you plead ignorance of the facts.

I have done a good bit of historical research in my days. The colony of Georgia was founded by 21 trustees in 1732. It would have been difficult to find in England 21 more noble people than the Earl of Egmont, James Edward Oglethorpe, and other leaders in this project, but they made a great mistake in thinking they could govern this colony from London.

Oglethorpe is the only one of the 21 trustees who ever came to America. The laws they passed were so out of tune with the time and place that they were mostly matters for contention. Twenty-five percent of the colonists died the first year. Within the first 5 years, 90 percent of the original settlers had either gone to South Carolina or returned to England.

It was a miserable failure except from the military point of view, and, in that respect, Oglethorpe was a great success.

I think Congress, in passing the Voting Rights Act of 1965, had in mind doing something about the use of literacy tests as a discrimination against blacks in voting.

That is not too bad an aim. These literacy tests came early in this century. The Southern States accepted the end of slavery as a result of the Civil War, but, with a mobile black population, there were real problems involved. Nearly all of the blacks were in the Southeast. Georgia had more than any other State. The people of Georgia did not accept black voting, and it is only fair to say they used discriminatory methods to keep the blacks from voting.

Toward the end of the 19th century, about 1898, and more effectively in the first decade of the 20th century, they began using the Democratic white primary. Negroes could vote in the general election under this scheme, but they couldn't vote in the Democratic primary. All the people who were in positions of power united in the Democratic Party.

I happened to have been asked by the Secretary of State some years ago to make a study of the election laws of Georgia. Believe it or not, there were no provisions as to the requirement for the election of a Governor of Georgia, whether it be through plurality or a majority. Nobody paid any attention to this because whoever was nominated in the Democratic primary was elected Governor of Georgia, and so it was for all offices in the State of Georgia.

It was the Democratic white primary rather than these tests or devices, as they are called in the Civil Rights Act of 1965, that prevented blacks from having any effective voice in the government.

Actually, the election of 1906, when this grandfather clause business and literacy test was written into the constitution of Georgia was a contest between the editor of the Atlanta Journal and the Atlanta Constitution. The editor, Hope Smith, of the Atlanta Journal, won, largely on this grandfather clause business, and it was written into the constitution of Georgia in 1908. It is still—no, it is not all that, either, because Governor Ellis Arnall revised the constitution. Under his leadership in 1945 we had a new constitution, and practically all of that was left out. The clauses were obsolete. The only thing left was that a person should be able to read or that he be of good character. It was not and but or—either he read or be of good character. But this wouldn't matter because so far as discriminating against blacks, they couldn't vote in the Democratic white primary.

The case of *Smith* v. *Allwright* put an end to this system, and I don't think we have had in Georgia since 1944 any discrimination against blacks in voting.

I think that both of the proposed bills before you take the wrong approach. Mr. Rodino's bill is so far removed from the facts and actualities of the day that I can only conclude he is too busy to find out what is really going on in the world or too lazy to rewrite the bill. I don't think there is anything to be gained, even by Mr. Hyde's approach, to rewriting certain sentences in this highly objectionable bill that you have—the Voting Rights Act of 1965.

If you want to do away with literacy tests, you have already made that universal to all of the States. Now you can pass some new laws in plain English that graduates of the law school can read saying that no person shall be denied the right—that no State may use literacy as a qualification for voting.

I am not certain that Albert Saye advocates that because I don't really think there is anything wrong with a literacy test in theory. I should not like to see it abused, however, and due to past experience it wouldn't be objectionable to me. What I think is not terribly important, but I don't think it would be very objectionable to anyone in the South or in my own State—I speak more for the people of Georgia—to having a central law that outlawed the use of literacy tests.

That was the main thing, the main objective of this 1965 act, but it goes on to say that any State which, by this device or triggering mechanism—and that is very poorly written from the point of view of grammar and very objectionable in that it is geographic legislation; that is what it turns out to be. This isn't necessary. You can write it in plain English.

If you want to outlaw the use of English language tests—any of those specific provisions you want to put in—I personally am opposed to requiring Texas or California, or any State, to have elections in Spanish and in English in all municipalities. There are some cities in Texas where there are very, very few people who use the Spanish language, and it doesn't make any sense. This universality of full coverage of the Civil Rights Act of 1965 is abominable.

Let me give you a few points on the confusion which grows out of this act.

Mr. Evans mentioned the matter of the election of the mayor of Atlanta.

Here is a front-page item in the Atlanta Constitution. I don't really think there is much to it because Maynard Jackson is a rather sensible mayor, and he says he doesn't think the people of Atlanta and the people of the legislature intended for him to run for any third term when they abolished the possibility; so he is not going to try to do it. But it is just one example of confusion in the public mind as to what the law is and what it is not.

One of the speakers—Mr. Greenberg, I believe, spoke of the infamy—in the area of freedom of speech—of censorship—though he doesn't use the term preclearance, though, it is really censorship. You have it in the area of legislation here. Atlanta has to preclear with the Attorney General's office before it will know. It is very, very hard to know when the Attorney General's Office is going to rule on these matters. The length of time—60 days—that is just in the law; that isn't too much in force.

I wanted some specific facts. What I have in my paper here is accurate about the increase in the number of negroes registered and voting in the State of Georgia, occurring in the 1950's and in the 1960's. These figures in my paper are specific.

You may have noticed I rather slurred over 1980. Well, actually I didn't know I was coming up here until Thursday of last week, and I didn't have a lot of time, but yesterday I called the Secretary of State's office to find out how many were registered in Georgia in 1980 by race and color. What answer did I get? We have 159 counties. About a third of the registrars had gotten the erroneous idea that under the Civil Rights Act of 1965 they were not permitted to list the race of applicants to vote, so they don't have on the registration cards whether the applicant is black or white or of Spanish origin.

So all of the reports that you get since about 1975, since this erroneous idea got out, will not really give you the specific data. The estimates that I had, which I have left out of the paper, showed about 65 percent whites and I think about 66 percent blacks were registered at the end of the last decade, in 1980. But I don't think I would like to enter this into the record, but it is approximately the same and has been since about 1970.

There is no discrimination against blacks in the State of Georgia in voting.

Let me see if I can go back, though, to some other illustrations of the confusion that arises. We have currently—one of the big things going on in Athens—this is in the paper, I will give you the gist of it—is consolidating the government in Athens and Clarke County. We have too many local jurisdictions in the State. Athens almost covers Clarke County. It covers two-thirds of it already. Clarke is the smallest county in Georgia. Why not have one government for the two? Well, there has been a civic movement for that for some time.

The legislators—we have to get, usually for this kind of thing, some local legislation authorizing it. So, in January, the groups that have been fighting for this—civic-minded groups—consulted with the legislators, and they were quite willing to introduce a law to provide a charter commission to study the matter. But they wanted to know, well, now, once you get the charter, how will it be voted on? Will it be voted on in the city and in the county separately? Or will it be voted countywide—the majority vote in the county? And if it is voted on citywide and countywide separately will the people who live in the city get to vote in the county election? After all, they vote for the county commissioners now. They are a part of this, and under Georgia law that would be possible.

The papers were full of the arguments before the issue was finally decided. Commissioner Jewell John, a woman on our commission, emphasized there was very little likelihood that the Attorney General's Office would approve voting in any way except separately by the city and by the county. A majority vote countywide would not be acceptable to the Attorney General's Office. The city council and the county commissioners agreed to that, because they had to get this cleared, you see, from the Attorney General's Office.

The charter commission has worked about 5 weeks now. The county commissioners are now elected at large—five members from the county at large. But the charter commission has decided it is best to divide the county up into six districts because otherwise they won't be able to get a charter approved by the Attorney General's Office.

What I am trying to say is that the Attorney General's Office is acting as a dictator. These are very controversial fields of political theory—whether or not you should require something that often leads to a ward-politics kind of government.

I would be the last to say I know the answer to all these problems, but one of the privileges of our federal system is that we have government by the consent of the governed. The people should decide these things, and we don't really know. We may make some errors, but I would like to see us make some errors and correct them rather than saying the Attorney General is God.

The Attorney General doesn't know everything.

I have talked too long, Mr. Chairman. Thank you very much for your indulgence.

[Mr. Saye's prepared statement follows:]

COMMENTS ON THE VOTING RIGHTS ACT OF 1965 BY ALBERT B. SAYE, RICHARD B. RUSSELL PROFESSOR EMERITUS, THE UNIVERSITY OF GEORGIA

With all its faults, the Congress of the United States is "the world's best hope for representative government." I appreciate the opportunity of speaking before this committee on the Voting Rights Act of 1965.

As originally passed, this act was applicable primarily to seven Southern States. Congress apparently acted under the impression that there was widespread use of literacy tests in the South to prevent blacks from voting.

THE GEORGIA SCENE

Georgia is my home state. I would like to speak briefly on voting rights in Georgia.

To qualify to vote in Georgia a person must be a citizen of the United States, a resident of Georgia, and eighteen years of age. No specific length of residence is required; however, Georgia law authorizes the county registrars to suspend the taking of applications to register during the 30 day period before any regular primary or election.

Georgia was the first State to adopt the eighteen year old vote. This was in 1943, under the progressive leadership of Governor Ellis Arnall. In 1945 Georgia abolished her poll tax.

The procedure to register to vote is simple and easy, and once a person is registered, he remains permanently on the voters list, provided he votes once within each period of three years in a state, county, or municipal election or primary.

In neither the wording of the Georgia law nor in its administration is there any discrimination based on race. The percentage of persons of voting age registered to vote is about the same today for blacks and for whites.

LITERACY TESTS

Life is not always filled with light; there are moments of darkness. The American people have experienced trial and tragedy—witness the Civil War and Reconstruction.

During the Reconstruction period the Ku Klux Klan used intimidation and violence to keep Negroes from the polls, but this secret society soon fell into disrepute. Taking advantage of the generality of the 15th Amendment, the Southern States sought legal refuge from Negro suffrage. A Mississippi law of 1890 required that the voter be able to read. In the case of *Williams* v. *Mississippi* (170 U.S. 213 (1898)) the United States Supreme Court found no objection to the Mississippi Law.

A literacy test for voting was a part of the platform of Hoke Smith in his campaign for Governor of Georgia in 1906. Clarke Howell, Smith's strongest opponent, was opposed to any disturbance of the existing method of election. He felt that the Democratic white primary effectively eliminated the Negro vote. Smith won the election and a literacy test for voting was written into the Georgia constitution.

DEMOCRATIC WHITE PRIMARY

In practice it was the Democratic white primary that prevented Negroes from having an effective voice in Georgia politics from 1900 to 1944. Georgia was a one-party State. The vast majority of her people, as well as other Southerners, felt obliged to stand together as members of the Democratic, or "White-man's Party," the party that would save "Anglo-Saxon civilization." As Rebecca Latimer Felton expressed it, "Tens of thousands of Southern men had no other political platform except 'I'm a Democrat, because my daddy was a Democrat, and I'm g'wine to vote agin the nigger!'" (Felton, My Memoirs of Georgia Politics, Atlanta, 1911, p. 6.) A few Negroes voted in general elections, but none voted in Democratic party primaries.

In the 1930's the Supreme Court approved the theory that party primaries were private matters not involving "State action." In 1944, however, in *Smith* v. *Allwright* the Court reversed this position, holding that "the same tests to determine the character of discrimination . . . should be applied to primaries as are applied to the general election."

END OF DISCRIMINATION

The court's 1944 decision brought an end to the Democratic white primary in Georgia and the beginning of meaningful participation by blacks in political elections. During the 1950s black voter registration increased from 5 percent to 29 percent of the black population 18 years of age and over. In the 1960s black

registration rose to 57 percent. Thereafter registration for blacks was approximately the same as registration for whites.

SECTION 5 OF VOTING RIGHTS ACT

The Voting Rights Act of 1965 goes much further than to prohibit the use of literacy tests. The States and political subdivisions (largely in the South) covered by the trigger mechanism of Section 4 are by Section 5 converted into the position of conquered provinces. The State of Georgia cannot reapportion its legislature and the City of Atlanta cannot change the term of its mayor without the approval of the Attorney General of the United States.

In *South Carolina* v. *Katzenbach* (1965) Justice Black commented:

"Section 5, by providing that some of the States cannot pass state laws or adopt state constitutional amendments without first being compelled to beg federal authorities to approve their policies, so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between state and federal power almost meaningless. . . . I cannot help but believe that the inevitable effect of any such law . . . is to create the impression that the State or States treated in this way are little more than conquered provinces."

In practice, Section 5 has often been abused. The record in *United Jewish Organizations of Williamsburgh* v. *Carey* (1977) reveals how agents of the United States Attorney General compelled a reapportionment committee of the New York legislature to divide a Jewish community in order to insure the election of blacks. In enacting Section 5, did Congress intend to constitute the Attorney General "champion of the interests of minority voters" (Justice Brennan's phrase) and arm him with the power to coerce "covered" States to submit to reverse discrimination?

The administration by Section 5 has in practice led to confusion. For example, consider this question: Can the Mayor of Atlanta run for a third term? A feature article in the Atlanta Constitution on March 20, 1981, deals with this question as follows:

"The U.S. Justice Department has told Atlanta officials that it has no record of ever having approved the city's two term limitation for mayors, a ruling that may reopen debate about the possibility of a third term for Mayor Maynard Jackson.

"In a recent letter to City Attorney Marva Jones Brooks, the Justice Department said it does not have any record of having 'pre-cleared' the portion of the 1973 City Charter dealing with mayoral terms. . . .

"Mrs. Brooks and Jackson could not be reached for comment Thursday, but when the issue was first raised last December, Jackson said he would not seek a third term."

Another local example illustrates the pervasive influence of Section 5 of the Voting Rights Act on local governments. This example grows out of the current movement to consolidate the governments of the City of Athens (home of the University of Georgia) and Clarke County. Local representatives of Clarke County in the General Assembly of Georgia indicated in January (1981) that they would gladly introduce legislation authorizing the creation of a charter commission, but they wanted the City Council of Athens and the Board of Commissioners of Clarke County to agree on the procedure to be used in a referendum to approve the charter for the consolidated government once it had been written.

Should the vote be county-wide, with a majority vote controlling? Or should there be a separate vote for the city and for the county, and a majority vote required in each? And if a separate vote should be required for the city and for the county, should the residents of the city (who are residents of the county as well) be allowed to vote both in the city election and in the county election?

During the month of February the Athens newspapers were full of arguments on this issue—good arguments on three sides. The issue was finally settled by local leaders bowing to the method they considered most likely to gain approval by the Attorney General of the United States.

The Charter Commission has been at work for a little more than a month. Last week the press announced that it had decided to have all members of the governing board of the new government elected from single member districts. Was this decision also prompted by anticipation of future dealings with the Attorney General's agents?

Local governments in Georgia are receiving rough treatment from the office of the Attorney General of the United States. Why, then, do they not "bailout" under Section 4(a) of the Civil Rights Act? The answer is found in the case of *City of Rome* v. *United States (1980).* The Court of Appeals of the District of Columbia held that municipalities located in a "covered" State could not bailout so long as the State remained covered. The District Court found that Rome had not used a "literacy test or other device . . . as a prerequisite to voter registration during the past seventeen

years" and that "in recent years there had been no direct barrier to black voting in Rome." Nonetheless, the City would have to comply with the whimsical political theory of the Attorney General in making any change in the structure of its government.

The Declaration of Independence proclaimed "these truths to be self-evident, that all men are created equal, that . . . governments are instituted among men, deriving their just powers from the consent of the governed." We need to reaffirm these principles.

Mr. EDWARDS. Thank you very much, Professor.

I believe our next witness is Prof. Charles Cotrell, Department of Political Science, St. Mary's University.

Mr. COTRELL. I would like to thank the committee for the opportunity to appear here.

I have provided the committee with a summation of my testimony. I request permission to include the full body of the work that this is based upon in the hearings.

Mr. EDWARDS. Without objection, it will be so included.

[Mr. Cotrell's prepared statement follows:]

My name is Charles Cotrell. I am a Professor of Political Science at St. Mary's University in San Antonio, Texas, the city of my birth. I testified before this subcommittee in March 1975 when it was considering whether to extend the protections of the Voting Rights Act to Mexican Americans and other minorities in Texas and the Southwest. I testified in 1975 that Mexican Americans and blacks in Texas desperately needed the most stringent protections of the Voting Rights Act in order to gain equal access to the political process. The facts which led me to that conclusion six years ago in large part remain no less true today. The Voting Rights Act is needed today in Texas as much as it was needed then. I wholeheartedly endorse an extension of these provisions until 1992.

During the past ten years, I have researched and appeared as an expert witness in over twenty federal court suits throughout the country which have dealt with the impact of reapportionment, redistricting, at-large elections, and other electoral structures to Mexican American, black and American Indian participation in the political process. My research has included the states of Washington, California, Arizona, New Mexico, Louisiana, Alabama, Florida, Massachusetts and, of course, my native state of Texas, which, as I have said before, "yields to no state in the area of voting discrimination. . . ."

The cases in which I have testified include *White* v. *Regester, Bull* v. *Shreveport, Wiley Bolden* v. *City of Mobile* and more recently, litigation before the District Court of the District of Columbia concerning Section 5 issues.

I have also written comments on some two dozen Texas submissions of election law changes as required under Section 5 of the Voting Rights Act.

In January 1980, my research on Texas was published by the Texas Advisory Committee to the U.S. Civil Rights Commission. My study, "A Report on the Political Participation of Mexican Americans, Blacks and Females in the Political Institutions and Processes of Texas, 1968-1978" includes an examination of the impact of the Voting Rights Act on the Texas electoral system, as well as the kind and degree of access and representation which minority citizens have in the Texas political system. Unfortunately, that access is severely limited. In many cases it is deliberately limited. Only with the aid of the Voting Rights Act and federal court litigation have the minorities in Texas been given the opportunity to reverse over one hundred years of discriminatory election practices.

[COMMITTEE NOTE: The Texas Advisory Committee Report, submitted with this statement, is available in the committee's files.]

It is upon the extensive research I have described above, and also on my experience of growing up in Texas, that I urge this subcommittee to extend the Voting Rights Act and to resist efforts to dismantle any of its sections in any way.

THE IMPACT OF THE VOTING RIGHTS ACT SINCE 1975

It is well know that electoral structures—the almost invisible "rules of the political game"—profoundly shape and influence the kind and degree of political participation and access which citizens have. Since 1975, the State of Texas and its political subdivisions sought to enact 130 electoral laws that would have shaped and influenced Mexican American and black political participation in Texas by limiting it. These 130 proposed changes were included in 86 letters of objection by the Department of Justice. In the six years the Voting Rights Act has covered Texas, the state has received more letters of objection than any other state covered by the

Voting Rights Act for 15 years. These 86 letters include a wide range of changes at the state and local level, they are spread throughout the state, and had they been implemented, the effect on minority participation would have been devastating.

The Department of Justice objected to Texas State Bill 300 which would have purged the entire state's voters' lists. The effect on the state's Mexican American and black voters would have been felt for years to come. Texas has 2.9 million Mexican Americans, a larger number than any other totally covered jurisdiction. The state has 1.7 million blacks, the largest number of blacks in any covered jurisdiction.

The access of minority citizens throughout the state's numerous political subdivisions has been enhanced by objections under Section 5 to such practices as "dicing" (racial gerrymandering) of county and state legislative district boundaries; and numbered post and majority run-off provisions in at-large election systems.

My report contains irrefutable evidence that the Voting Rights Act has been a major vehicle for increased minority access in Texas and that its protections continue to be necessary. I would like to share with this subcommittee the information upon which I have come to these conclusions and upon which I urge you to support extension of this legislation. My report concludes that:

(1) The number of Section 5 objections to electoral barriers in Texas in six years far surpasses the total number of objections over the entire fifteen years of VRA coverage in other covered jurisdictions;

(2) Most of Texas' Section 5 objections were to proposed redistricting schemes, the adoption of numbered posts and majority run-off provisions and proposed annexations. These are the kind of changes which subtly, but effectively, deny minority voting access and representation;

(3) The Section 5 provision of the Act was, in Texas, an integral complement to federal court litigation in any number of jurisdictions. (See "A Report on the Political Participation of Mexican Americans, Blacks, etc., 1968-1978, chapters 10, 12, 14 and 15.)

Nowhere is this more clear than in 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.

Waller County, the only majority black county in Texas, provides yet another example of the necessary Section 5 coverage and litigation. After twelve years of being denied the right to register to vote in Waller County [*United States* v. *State of Texas* (1978)], students of predominantly black Prairie View A. & M., along with other blacks in Waller County, attained political access only after a Section 5 objection to racially gerrymandered county commissioner precinct lines.

These examples illustrate that effectiveness in insuring voting rights in Texas results from Comprehensive Section 5 coverage, coupled with selective litigation.

(4) The Voting Rights Act not only protects voting rights through objections to proposed electoral barriers, but most importantly through the submission process itself. In my opinion, the requirement that covered jurisdictions submit election law changes deters political subdivisions from adopting discriminatory election changes. Equally important, it has required local election officials to consider the effects of their actions on minority access and voting strength. In working on redistricting efforts in Webb County (Laredo) and Bexar County (San Antonio), I have found that officials are now informed of a new ingredient in their decision-making—the need to include in their judgments the undeniable impact of election changes on minority citizens. This awareness on the part of state and local decision-makers is as important in the Section 5 pre-clearance process as are the actual objections. That city council members, managers, and attorneys knew that a proposed annexation has *electoral*, as well as economic and physical growth implications, is crucial in the continued protection of minority voting rights.

A final conclusion of my study speaks directly to what has occurred since the Voting Rights Act was expanded to cover Texas. The Voting Rights Act, coupled with the federal courts, have prevented the adoption of scores of discriminatory election changes infringing on the voting rights of millions of citizens. Had those discriminatory changes been implemented, it would have taken decades to remedy their effect on minority citizens. Therefore, a continued federal presence in the form of the Voting Rights Act, extended until 1992, is imperative to the integrity of our democratic political processes.

Mr. COTRELL. If I may, I will quickly go through this. I think it is tailored to go about 6 or 7 minutes.

I am a native San Antonian. I testified before this subcommittee in March 1975, when it was considering whether to extend the protection of the Voting Rights Act to Mexican Americans and other minorities in Texas and the Southwest.

I testified in 1975 that Mexican Americans and blacks in Texas desperately needed the most stringent protections of the Voting Rights Act in order to gain equal access to the political process. The facts which led me to that conclusion 6 years ago in large part remain no less true today. The Voting Rights Act is needed today in Texas as much as it was needed then. I wholeheartedly endorse an extension of these provisions until 1992.

During the past 10 years, I have researched and appeared as an expert witness in over 20 Federal court suits throughout the country which have dealt with the impact of reapportionment, redistricting, at-large elections, and other electoral structures to Mexican American, black and American Indian participation in the political process. My research has included the States of Washington, California, Arizona, New Mexico, Louisiana, Alabama, Florida, Massachusetts, and, of course, my native State of Texas, which, as I have said before, "yields to no State in the area of voting discrimination.* * *"

The cases in which I have testified include *White* v. *Regester, Bull* v. *Shreveport, Wiley Bolden* v. *City of Mobile,* and, more recently, litigation before the District Court of the District of Columbia concerning section 5 issues.

I have also written comments on some two dozen Texas submissions of election law changes as required under section 5 of the Voting Rights Act.

In January 1980, my research on Texas was published by the Texas Advisory Committee to the U.S. Civil Rights Commission. My study, "A Report on the Political Participation of Mexican Americans, Blacks and Females in the Political Institutions and Processes of Texas, 1968-1978" includes an examination of the impact of the Voting Rights Act on the Texas electoral system, as well as the kind and degree of access and representation which minority citizens have in the Texas political system.

Unfortunately, that access is severely limited. In many cases it is deliberately limited. Only with the aid of the Voting Rights Act and Federal court litigation have the minorities in Texas been given the opportunity to reverse over 100 years of discriminatory election practices.

It is upon the extensive research I have described above, and also on my experience of growing up in Texas, that I urge this subcommittee to extend the Voting Rights Act and to resist efforts to dismantle any of its sections in any way.

It is well known that electoral structures—the almost invisible rules of the political game—profoundly shape and influence the kind and degree of political participation and access which citizens have. Since 1975, the State of Texas and its political subdivisions sought to enact 130 electoral laws that would have shaped and

influenced Mexican American and black political participation in Texas by limiting it. These 130 proposed changes were included in 86 letters of objection by the Department of Justice.

In the 6 years the Voting Rights Act has covered Texas, the State has received more letters of objection than any other State covered by the Voting Rights Act for 15 years. These 86 letters include a wide range of changes at the State and local level, they are spread throughout the State, and had they been implemented, the effect on minority participation would have been devastating.

The Department of Justice objected to Texas State bill 300, which would have purged the entire State's voters lists. The effect on the State's Mexican American and black voters would have been felt for years to come. Texas has 2.9 million Mexican Americans, a larger number than any other totally covered jurisdiction. The State has 1.7 million blacks, the largest number of blacks in any covered jurisdiction.

The access of minority citizens throughout the State's numerous political subdivisions has been enhanced by objections under section 5 to such practices as dicing—racial gerrymandering—of county and State legislative district boundaries; and numbered post and majority runoff provisions in at-large election systems.

My report contains irrefutable evidence that the Voting Rights Act has been a major vehicle for increased minority access in Texas and that its protections continue to be necessary. I would like to share with this subcommittee the information upon which I have come to these conclusions and upon which I urge you to support extension of this legislation. My report concludes that:

One, the number of section 5 objections to electoral barriers in Texas in 6 years far surpasses the total number of objections over the entire 15 years of VRA coverage in other covered jurisdictions;

Two, most of Texas section 5 objections were to proposed redistricting schemes, the adoption of numbered posts and majority runoff provisions and proposed annexations. These are the kind of changes which subtly, but effectively, deny minority voting access and representation;

Three, the section 5 provision of the act was, in Texas, an integral complement to Federal court litigation in any number of jurisdictions. [See "A Report on the Political Participation of Mexican Americans, Blacks, et cetera, 1968-78, chapters 10, 12, 14, and 15.]

Nowhere is this more clear than in Tarrant County—Fort Worth. After multimember State legislative districts had been declared unconstitutional in the *White* v. *Regester* decision, 1973, a three-judge Federal panel declared that multimember State legislative districts were constitutionally impermissible 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.

Waller County, the only majority black county among Texas some 25 to 30 predominantly black counties, provides yet another example of the necessary section 5 coverage and litigation. After 12 years of being denied the right to register to vote in Waller

County—*United States* v. *State of Texas,* 1978—students of predominantly black Prairie View A. & M., along with other blacks in Waller County, attained political access only after a section 5 objection to racially gerrymandered county commissioner precinct lines.

These examples illustrate that effectiveness in ensuring voting rights in Texas results from comprehensive section 5 coverage, coupled with selective litigation.

Four, the Voting Rights Act not only protects voting rights through objections to proposed electoral barriers, but, most importantly, through the submission process itself.

In my opinion, the requirement that covered jurisdictions submit election law changes deters political subdivisions from adopting discriminatory election changes. Equally important, it has required local election officials to consider the effects of their actions on minority access and voting strength. In working on redistricting efforts in Webb County—Laredo—and Bexar County—San Antonio—I have found that officials are now informed of a new ingredient in their decisionmaking—the need to include in their judgments the undeniable impact of election changes on minority citizens.

This awareness on the part of State and local decisionmakers is as important in the section 5 preclearance process as are the actual objections. That city council members, managers, and attorneys knew that a proposed annexation has electoral, as well as economic and physical growth implications, is crucial in the continued protection of minority voting rights.

A final conclusion of my study speaks directly to what has occurred since the Voting Rights Act was expanded to cover Texas. The Voting Rights Act, coupled with the Federal courts, has prevented the adoption of scores of discriminatory election changes infringing on the voting rights of millions of citizens. Had those discriminatory changes been implemented, it would have taken decades to remedy their effect on minority citizens. Therefore, a continued Federal presence in the form of the Voting Rights Act extended until 1992 is imperative to the integrity of our democratic political processes.

Mr. EDWARDS. Thank you very much, Professor Cotrell.

The last member of the panel to testify is Prof. Richard Engstrom, professor of political science at the University of New Orleans.

Mr. ENGSTROM. Thank you, Mr. Chairman. I appreciate the opportunity to be here today. As all of you know the Voting Rights Act has been widely acclaimed as one of the most successful pieces of civil rights legislation in the history of this country, and it is indeed a privilege to support its extension today.

I apologize for not having a written statement prepared for the record. I just recently had some very minor surgery, and it wasn't clear until yesterday that I could be here today, and I didn't have time to prepare a statement, but I would like to make a few remarks.

The Voting Rights Act, as I have said, is one of the most successful pieces of civil rights legislation in this Nation's history. There are two primary reasons for that. One, of course, is that it has effectively eliminated disenfranchisement as an issue within this

country. Second, it has also provided a very effective mechanism to combat the subsequent effort at diluting that new black or minority voting strength, reducing its impact, in various areas covered by section 5.

Most of the acclaim, of course, for the Voting Rights Act has related to the dramatic increases in black registration. Various provisions of that act that prohibited the continued use of various "tests and devices" and provided for Federal examiners in various areas of the country, have produced impressive increases in black voter registration.

Indeed, within 2 years, the figures were impressive in terms of very dramatic increases in black registration. Disenfranchisement has been virtually eliminated as a widespread issue throughout the South today. But that is no reason to assume that discrimination within the electoral process is no longer an issue today. I believe it most clearly is.

The focus only has shifted. It has shifted from the previous emphasis on denial of the vote to a new emphasis on dilution of the votes. We are now confronting in the South what I call a second generation of electoral discrimination issues as efforts are made to adopt structural barriers that reduce the potential impact of that new black voting strength within the Southern States.

As that black voting strength increased, it is well known that the racial rhetoric in southern politics decreased. Again, that does not mean that there is no longer conflict and polarization between the races in southern politics. Polarization is pervasive throughout the South, and it is especially evident in electoral patterns, and indeed it is this polarization that makes the dilution issue so important.

I would like to give you just a few quick examples of polarization in voting patterns. One very recent illustration: A week from last Saturday, we held a special election in the city of New Orleans to fill one of the district seats on our city council. It was an election in which a black candidate was opposed by a white candidate, neither of them, of course, incumbents. The registration in the district at the time of the election was 50.93 percent black, and the electoral result was that the black candidate won with 50.54 percent of the vote.

Precinct returns in that election clearly show a polarized pattern behind that outcome. In the virtually all-black precincts in the district the black candidate received 95.8 percent of the vote cast. In the virtually all-white precincts the black candidate received 9.8 percent of the vote cast.

There is nothing unique about that pattern in the South. Indeed, I have seen similar polarized voting patterns in a number of Louisiana Parishes and municipalities, while serving as an expert witness in vote dilution cases I have documented polarized voting patterns in police jury elections in Louisiana, school board elections, and elections for municipal council.

The pattern is extremely common.

Further evidence of racially polarized voting patterns beyond Louisiana, in the South generally, is available in a recent study by Richard Murray, of the University of Houston, and Arnold Vedlitz of Texas A. & M., which appeared in the September 1978 issue of

the Annals of the American Academy of Political and Social Sciences.

They examined elections held during the 1960's and 1970's in five southern cities, and they discovered in that investigation.

First, voting in large southern cities tend to follow racial lines. Blacks typically give strong support to a particular candidate, and that candidate usually gets a minority of white votes.

Second, when blacks run as candidates, these patterns are accentuated. Virtually all blacks vote for the black candidate; very few whites do so.

Finally, racially polarized voting rose rapidly in the 1960's and continues at a high level to the present.

I don't think there is any question but that the race of the candidate is a major reference in the voting decision of southern voters, both black voters and white voters, and it is this polarization which makes vote dilution such an important issue in the South today.

Now, we have talked about vote dilution mechanisms. Let me just note the three most common devices that have serious dilutive consequences. These, of course, are gerrymandering, at-large elections, and annexation. Indeed, over 80 percent of the more than 800 section 5 objections have been to one of these three types of changes.

First, let's take just a quick look at gerrymandering. Here we are talking about the discriminatory delineation of representational district boundaries. The idea is to waste votes, either by dispersing the vote of the minority group so it has ineffective support in a number of districts or by concentrating its vote so it gives excessive support to candidates who win elections.

We are all familiar with gerrymandering, but let me give you one illustration from my own area.

The Louisiana Legislature's effort to redistrict its boundaries after the 1970 census contained a classic case of concentrating black votes so as to waste them. There was one black incumbent in the house of representatives at the time. She came from the city of New Orleans. When they redrew the lines, they gave her a district that contained 36,598 people of which 33,364 were black. Indeed, they drew her a district well over 90 percent black in population—far more black votes, far more support than she needed to be reelected, indeed wasting a lot of votes through overkill.

Around the rest of the State, much of the black vote was dispersed so blacks constituted minorities of voters in the various districts.

That particular districting plan was blocked by a Justice Department objection under section 5 of the Voting Rights Act, and indeed later on a special master appointed by the Federal court did a much better job of drawing the district lines.

A second very common vote dilution device is at-large elections. These are pervasive throughout the South. Indeed, approximately three-fourths of all southern municipalities use at-large elections exclusively to select members of their city council.

In a racially polarized voting context, at-large elections can have a devastating effect.

I have recently been doing research on exactly that particular issue, in collaboration with Dr. Michael McDonald, of the University of New Orleans, in which we examined the relationship between minority populations and the election of minority members to the city councils of central cities in this country.

I have a copy of the study if you would like to insert it in the record.

Mr. EDWARDS. Without objection, it will be received.

Mr. ENGSTROM. We reach three important findings. One, that the type of election system, that is, whether it is an at-large election system or districted arrangement, is the major variables, the major factor, relating to the election of black city council members.

Second, we find that the difference between having an at-large arrangement or districts is that the black voting strength is much less than half as effective in an at-large contest as in a district arrangement.

Third, the type of election structure, whether it is at-large or districted, actually becomes an important impediment when the black population reaches only about 10 percent of a city's population.

Once the black population is about 10 percent in a city you can find dramatic differences between their ability to convert their voting strength into the selection of representatives between districted cities and at-large cities.

Of course, at-large elections can be even more discriminatory when combined with what are called anti-single-shot voting devices, such as full-slate laws and have systems with majority runoff requirements, so that the black population is prohibited from targeting its voting strength on one or maybe only two candidates.

A third type of change I want to note very quickly is simply annexation, another potential vote-dilution device. Usually an annexation is the addition of whites to a municipal electorate, and again in the context of polarization that can have a serious impact on the ability of blacks to use their voting strength effectively.

One example of that occurred in 1976 when the city of Shreveport attempted to annex a large number of whites which would have had the impact then of expanding the white vote in an at-large election system at the time. Again, that was prevented by the Department of Justice's objection under section 5.

Subsequently the city of Shreveport revised its annexation, included minority areas into the annexation, and switched the district elections as well.

Those three issues are at the heart of section 5 enforcement. As I said earlier, over 80 percent of all of the objections under section 5 have been to either a redistricting plan, an election system change, or to annexation.

Efforts to adopt these kinds of changes have continued through the late seventies.

Looking at figures from 1976 to 1980—these are Department of Justice figures concerning objections—there were 37 districting plans objected to during the late seventies, 154 changes in the method of election, and 148 annexations. Indeed, a total of 339 changes objected to during the late seventies.

This is the second reason why the Voting Rights Act has been such a successful measure. Not only has it increased the black registration throughout the South, but through the preclearance requirement of section 5 it has offered a protection against subsequent dilution of that voting strength by the adoption of discriminatory changes. Without those objections and the threat of those objections, blacks in the South, I believe, would be very vulnerable to vote-dilution schemes in the future.

I say this largely because I do not think that 14th and 15th amendment litigation has provided a very effective check against these types of factors. I speak now as a political scientist, not as a lawyer. But as the Supreme Court has consistently told us in the last few years, dilutive consequences are not enough in 14th and 15th amendment litigation, but rather plaintiffs must prove one, purposeful discrimination, and two, that that discriminatory intent was a major motivation in the decision or the action taken by the officials.

A showing of a natural or foreseeable consequence of a change in terms of discrimination is not sufficient. But now the plaintiff must prove that the decision or the action made was in part because of those consequences. And the evidence of that must be independent from the effects of the voting change.

I believe that this is an extremely difficult burden of proof, an extremely difficult evidentiary hurdle for plaintiffs, a standard that is not often likely to be satisfied. Decisionmakers simply have to first, cover their tracks and second, mask or cleanse possible discriminatory motives by asserting some permissible nonracial motivations.

I really do not think that is very difficult to do. I am afraid that without the preclearance requirement being retained in the extension of the Voting Rights Act, the new black voting strength in the South will become extremely vulnerable to various vote dilution mechanisms, and the recent gains we have seen in the South will be put in serious danger.

Thank you.

Mr. EDWARDS. Thank you very much, Professor Engstrom.

Mr. Washington.

Mr. WASHINGTON. Thank you, Mr. Engstrom, Mr. Cotrell, and Professor Saye for your testimony.

I think it has been confirmed by others on the subcommittee, in attendance, today, Professor Saye, that in your testimony advocating literacy tests you repeatedly used "Nigra" when referring to Negro. You are very learned and widely traveled, with a full command of the English language.

I think in view of this fact I should make it clear to you, sir, that your use of that word has historical implications which make it extremely difficult to be objective in listening to you. But rest assured I have pulled myself above that barrier. I simply say this to you. I would suggest strongly, mightily, that in the future, in addressing any crowd, be it black or white, that you refrain from that particular pronunciation. If you are going to use N-e-g-r-o, just say Negro.

This committee has received, Professor Saye, a good deal of testimony describing voting violations in many States, including Geor-

gia. Testimony received from civil rights organizations, State officials, League of Women Voters, et cetera, et cetera, et cetera.

The record reflects this quite lengthily. You are at loggerheads, for example, with three gentlemen from Georgia, one from Rome, who testified here an May 19 in reference to rampant violation of the Voting Rights Act throughout the State of Georgia, and strong allegations about violations in the city of Rome.

In view of all that, Mr. Chairman, this conflict, I for one would suggest strongly that perhaps we should take our road show to Georgia, perhaps Rome, Ga., and at least on the scene perhaps reconcile this apparent conflict between testimony coming from the three distinguished gentlemen here on May 19 and the distinguished professors sitting before us today.

Let me just cite for your benefit, Professor—if you want to respond to this—that on May 19, Senator Julian Bond of Georgia came in and testified and submitted a 10-, 12-, 14-page statement, and he says this, and I quote on page 3:

> Since 1965 the State of Georgia and its political subdivisions have continued to subvert both the spirit and the letter of the Voting Rights Act of 1965 as amended. For example, in Georgia alone there may have been nearly 400 nonsubmissions of State acts that had the effect of diluting black voting strength. In addition we are just beginning to discover untold numbers of local ordinances and enactments which have not been submitted for preclearance. For example an enactment applying to Moultrie, Ga., has passed mandating a majority vote requiring a clearly diluted majority of vote strength.

He goes on and on to cite any number of examples. He also submitted for the record on that date some photostatic copies of a series of articles in the Georgia constitution, documenting ad nauseam any number of violations throughout the the State, which we have in our records.

In the light of your testimony—if you can address yourself to my rather fullsome question in full or in part, if you please.

Mr. SAYE. I know Mr. Julian Bond, of course, and I would like to agree with him that there have been quite a number of changes in local ordinances and probably some State laws that have not been submitted to the Attorney General. That is one of the big points I was trying to make, Mr. Washington, that there is great confusion in this field. Starting in 1965 this was a law, primarily a Voting Rights Act. It dealt with testing devices for keeping people from registering and voting——

Mr. WASHINGTON. Are you suggesting that the act applies just to registration and voting?

Mr. SAYE. I suggest that in years past how the act has been interpreted and what the words of the act are, are very, very debatable.

Mr. WASHINGTON. Did you listen to Mr. Engstrom's testimony?

Mr. SAYE. I listened to all the testimony here this afternoon, but through the years the Court itself and the administrators—administrators of the Attorney General's office—have varied the meaning, and now the act is a much broader one than it was.

In the *City of Rome* case, for example, there were quite a number of extensions of the boundaries of the city of Rome that had not been submitted to the Attorney General's office. When they submitted an ordinance in 1975, they suddenly discovered there were a

dozen or more others that should have been submitted earlier. I think that is what Mr. Bond points out.

Mr. WASHINGTON. When the former city attorney of Rome was here and pointed that out I indicated to him that he had a right to plead for the cessation of the act but he came into a court, if you can call it that, with unclean hands. Mr. Bond agreed with that.

In short, they just ignored the act, as though it did not exist.

Mr. SAYE. I am not sure he ignored the act. I think it is a matter of not knowing what the act was.

Mr. WASHINGTON. He was sitting before me, testifying, and based upon my appraisal of his condition, et cetera, and so forth, clearly he was doing the best he could.

Mr. SAYE. What was the conclusion of the District Court of the United States for the District of Columbia? You had three witnesses here, but these were the same—this was the same evidence that was presented to the U.S. District Court for the District of Columbia. What was its decision in the matter?

Mr. WASHINGTON. What was whose decision?

Mr. SAYE. The court's decision?

Mr. WASHINGTON. You know what the court's decision in the matter was.

Mr. SAYE. The district court's decision, that is what I am trying to get at. It found no discrimination. You say in the city of Rome, discrimination was rampant.

Mr. WASHINGTON. That is not true. That is not true. The court said you cannot opt out. It has to be done by the State. That was the finding.

Mr. SAYE. I did not really understand your last remark.

Mr. WASHINGTON. I said the court found that Rome could not opt out, that can only be done by the State, because they were——

Mr. SAYE. But they also found as a matter of fact the city of Rome had not discriminated, for the past 17 years it had not discriminated.

Mr. WASHINGTON. Do you indicate Rome should have been able to get out from under the act?

Mr. SAYE. Not under the act as presently written. That is my point. The court finds there is no discrimination on the part of the city of Rome. You have three witnesses testifying, whom I do not know, and I have not been to Rome to investigate it, but I would take the findings of the district court judge and the U.S. Supreme Court as being accurate on this. But even though the city of Rome has done nothing wrong, it is a part of the State of Georgia. It is covered—because we happened to have had in 1965 some old laws on literacy tests. They were not being enforced. Do away with literacy tests. It does not affect us. Because we had this in 1965, this fact, a part of it was still there in 1965, we have been punished for 17 years. Would you punish us for 10 more years because this act——

Mr. WASHINGTON. I think punishment is the wrong word. You have been under the coverage of the act for 17 years, and based upon testimony we received from Mr. Bond and others on the 19th, 400 acts, municipal code variations and State law variations, unreported, seems to indicate to me that perhaps you might well go another 17 years.

Mr. SAYE. Mr. Washington, would you not have to know something about the content of these laws as to whether or not they were discriminatory?

Mr. WASHINGTON. Certainly I would, but I would want to certainly make one thing clear, that violative of the spirit of the act or not, they were never reported.

Mr. SAYE. Exactly so. It is a very, very poor administrative system. Which laws do affect voting? If I should hold my breath and I should die here, would that affect voting? Everything is connected in a general sense. Do you have the act, and can you give us the wording there about any practice or procedure?

Mr. WASHINGTON. I am not going to give you any wording. I am simply saying this, that you too are here, if you are pleading Georgia's case, you have unclean hands.

It seems to me if the State of Georgia were concerned, really and truly concerned about holding inviolate the right of people to vote, and if they wanted the world to know they intended to follow that course of conduct, they would comply with simple provisions which provided for reporting any change in the law pursuant to the act of 1965. I think it is just that clear. They did not give a damn. They were just going to do as they pleased. They did not report it.

And they send you down here to clean it up. Well, you cannot clean it up. You cannot do it.

Mr. EVANS. Mr. Chairman, I would say to my colleague, Dr. Saye was invited by this committee to appear. He has no axe to grind with anyone. He came as a guest to testify. He has tried to respond to the questions that my colleague has asked. I think if there are questions asked he should be allowed to answer them. If my colleague wishes to take issue with it, he certainly has an opportunity to do that, but I think in the sense of the gentlemanly procedure which we follow in this committee that accusations of unclean hands are entirely out of order, Mr. Chairman, and I know I am a guest.

Mr. EDWARDS. Does the gentleman from Illinois yield to the gentleman from Georgia?

Mr. WASHINGTON. No; I did not yield, and perhaps the gentleman should be apprised of procedures and the rules of this committee before he would blunderbuss——

Mr. EVANS. The gentleman is aware of it, but the gentleman does have the right to object to what is an accusation against a guest who did not ask to appear and did not appear on behalf of the State of Georgia.

Mr. WASHINGTON. It seems to be apparent that the gentleman from Georgia will violate the rules. As you heard, I did not yield.

Mr. EDWARDS. We will have regular order, please. We will have regular order. The time belongs to the gentleman from Illinois.

Mr. WASHINGTON. He is a good student, Mr. Chairman. He has done just what the master said.

I yield the balance of my time.

Mr. EDWARDS. The gentleman from Georgia.

Mr. EVANS. I thank the gentleman for yielding. I apologize to my colleague for interfering with his time.

Mr. WASHINGTON. Accepted.

Mr. EVANS. The point I was trying to make, Mr. Washington, was that Dr. Saye did not come on behalf of the State of Georgia. He came as a guest of this committee to testify. Fortunately in this country we do have the right to have disagreements. We have the right to have differing opinions. I happen to have served in the State legislature with Mr. Bond. I agreed with him on some issues and I disagreed with him on some, but I do not think that Dr. Saye is bound by Mr. Bond's testimony any more than Mr. Bond is bound by Dr. Saye's testimony, and I certainly believe that in this country we have a right to disagree amicably.

I think the State of Georgia has made a great deal of progress. There has been discrimination in the past in Georgia just like there has been discrimination in every State in this Union.

We have had a great deal of discrimination in the South because we have had more minorities in the South than many parts of the Union. I did not come here, either, to defend Georgia. I do think that some of the points that were made by Dr. Saye are valid points in that preclearance is something that has been done, it has been effective, but the problem is that this committee should learn from the experiences of the courts and the experiences of the act over the past 17 years, that there are some things that should not have to be precleared because of the confusion, and I think the case of Athens and Clarke County is a case in point in which there was previously no determination of discrimination, growth patterns in that city and the elections that were held under it are proper under the decisions of the U.S. courts.

In other words, to change that from a city-county government to a merged government, the question raised—and I would like for any of the gentlemen on the panel to address this—if in fact there has been no evidence of discrimination and the city and county wish to merge, and if the city elections were citywide and the county elections were countywide, and the courts have upheld that as being valid, since there was no discrimination in the past, why should that have to be submitted to the Justice Department to be approved? And I think that is one of the issues that this law has to address.

Mr. ENGSTROM. Let me get the issue straight. Is it a question of whether the city vote in the referendum would count twice, whether it has to be a majority in the city and a majority in the county including the city vote? Is that what the issue was?

Mr. EVANS. Why should it be submitted to the Attorney General if there is no evidence of discrimination in the past, if the method of election for city officials has been upheld and the election for county officials is upheld? Why, for a merger of those two governments, is it necessary to submit it to the Justice Department, and why should not we address those type issues in any extension of this bill?

Mr. ENGSTROM. I would argue that the voting change of city-county consolidation, generally, as opposed to the specific case of Athens—Clarke County, that consolidation can have the same dilutive impact as annexation.

Mr. EVANS. I am very much aware, and let me give you a little of my background, and that is that I have worked in my own home city and county of Macon, Twiggs County, not to wait for the

Justice Department or the courts, but I did it legislatively. I led the fight to change it so as to include minorities in the most effective way. In fact we have more representation in our percentage because of bills that I drew in the State legislature. So I am not a person who would deprive minorities. But my point is, why should you automatically be subjected to preclearance when there has been no evidence in the past of discrimination?

Mr. ENGSTROM. I was not speaking to you personally. I am sorry.

Mr. EVANS. I did not take it personally, but I wanted to clear my position.

Mr. ENGSTROM. What I was saying is that that type of change, that type of structural change is potentially discriminatory because it is an enlargement of the municipal electorate, just as annexation is. Once you consolidate, you no longer have the central city. You have the city-county government arrangement.

There can be situations where the central city is majority black, or the central city has a solid minority of black population, but a considerably smaller minority in the county. Now depending on what kind of electoral structure would be designed for the consolidated arrangement, there is the potential to dilute the impact of the central city vote, the black vote in the central city, by combining it with the countywide electorate. Therefore I would argue that that is a legitimate change in terms of Justice Department review. Now whether in that particular case there should be an objection or not, I cannot speak to that.

Mr. EVANS. The point is that no matter whether that exists or not, you still have to go through the process of preclearance. And that is not true all over this country, and I think if it is true in one jurisdiction it should be true in all jurisdictions, because if there is no evidence of discrimination in one particular area and yet that has to be submitted to the Justice Department because there is evidence in other parts of that same general area, then that law is discriminatory against that section of the country, and that is the objectionable part of continuing this bill as it now exists. Not the fact that we are trying to reach a purpose, which is to prevent any discrimination on the voting in electoral strength, which I would be opposed to. But why should you have the censorship that exists under a general act, of general application?

Mr. COTRELL. I think we are all clear here on which consolidations and incorporations would be included under the preclearance provision. You are asking, I think, a very good question. I am not certain that you and I could agree on the answer.

My answer would be that that consolidation—and I have not investigated that jurisdiction, and I would take your word for it, or taking the hypothetical on it.

The answer it seems to me is if you remove consolidations or incorporations you fundamentally alter the whole comprehensive nature of the preclearance provision. Those lower political subdivisions—I will speak about my own State now, my native State—that are covered—there are nearly 5,000 of them in Texas—are covered on grounds of good suspicion that patterned discrimination occurred recently in the past. To remove consolidations it seems to me would fundamentally wreck the comprehensiveness and the deterrent factor in section 5. I do not know if we can agree on this,

but I am going to offer it. I worked with—beginning when the act was signed in law August 6, 1975 with a little jurisdiction, the San Antonio River Authority. Now that sounds minute, but they have flood control powers in a large area which is not minute. They are an elected body.

I cannot speak for your home jurisdiction, but with some work and some faith, they understood they had to follow the law on this. There has never been a question of their discriminating in their election procedures. I guess what I am saying is, sir, they have submitted under section 5 and it has been a relatively painless process to them—they understand they are a subdivision of the State of Texas and the history which that State ingloriously represents, and I do not think we can go much beyond that.

Mr. EVANS. Can I make just one point. We have certain areas that have not discriminated in other jurisdictions, the larger jurisdiction which did. Why not make the law nationwide? I could live with it a lot better and would support it nationwide.

Second, I think there can be no doubt in discrimination that has existed all over this Nation, the mistake if you have it—the mistake was in discrimination, but the technical mistake was, in the Southeastern States, that it was done through laws and not by de facto discrimination, which exists all over this country.

I would just like to see our laws apply to all jurisdictions if it is a Federal law and not just to certain parts of the country. I do not disagree with the intent of the law or the effect it has had, and I am very well aware of the accomplishments of this law. The objection comes from the discrimination, if you will, to the areas of the country, although we recognize there has been discrimination in other parts of the country as well.

Mr. Chairman, I do not think that requires an answer, and I yield back the balance of my time.

Mr. EDWARDS. Professor Engstrom, how do you know voting discrimination will reestablish itself if the Voting Rights Act is not extended?

Mr. ENGSTROM. I infer that from the pattern of objections brought throughout the 1970's and in the late 1970's.

Mr. EDWARDS. 35,000 submissions and only 800, witnesses have pointed out, that were objected to.

Mr. ENGSTROM. Over 800. Proportionally that is not great, but I think 800 changes that were objected to is significant.

Mr. EDWARDS. About 1 out of every 35, right?

Mr. ENGSTROM. Yes. In absolute terms, that is a large number of voting changes that have been objected to.

My other fear, of course, we do not know, we cannot document how many others would have been implemented had there not been the threat of Justice Department preclearance.

Mr. EDWARDS. Do we have any way of knowing what percent of these submissions that were objected to were drawn consciously with discrimination in mind?

Mr. ENGSTROM. I do not have a way of knowing. From most of the Justice Department letters which I have seen, which are not a systematic or random sample or anything like that, they usually do not reach the question of intent because effect is sufficient under the preclearance objection procedure. Most of those that I have

read use double negatives, "We cannot conclude that there is not a discrimatory effect."

I could not testify as to how many of those were consciously implemented with a discriminatory purpose and how many were not.

Mr. EDWARDS. Thank you.

Professor Cotrell, how are we going to know when the Voting Rights Act is no longer needed in Texas?

Mr. COTRELL. Or other jurisdictions?

Mr. EDWARDS. Or other jurisdictions.

Mr. COTRELL. When I gave testimony before this committee in 1975, I know that the members would not recall, but there were thousands of pages of testimony, but we looked at the history, the patterned history of racial discrimination reflected in court records and behavior practices of the State. I urged extension to 1982 then. I cannot answer that question in terms of years. After having done post-1975 research, we have such light years to go in terms of dealing with practices, electoral structures; indeed, only 2 weeks ago, intimidation in voting occurred in the State of Texas in the McAllen City elections.

I respect your question and from your perspective I am sure you have to ask that question in terms of shall the VRA be extended permanently.

The fact is that the State of Texas has a constitutional record in voting rights violations that is virtually unmatched. But then in terms of the post-1975 era, its record is astounding in terms of discriminatory changes.

In Texas and in many of the jurisdictions which I have had to research in order to give Federal court testimony, I have absolutely no problem, Congressman Edwards, in suggesting that 1992 is a reasonable target year, at which the Congress would consider the question of extension again.

Mr. EDWARDS. Thank you very much.

Mr. Washington.

Mr. WASHINGTON. Mr. Engstrom, do you think that the administration of the Voting Rights Act is burdensome to a State? An administrative matter?

Mr. ENGSTROM. I would have to preface my response by saying I have never been a person who has had to submit a change, so I cannot speak from personal experience.

My impression, though, would be that this is not. That the administrative procedures are not—in other words, going to the Justice Department avoids litigation. It was set up to be a more convenient administrative route for getting preclearance.

From the list of materials that the Justice Department has published in terms of the requirements. its regulations for submission, it does not seem like it would be terribly burdensome to collect that information and to include it along with the ordinance or the statute or whatever.

So, I would think not. But I have to admit I have never been a person who——

Mr. WASHINGTON. I would think in the process of passing a State law, you would have that information. It would be merely a question of filling out requisite forms. I just did not feel that it was, and

I have not heard anyone who is opposed to the act maintain that it was. I suppose the burdensomeness if there is any comes from the thought of complying and not the act of complying.

Mr. ENGSTROM. I would certainly think if there were some burdens, that may be a justifiable tradeoff given the good that results from preclearance.

Mr. WASHINGTON. Are your sentiments similar, Mr. Cotrell?

Mr. COTRELL. I was asked that question by Judge Dawkins, a Federal judge in Shreveport, La., concerning the entire burden of interfering with local governmental structures, also. It extended beyond that. The more narrow answer to your question is that the jurisdictions with which I have dealt, both as a friend of the jurisdiction, or writing comments about the proposed changes, have, in Texas at least, responded very quickly, they have learned very quickly—they have the information there and it does not take enormous staff time to respond to Justice's provisions.

The other thing I answered to Judge Dawkins concerns the relationship between a fundamental right to vote or burdens or interferences with local government. That is real to me. That is a real dilemma. I think we have to look at it carefully. But my answer to Judge Dawkins at that time was that he was talking about changing a local form of government in that situation, and if we consider the fundamental nature of a voting right against the burdensome quality of a local government responding, I do not think we have a match. That Louisiana judge saw it the same way in the final decision.

Mr. WASHINGTON. My colleague raised another question here. It has been raised by others. That is that they resent the onus of having the Voting Rights Act applied to only 22 States, and they maintained that it should proliferate. It should be like fishes and loaves that multiply and apply everyplace. What is your response to that?

Mr. COTRELL. I think it has been said a lot before this committee that, first, those 22 States or the covered jurisdictions encompass a great geographical range. It is not only one section of the country. I think there are three counties in New York, for example, that have more black persons in them than most of the covered jurisdictions in the South, save Texas. Those covered jurisdictions are covered for a reason, and the reason is extensively found in the 1965, 1970, and 1975 hearings. That is not to say discrimination does not occur elsewhere, but it occurred in such a stark and patterned way in those jurisdictions that the Congress felt it necessary to do what it did and, again, I have to retreat to my own experiences and say that in the jurisdictions I have worked in, I can only conclude that the Voting Rights Act has been a very important enhancing instrument in protecting and guaranteeing minority voting rights. That record means something.

Mr. WASHINGTON. I yield back the balance of my time.

Mr. EDWARDS. Counsel, Ms. Gonzales.

Ms. GONZALES. This question is for either Professor Cotrell, Professor Engstrom, or both.

I think it's an issue referred to earlier. Would you say that at-large elections for example in and of themselves are discriminatory?

Mr. ENGSTROM. Definitely. Discriminatory in their impact.

Ms. GONZALES. Is that so when the at-large elections are held in the covered jurisdictions or outside of the coverage jurisdictions?

Mr. ENGSTROM. Yes.

Mr. COTRELL. I would like to respond to that. You ask a question that is asked in probably every court case, and I have to disagree with my colleague that, when certain conditions do not occur, at-large elections are not inherently racially discriminatory. But those conditions exist widely, pervasively, and in patterned ways throughout many, many areas of the covered jurisdictions.

The Supreme Court, I suppose, has urged us to look at these situations, locality by locality in courts of law, and the record on Federal court findings on at-large elections during the period 1972 to the present, nearly the last decade, is overwhelmingly conclusive that Federal courts from nearly all parts of the country have found them to operate in a racially discriminatory way, but I would say the substance of my answer probably is somewhat in agreement with Professor Engstrom, but I would approach it a bit differently in terms of the theoretical structure of at-large elections.

Mr. ENGSTROM. Let me clarify. We are in agreement. When I said yes, it was in the context of my earlier remarks concerning polarized voting. Certainly if there are polarized voting patterns within a community then I believe at-large elections have a discriminatory consequence to them. You have communities with very few blacks that have at-large elections, and you may have some that are not very polarized, in which case it certainly would not. But as a general matter, yes, they do have a discriminatory impact.

Ms. GONZALES. And the impact is greater, as you say if there is either racial bloc voting or any of the other schemes that you had mentioned earlier, such as anti-single-shot voting and some of the other schemes.

Mr. ENGSTROM. The anti-single-shot voting scheme is simply an attachment to at-large elections and generally they operate to make it more difficult for blacks to use their voting strength effectively, meaning the selection of representatives favored by black people.

Ms. GONZALES. Thank you.

Dr. Saye, in your testimony you seem to indicate that once the white primary was struck down in 1944 in Georgia that blacks began to meaningfully participate in the political process; is that correct?

Mr. SAYE. That is correct; yes.

Ms. GONZALES. Would you, maybe, describe for us a little bit about what that meaningful participation meant? Are you reflecting an increase in registration, in the number of elected officials, or just what does that imply?

Mr. SAYE. Just that. Previously a few blacks had voted in the general election, but the general election meant absolutely nothing because there were no names on the ballot other than the Democratic candidate. The blacks in 1946, 1948, 1950, and so on, began registering and participating. And we are really very proud of the participation of the blacks in Georgia. I think that the Democratic white primary had long outlived its usefulness if it ever had been justified. The court decision was really a blessing in a sense.

This case came from Texas, incidentally. I suppose that is why Texas was not covered because the court struck down its laws and it did not have any laws on this subject in 1965. Texas should have been covered from what you say here, a lot more than Georgia. We were caught because we were geographically located. We were already well ahead on this.

The figures I give you on the voting registration are accurate for the 1950's and 1960's because we did not have the 1965 act and no one knew that it might be against this act to record the race of an applicant to register.

Right now we have, I think, about 25 blacks in the Georgia Legislature. We have mentioned the mayor of Atlanta here.

Blacks participate in Georgia in a meaningful way and there really is not any discrimination against them in political life.

Now may I say a word on the at-large voting business. Actually, I think some 65 percent of the jurisdictions nationwide—I am quoting from memory from something I read a month ago in the case of *Rome* v. *United States* in which Rome was trying to get preclearance. If you read the statement by Justice Rehnquist in his dissenting opinion, there he gives some bibliography, and I think it is 65 percent of the jurisdictions that use at-large voting. And to say you cannot have it in any of these I do not like to say 22 covered States, it is most misleading. I do not think there are but about nine covered States. There are jurisdictions within New York and so on, but it is still largely the Southeast that is covered.

To say that in none of these—of course we have—most of the county commissioners, most of the boards of education and so on in the State of Georgia today are at large. Actually I find in the city of Athens, for example, if you had to elect all of your members of a school board—we do not elect them, but if you did have to elect members of the school board—from little wards, I think it dilutes the quality, the efficiency of the Government to put everything on a ward basis. And that is the point that Mr. Rehnquist is making, that early in the 19th century, the movement away from ward politics to at-large voting in the county was to improve the efficiency and economy in Government, and I think you get a great decrease in the quality of the Government if you put this in.

Who am I to say whether you should have at-large voting or single-member voting? I think it depends a lot on the circumstances of time and place, and I do not think it is right for any one person, be he the Attorney General of the United States or anyone else—I do not even think the House of Representatives, here, should decide that for communities like Rome. I think it is a right of the people to self-government and to decide these issues. The only way we will make any progress is to leave this to local determination. It is a part of our Federal system.

Ms. GONZALES. I take it based on your earlier testimony indicating that you felt the application of the Voting Rights Act had gone beyond the issues of registration or voting, that you would disagree with the court in *Allen* v. *State Board of Education* in 1969 which indicated that the right to vote can be affected by a dilution of voting power as well as an absolute prohibition on casting a ballot. Is that correct? Do you disagree with that?

Mr. SAYE. I do not disagree with that. I think you can find some particular cases, and maybe in this case that was true. I would not disagree that it could be, but I am not sure that it is always there.

Ms. GONZALES. In terms of the increased registration after the 1944 decision striking down the white primaries, in 1946 I believe it was there was a law requiring the purging of registered voters so that in fact, at least according to a political science journal of 1959, purging which led to 70 percent of the registered blacks being purged from the rolls—the article is "Recent Restrictions Upon Negro Sufferage."

Mr. SAYE. In 1946, that Georgia purged—what percentage?

Ms. GONZALES. Seventy percent of the registered blacks were purged, it says.

Perhaps something you can be more helpful on is this: In 1958, Georgia passed the Georgia Registration Act. Is that so?

Mr. SAYE. We changed the election laws. We have had registration laws. I am not sure what change was made in 1958.

Ms. GONZALES. In effect, at least to my knowledge, with this registration act in 1958, what was required was, illiterates to answer so-called general-knowledge questions as a prerequsite to registering.

Mr. SAYE. No; we don't have any.

Ms. GONZALES. I am saying in 1958; not now.

Mr. SAYE. That is after 1944, so we were not doing that at all in the fifties. I don't think that is true.

As a matter of fact, I don't remember having heard of anyone even before this *Smith* v. *Allwright* case having been denied the right beause he couldn't read, and that was on the books, but I really never heard of a case of it actually being applied, because this was the democratic white primary, of course, which was the real thing.

Ms. GONZALES. Another change that seemed to have occurred after the enactment of the Voting Rights Act was a change in the development of the number of posts in majority run-off elections in Georgia.

Could you tell us why that change would occur around that time and hadn't been necessary prior to that?

Mr. SAYE. I would have to agree. I think some of that was done; this majority vote business and by post. I personally don't like the post business. If you are going to elect three men, I would like to elect the best three, not have post Nos. 1, 2, and 3. But that is my view.

I am not sure the Constitution of the United States has anything on this or that it is a matter of Federal law, but I can see how you possibly can have this and dilute even the minority vote. There might be some situations where it might. I wouldn't dispute that.

Ms. GONZALES. Thank you.

Mr. EDWARDS. Counsel, Mr. Boyd.

Mr. BOYD. On page 5 of your statement, Dr. Saye, you mention an interesting case, the *Williamsburgh* v. *Carey* case, in which the Hasidic Jews of New York were dispersed in such a way as to dilute their voting ability at the expense of black block voting in New York.

What is your general reaction to that sort of dispersal of one minority for the benefit of another?

Mr. SAYE. The Jewish group wouldn't be considered a minority because they were white, you see, and Justice Brennan wouldn't consider them a minority. You might consider them a minority. It might be a point of view.

I think it is very objectionable. I simply dislike using quota or race as a basis.

You say there has been some testimony here that Texas and others had some gerrymandering that was unfair. I don't think you will find a more racially motivated and effective example than this. In this case the Justice Department insisted to this committee of the New York Legislature that they get the districts—was it 64 percent black?

Mr. BOYD. Sixty-five percent, I believe.

Mr. SAYE. I think it was 64 percent black. They had to move out the Jews from this Williamsburg District in order to do that.

They came back to the Justice Department to ask if 61.8 percent would do. No, it had to be 64. They had to draw the districts again.

I invite you to read the opinion of the Chief Justice of the United States in the case. It is only because—as the majority of the court, Brennan—and he is the most powerful member of the Court in this type of case—Brennan, himself, doesn't particularly like this quota business according to race. At least he indicates that he doesn't. But he said in this particular case Congress has mandated it.

I think he misinterpreted the case. I don't think Congress meant to move Jews out to make sure that blacks get at least three districts in New York State in this covered area of New York State. Congress never meant any such thing. At least I don't think so.

We are speaking of seeking justice. I think all of you are seeking it, too. In fact, I don't think the blacks really would like that very much. I have a lot of black friends, and I think they would be repelled at the idea of splitting up an existing jurisdiction, dispersing these Jews in order to give blacks a certain victory in the election. That is very bad.

Now, this is the Attorney General, and this is not appealable. No court will intervene. Actually, it is a very poor system of government in which you set up the Attorney General of the United States over, I don't say a sovereign State, necessarily, just a State, in a republican system. It is not a democratic system at all.

Thank you for having paid some attention to this.

The Justice Department makes errors. I make errors. You make errors. We all make errors. That is the beauty of our system, though, that we correct our errors.

If we have no chance of correcting, we will get worse and worse. If we set this agency up in Washington with—how many local governments are going to be fleeing to the Attorney General's office? Will we submit all of our laws to the Attorney General's office? They all affect elections remotely.

Mr. BOYD. Thank you.

Professor Engstrom, this racial polarization, does it exist outside the covered jurisdictions?

Mr. ENGSTROM. I am sure it does. I have not personally documented it. I have not seen it documented by other studies, but I strongly suspect it does.

Mr. BOYD. If you think it does, do you think the subcommittee should consider expanding the act to cover the country where it does exist, in order to be fair?

Mr. ENGSTROM. If polarization is present elsewhere, preclearance would be very effective.

If I thought we could enforce preclearance effectively nationwide, I would support it. My concern there, when you talk about it being onerous, is not on submitting authorities but on the Justice Department.

From everything I understand, the Justice Department could not take on that task today. If it had the resources to review all of those changes, I would have no objection to nationwide application.

Mr. BOYD. You oppose, generally speaking, at-large elections which involve bloc voting, do you not?

Mr. ENGSTROM. I would oppose them in contexts where there are racially polarized voting patterns.

Mr. BOYD. Do you favor proportional representation?

Mr. ENGSTROM. Are you talking about as an outcome or as a voting system? There is a proportional representation election system.

Mr. BOYD. Either.

Mr. ENGSTROM. I think there are advantages to a proportional representation system. That would be distinct from our system of territorial districting, plurality election, et cetera. I am talking about the single transferable vote as used in Ireland and elsewhere—maybe even some of the list systems used on the continent.

But if we are going to use territorial districting and plurality elections, I don't believe we can expect proportional results. The system is not designed to produce proportional results. Scientific literature shows that it isn't. With that system I don't think proportional representation, as a result, is a proper goal.

Mr. BOYD. Professor Cotrell, on H.R. 3112, if you feel it would not pass the Congress, what alternative would be acceptable for you? I would also ask Professor Engstrom to answer that, too.

Mr. COTRELL. At this early stage in the hearings I would hope the Rodino bill and its Senate counterpart would pass. I think it would have a devastating effect, as my testimony has indicated, if it did not.

Mr. BOYD. And assuming it doesn't?

Mr. COTRELL. I respect the question. I would have to go back to the drawing boards to see what we could salvage. I would hope it would pass intact.

Mr. BOYD. If one hypothesizes that H.R. 3112 cannot pass the Congress——

Mr. ENGSTROM. That is the Rodino bill, which continues the act as it is.

Mr. BOYD. For 10 years, and expands section 2. If one hypothesizes it cannot pass in its present form, what alternative would you propose, and what alternatives would be acceptable to you?

Mr. ENGSTROM. Alternatives to this bill?

Mr. BOYD. To H.R. 3112. Or are no other alternatives acceptable?

Mr. ENGSTROM. I really haven't given it considerable thought. I would not say that no other alternatives are acceptable. I don't think I have confronted myself with all possible alternatives.

The only thing I have seen, I guess, would be the Hyde bill, H.R. 3473.

Mr. BOYD. That is one. Bailout has been suggested as another.

Mr. ENGSTROM. Changing the bailout provisions?

Mr. BOYD. Yes.

Mr. ENGSTROM. I don't know what alternative I would suggest. I have heard people express concern with the coverage formula, partly because it is not nationwide, partly because of questions about the way it is linked to the question of past discrimination.

I have tried to think of a better coverage formula, and I have to admit I have not successfully convinced myself that I know of one.

I have also thought that for those who raise questions about places where there is no longer racial discrimination, where there isn't polarized voting, I would think, rather than change the coverage formula, changing the bailout procedure may be a more fruitful thing.

Again, I have no mechanism to offer for making that change.

Mr. BOYD. You would agree the District Court for the District of Columbia in the *City of Rome* case made an affirmative finding—and Dr. Saye might wish to elaborate—that Rome had no discrimination but was covered under the act because it is a part of the State of Georgia.

Mr. ENGSTROM. As I remember the case, the District Court's finding was that Rome was, in effect, pure, as a city, but it was covered because it was part of the State of Georgia.

Mr. BOYD. Dr. Saye, did you have anything you wanted to add on that point?

Mr. SAYE. No, thank you, but just one word more: I just hope if you are going to pass the Civil Rights Act in this year, 1981, or 1982, that you won't start out amending this hodgepodge of 1965. At least the language of it, the formula, I think, is very, very poor language—just from a grammatical point of view, if nothing else. It is very difficult. People don't know what the language means. The court, itself, is divided. It is 5 to 4 on this bailout provision, for example. It could have gone the other way.

I think that you are capable of drawing something in clearer English to be followed. I am not sure that the City of Rome intentionally violated the law in not submitting annexation. They didn't think annexing a new subdivision was a racially motivated voting thing, but as it is interpreted today, it is. It is very difficult to know what the law is.

Mr. BOYD. You pointed that out earlier in your testimony, that Mayor Jackson, of Atlanta, failed to submit a provision. We certainly wouldn't want to suggest there was any discriminatory intent there.

Thank you, Mr. Chairman.

Mr. EDWARDS. Gentlemen, thank you very much for very splendid testimony.

We meet again tomorrow morning at 9:30.

[Whereupon, at 4:45 p.m., the subcommittee adjourned, to reconvene at 9:30 a.m., Thursday, May 28, 1981.]

EXTENSION OF THE VOTING RIGHTS ACT

THURSDAY, MAY 28, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 2237, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Hyde, and Sensenbrenner.

Staff present: Ivy L. Davis and Helen C. Gonzales, assistant counsel; and Thomas M. Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

Today we are going to begin the seventh in our series of hearings on legislation to extend and amend the Voting Rights Act.

This morning's hearing will focus on the progress that has occurred in Mississippi since the enactment of the Voting Rights Act. We will also hear testimony that indicates serious problems continue to exist there in spite of that progress.

I should like to note that the committee invited a number of the witnesses from Mississippi, who were suggested to us on behalf of the minority members of the subcommittee. All of those witnesses, however, indicated a preference to testify at our hearing in Montgomery, Ala., on June 12. That hearing will concentrate on issues relating to both Alabama and Mississippi.

Our first witnesses today will be a panel presentation—two gentlemen well known to all people interested in civil rights for many years. The first one, a personal friend of mine for many years, Dr. Aaron Henry, president, Mississippi State Conference of the NAACP. And the second witness, a member of the panel, will be Rims Barber, who is the project director for Mississippi for the Children's Defense Fund in Jackson, Miss.

Dr. Henry, we welcome you.

Before you begin, I yield to the gentleman from Illinois, Mr. Hyde.

Mr. HYDE. I have no opening statement to make, Mr. Chairman. Thank you.

Mr. EDWARDS. Dr. Henry, you may proceed.

TESTIMONY OF DR. AARON HENRY, PRESIDENT, MISSISSIPPI STATE CONFERENCE, NAACP, ACCOMPANIED BY RIMS BARBER, MISSISSIPPI PROJECT DIRECTOR, CHILDREN'S DEFENSE FUND, JACKSON, MISS.

Dr. HENRY. Congressman Edwards and Congressman Hyde, certainly other members of this distinguished committee, I appreciate the tedious assignment you have of carefully analyzing the need to extend the Voting Rights Act of 1965.

My name is Aaron E. Henry and I am the president of the Mississippi State Conference of the National Association for the Advancement of Colored People. It is in that capacity that I appear before you today to share my experiences as a citizen of Mississippi since the passage of the historic Voting Rights Act in 1965. Let me assure you, at the outset, of my confidence, particularly, Don, in you and this relationship has existed certainly during and prior to the passage of the Voting Rights Act of 1965.

I am aware that others who have preceded me in appearing before this committee have given you a historical overview; however, I believe that it might be well to briefly highlight conditions in Mississippi prior to the passage of the Voting Rights Act, to put my remarks in the proper context.

Although the 15th amendment to the Constitution was passed in the 1860's and blacks had a brief period when they were able to exercise the right to vote, it was not until 1965, after the passage of the Voting Rights Act, that black citizens of my State were able to enjoy the rights of citizenship. The act and its administrative remedies have resulted in the increase of some 320,000 citizens registered to vote from the black community, from around 20,000 that were registered before the act was passed.

Mississippians have paid a dear price for the precious right to vote. In 1956 Rev. George W. Lee was murdered in Belzoni, Miss., because he refused to take his name off the voting rolls.

A few years later, Vernon Dahmer of Hattiesburg, Miss., was the victim of a white mob which saturated his house with flammable material and then ignited it. Although trapped like an animal, Dahmer opened fire on the murderers, marking their car which led to their apprehension and sentencing for the denial of his civil rights. Vernon Dahmer's crime was voter registration activities—he actually was involved in paying poll taxes for the people who were afraid to go to the courthouse to pay themselves for fear of economic reprisal and physical harm.

Those of us in NAACP can never forget the assassination of our field director, Medgar Evers on June 12, 1963. Medgar encouraged Mississippi blacks to go to the registrar's office and register and vote.

The Nation nor the world can ever forget the brutal lynching of Andrew Goodman, James Chaney, and Mickey Schwerner in the summer of 1964. Their crime was helping to make democracy work in Mississippi for all of its citizens. Although these three were murdered and buried, they did not die in vain because black folks kept on trying to become full fledged citizens despite the painful consequences.

There have been some changes in Mississippi, although we still have a long way to go. Mississippi has the largest number of black

elected officials of any State in the Union—around 300. We have more blacks in the State legislature than any other State except Georgia.

While these figures certainly are impressive and we appreciate them, I would hurriedly mention that population of blacks in Mississippi is around 38 percent to 40 percent, and the number of black elected officials that are involved or presently exist in the State of Mississippi is less than 5 percent. So we can hardly rest on that laurel, as it is time now, to show that the Voter Rights Act has done the job that it was intended to do.

You should be aware, members of the subcommittee, that there were four blacks in the legislature prior to 1980. That came about as a result of a court ruling in a redistricting suit, where three additional blacks gaining seats in the legislature, making a total of four at that time.

You will recall, Don, that Robert Clark was elected to the Mississippi Legislature back in 1957. And as a result of fifth circuit action with regard to the demanding that in the total redistricting operations that was handled by Counsel Frank Parker, the city of Jackson was required to subdivide. In that process, three additional blacks were elected to the legislature, making a total of four, which is some 3 years later after the first act with regard to the fifth circuit's ruling saying that they had to do it.

Now, *Conner* v. *Waller* is the suit that finally resulted in the redistricting of Mississippi.

You will recall in 1964, 64 country bumpkins from the State of Mississippi, both black and white, motored to Atlantic City, N.J., and presented ourselves before the Democratic National Committee demanding the opportunity for blacks, women, and youth to be a part of the political system of our country.

We were not completely successful on the initial activity, but as a result of that invasion, we called it, we have certainly put reform as an action process into the total political system, both Republican and Democrat, in this country, because prior—in the delicate posture of 1964 from Mississippi, there were 64 white males over 40. Not a single woman, not a single black.

Of course, since the 1964 convention, and after that, the appointment of Equal Rights Committee headed by Governor Hughes of New Jersey, we have been able to establish the beginning at least, of a reform structure within the political system that now includes blacks, women, and youths in almost everything that we do.

As I say, the Conner suit was filed in Mississippi after we came back from attempting to become involved in national politics in 1964. We thought that certainly the same things should happen in Mississippi. So we tried to transport the same action that we took before the National Democratic Convention in Atlantic City for the courthouses of Mississippi. Of course, this was 1 year before the Voter Rights Act was passed.

When we in Mississippi talk about sucess of black political action in my State, we are really responding to the results of the 1965 Voting Rights Act. Attitudes of black and white Mississippians have improved significantly, as a result of the Voting Rights Act and we believe strongly that if the act and its protections are lifted, there would be desire and action taken by much of the white

population to turn back the clock and we would, I daresay, experience a second "Reconstruction," where many of the gains we have won over the years would be lost.

I want to hurriedly say the gains we have won are not merely to the extent that we intend to boost them, or that we demand that they be. While we are proud of the gains we have made, our major activity certainly has to also be centered around being sure that we don't lose a single inch that we have gained. We are not by any means satisfied with the gains we have made, but we were determined not to lose a single inch in a backward movement.

Mississippi still has more difficulty than many other States in registering its citizens. In Mississippi it is easier to buy a gun or get a hunter's license than it is to register to vote. To register to vote, a citizen still has to go to the county courthouse at the county seat or to the city hall in the cities and towns. There is no door-to-door registration and most of the State is rural. Persons who are too old or too ill or bedridden to go to the county seat or the city hall, simply cannot register. There are no provisions to register them and we do not have deputy registrars as many States have that could go door to door and process persons outside of the county seat or the town or the city halls, where they live.

Mr. Chairman, and members of the subcommittee, instead of talking about lifting the Voting Rights Act, we should really be talking about how to strengthen it. Many of my fellow citizens in the State live in rural areas some 35 to 40 miles from the courthouse. A registration trip may mean a 70- to 80-mile round trip, if one can afford to purchase the gasoline to get there.

In the weeks ahead, we will hear a number of arguments against the extension of this act. We will be told it is a drastic departure from the principles of our federal system. The Supreme Court has agreed that Congress has faced a drastic situation and that the law contains reasonable remedies that are fast, efficient, and effective.

We will be told that the act should be applied across the Nation and that it is wrong to use a double standard against one section of the country. That is simply incorrect and really does not match consistency of the arguments that many of my white friends make with regard to the continued raising of questions by blacks of the difficulty blacks have had at the hands of whites.

The first answer you will get is don't blame me for what my grandpa did. I didn't have nothing to do with the slave question, and all of the bad things that happened to you folks, so let's start right now. But these people are not at all willing to permit Mississippi to stand on its own record of denial of people's rights to vote. They want to encompass in that whole thing all of the States, whether they have had any kind of accusation or charge, even, about denying other people the right to vote.

Certainly I am for the inclusion of the act wherever there is a proven case of discrimination with regard to the right to vote. The act today applies to every section of the country where serious racial discrimination is proven. In 1974, the New York State restricting plan for New York City was submitted, turned down by the Attorney General and New York had to come up with another plan for the redistricting of New York City before the Justice Department would accept it.

Although New York City is a covered jurisdiction, the same section of the act would apply to noncovered jurisdiction. Sections 2 and 3 of the act gives nationwide coverage. We need section 5 as insurance that there will be no backsliding as we attempt to play catchup after almost a centural of litigation under the 14th and 15th amendments and denial of the right to vote to black citizens.

Here, I would like to insert that I am privileged to be on the mailing list of the U.S. Department of Justice. And in that process, we get copies of—we get a communication letting us know anywhere in the State where submissions under section 5 have taken place, and what the reaction of the Justice Department was. I can tell you that within the past 2 years there have been 56 submissions to the U.S. Department of Justice that have been turned down on the basis that they dilute black voting strength.

These submissions have come from many of the counties, particularly Copial, Warren, Jasper, Hinds, Grenada. The submissions are in the field of redistricting, at large elections, registration, changing of polling places, and annexations generally. Were it not for the Voting Rights Act of 1965, all 56 of these dilutions of black voting strength rulings would never have come about, and the acts that were contemplated by cities, State, and local governments, would have been invoked.

Mr. Chairman and members of the subcommittee, we must keep faith with the millions of Americans who look to this act for the protection of their basic political rights. We must not risk a return to the conditions that we struggled so long to change. We must not turn back the clock.

Mr. EDWARDS. Dr. Henry, we are going to have to recess for a few minutes because there is a vote in the House. We will pick up again right at the next paragraph at the end of a very short recess.

[A short recess was taken.]

Mr. EDWARDS. The subcommittee will come to order.

Dr. Henry, you can proceed.

Dr. HENRY. Thank you, Congressman Edwards. I want to deal just for a few moments with a very recent experience in my home town of Clarksdale around the question of sufferage. Of course, Clarksdale is one of the metropolitan areas of Mississippi, not a stop way back out in the country, but downtown Mississippi where enlightenment certainly ought to be manifested if it is anywhere.

In the first primary of the municipal elections held this month, a young black candidate, James Hicks, ran against a white member of the community, Grady Palmer. There was a third person in the race, and the rule is if you win the primary, you have to get a 50 percent plus one of the votes of everybody there. Now, the third candidate, I don't recall how many votes he polled, but it wasn't too many. But the difference between the vote of Mr. Hicks and Mr. Palmer, there was either a one vote more than a majority or two votes more than a majority. There was a big discussion about that.

The argument still is not resolved. Mr. Hicks started investigating alleged voter violations on that election day and brought the problem to my attention. I immediately called the Chairman of the county Democratic Party, Mr. William Luckett, and laid the matter in his lap. He assured me that as chairman of the Coahama

County Democratic Party, he would diligently seek a fair resolution to the problem.

I reported to Mr. Hicks, although I have no problem with the integrity of Mr. Luckett personally, I told Mr. Hicks what Mr. Luckett had said about his assurances of a political fairness in the situation.

Mr. Hicks was not satisfied with the political decision. He wanted a legal decision to reverse the announced action. I then called the attorney general of the State and asked for relief for Mr. Hicks. Attorney General Allain informed me that the office of the attorney general had no facilities to deal with difficulties in a primary election. Then I called the Federal Bureau of Investigation and talked to a Mr. Kelley. He informed me this was not a Federal matter and could not help.

Well, Mr. Chairman, after I had been through the system, with no relief, I called "Old Faithful," Attorney Gerald Jones, the Voting Section Chief in the Civil Rights Section of the U.S. Department of Justice. A member of his staff was assigned to the case; an investigation is now underway; and at least Mr. Hicks feels that there is somewhere in this Nation of ours that one can seek and receive assistance in this type of case.

Mr. Edwards, and members of the subcommittee, it has been 25 years since Rev. George W. Lee of Belzoni paid with his life for the right to vote. It has been 18 years since Medgar Evers made the supreme sacrifice for his creed and beliefs. It has been 19 years since the wantion murders of Andrew Goodman, James Chaney, and Mickey Schwerner. It has been 16 years since President Lyndon B. Johnson came before us and challenged us to join him in the historic pledge, "We Shall Overcome."

I call upon this subcommittee, President Reagan, the Congress, and citizens of good will throughout this country to again refuse to use the technique of "thundering silence" or overt racism to block the progress of a people whose destiny is inextricably tied to yours.

It is still true that the only way to keep a man in a ditch is to stay down in the ditch with him. This is not the time to retreat or to surrender. This is the time to extend the Voting Rights Act for another decade. This is the time to insure blacks the continued right of the franchise.

Thank you very much, Mr. Edwards.

[The statement of Dr. Henry follows:]

PREPARED STATEMENT OF DR. AARON HENRY, PRESIDENT, MISSISSIPPI STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Congressman Don Edwards and members of this distinguished Committee I appreciate the tedious assignment you have of carefully analyzing the need to extend the Voting Rights Act of 1965.

My name is Aaron E. Henry and I am the President of the Mississippi State Conference of the National Association for the Advancement of Colored People. It is in that capacity that I appear before you today to share my experiences as a citizen of Mississippi since the passage of the historic Voting Rights Act in 1965. Let me assure you, at the outset, of my confidence in you, as over the years, I have had the privilege of sharing my views with you since the initial discussions were held on the Votings Rights Act.

I am aware that others who have preceded me in appearing before this Committee have given you a historical overview; however, I believe that it might be well to briefly highlight conditions in Mississippi prior to the passage of the Voting Rights Act, to put my remarks in context.

Although the 15th Amendment to the Constitution was passed in the 1860's and blacks had a brief period when they were able to exercise the right to vote, it was not until 1965, after the passage of the Voting Rights Act, that black citizens of my state were able to enjoy the rights of citizenship. The Act and its administrative remedies have resulted in the increase of some 320,000 citizens registered to vote—from 20,000 before the passage of the Act until now.

Mississippians have paid a dear price for the precious right to vote. In 1956 Rev. George W. Lee was murdered in Belzoni, Mississippi because he refused to take his name off the voting rolls. A few years later, Vernon Dahmer of Hattiesburg, Mississippi was the victim of a white mob which saturated his house with flammable material and then ignited it. Although trapped like an animal, Dahmer opened fire on the murderers, marking their car which led to their apprehension and sentencing for the denial of his civil rights. Vernon Dahmer's crime was voter registration activities—paying the poll taxes for people who were afraid to go to the courthouse to pay for themselves for fear of economic reprisal and physical harm.

Those of us in NAACP can never forget the assassination of our Field Director, Medgar Evers on June 12, 1963. Medgar encouraged Mississippi blacks to go to the registrar's office and register and vote. The nation nor the world can ever forget the brutal lynching of Andrew Goodman, James Chaney and Mickey Schewerner in the summer of 1964. Their only "crime" was helping to make democracy work in Mississippi for all of its citizens. Although these three were murdered and buried, they did not die in vain because black folks kept on trying to become full-fledged citizens despite the painful consequences.

There have been some changes in Mississippi, although we still have a long way to go. Mississippi has the largest number of black elected officials of any state in the Union—some 300. We have more blacks in the State Legislature than any other state except Georgia. You should be aware, members of the Subcommittee, that there were four blacks in the legislature prior to 1980. As a result of a court ruling in a redistricting suit, 3 additional blacks gained seats in the legislature making a total of 4. Three years later, in 1979, when *Conner* v. *Waller* was decided, I, along with 13 other blacks, gained seat(s) in the State Legislature. The Conner suit was filed in 1964, one year before the Voting Rights Act was enacted.

When we, in Mississippi, talk about success of black political action in my State, we are really responding to the results of the Voting Rights Act. Attitudes of black and white Mississippians have improved significantly, as a result of the Voting Rights Act and we believe strongly that if the Act and its protections are lifted, there would be a desire and action taken by much of the white population to turn back the clock and we would, I daresay experience a second "Reconstruction," where many of the gains we have won over the years would be lost. We are not, by any means, satisfied with the gains we have made, but we are determined not to lose a single inch in a backward movement.

Mississippi still has more difficulty than many other states in registering its citizens. In Mississippi, it is easier to buy a gun or get a hunter's license than it is to register to vote. To register to vote, a citizens still has to go to the county courthouse at the county seat or to City Hall in the cities and towns. There is no door-to-door registration and most of the State is rural. Persons who are too old or too ill or bedridden to go to the county seat or to City Hall cannot register. There are no provisions to register them and we do not have deputy registrars as many states have. Mr. Chairman, and members of the Subcommittee, instead of talking about lifting the Voting Rights Act, we should be talking about how to strengthen it. Many of my fellow citizens in the state live in rural areas some 35 to 40 miles from the Courthouse. A registration trip may mean a 70 to 80 mile roundtrip if one can afford to purchase the gasoline to get there.

In the weeks ahead, we will hear a number of arguments against the extension of the act. We will be told it is a drastic departure from the principles of our Federal system. The Supreme Court has agreed that Congress has faced a drastic situation and that the law contains reasonable remedies that are fast, efficient and effective. We will be told that the Act should be applied across the nation and that it is wrong to use a double standard against one section of the country. That is simply incorrect. The Act today applies to every section of the country where serious racial discrimination is proven. In 1974, the New York State redistricting plan for New York City, was submitted, turned down by the Attorney General and New York had to come up with another plan before the Justice Department would accept it. Although New York City is a covered jurisdiction, the same section of the Act would apply to noncovered jurisdiction. Sections 2 and 3 of the Act gives nationwide coverage. We need Section 5 as insurance that there will be no backsliding as we attempt to play catch-up after almost of century of litigation under the 14th and 15th Amendments and denial of the right to vote to black citizens.

Mr. Chairman, and members of the Subcommittee, we must keep faith with the millions of Americans who look to this Act for the protection of their basic political rights. We must not risk a return to the conditions that we struggled so long to change. We must not turn back the clock.

Let me deal for a few moments with a very recent experience in my hometown of Clarksdale—one of the metropolitan areas of Mississippi, not a stop way back out in the country, but downtown Mississippi. In the first primary of the municipal elections held this month, a young black candidate, James Hicks ran against a white member of the community, Grady Palmer. There was a third person in the race. The vote difference between Mr. Hicks and Mr. Palmer was first announced as one vote, then later two votes. Mr. Hicks started investigating and alleged several voter violations on that election day as several persons reported to him that they were denied the right to vote. Mr. Hicks brought the matter to my attention. I immediately called the chairman of the County Democratic Party, Mr. William Luckett, and laid the matter in his lap. He assured me that as chairman of the Coahoma County Democratic Party, he would diligently seek a fair resolution to the problem.

I reported to Mr. Hicks on my discussion with Mr. Luckett. Mr. Hicks was not satisfied with a political decision. He wanted a legal decision to reverse the announced action. I then called the Attorney General of the State and asked for relief for Mr. Hicks. Attorney Allain informed me that the Office of the Attorney General had no facilities to deal with difficulties in a primary election. I then called the Federal Bureau of Investigation Chief for Mississippi who informed me that, since this was not a federal election, the FBI had no jurisdiction and could not help. Well, Mr. Chairman, after I had been through the system, with no relief, I called "Old Faithful", Attorney Gerald Jones, The Voting Section Chief in the Civil Rights Section of the United States Department of Justice. A member of his staff was assigned to the case, an investigation is now underway, and at least, Mr. Hicks feels that there is somewhere in this nation of ours that one can seek and receive assistance in this type of case.

Mr. Edwards, and members of the Subcommittee, it has been 25 years since Rev. George W. Lee, of Belzoni paid with this life for the right to vote. It has been 18 years since Medgar Evers made the supreme sacrifice for his creed and beliefs. It has been 19 years since the wanton murders of Andrew Goodman, James Chaney, and Mickey Schwerner. It has been 16 years since President Lyndon B. Johnson came before us and challenged us to join him in the historic pledge, "We Shall Overcome." I call upon this Subcommittee, President Reagan, the Congress, and citizens of good will throughout this country to again refuse to use the technique of "thundering silence" or overt racism to block the progress of a people whose destiny is inextricably tied to yours.

It is still true that the only way to keep a man in a ditch is to stay down in the ditch with him. This is not the time to retreat or to surrender. This is the time to extend the Voting Rights Act for another decade. This is the time to insure blacks the continued right of the franchise.

Mr. EDWARDS. Thank you very much, Dr. Henry.

Mr. Barber, you may proceed.

Mr. BARBER. Mr. Chairman, members of the committee, I am Rims Barber from Jackson, Miss. I have been active in civil rights in Mississippi before the passage of the Voting Rights Act and have continued my activities as a participant and think I have broad-based experience from which to speak. There is a historic continuity of racism among white officials and voters in Mississippi that continues today.

I clearly remember black citizens being turned away from Madison County Courthouse by the Sheriff and other armed county officials. That same man is still sheriff and the same men constitute the majority of county board of supervisors, in that majority black county. Numerous attempts by black political groups have been unsuccessful in unseating those officials, who black people perceive as the enemy of their liberty.

To black people in places like that it is clear that even in the 1980's, racial politics governed their lives, and they are not alone, for 20 percent of the counties in Mississippi are still controlled by the same people who governed those counties during the days that

brought the need for the Voting Rights Act to the attention of our Nation 16 years ago.

Similarly, there has been little change in the State legislative leadership from the days that brought us massive resistance. Only 2 weeks ago, in my voting precinct, two white people came in and took their ballots for the Democratic primary contest in the Jackson city elections. When they entered the booth, the man called out to the white poll workers, "Are any of these candidates for Commissioner colored?" When told by the officials that they honestly did not know, the man stated that he and his wife would only vote for mayor so that they not indavertently make a racial mistake.

The attitudes continue. Racial bloc voting is still very present in Mississippi. It was there last week, and the week before as people, black candidates, went down to defeat in city elections in a number of places. Racial bloc voting prevents a black candidate from having an even chance to participate in the governing of the political subdivision of our State.

The programmatic proposals of the administration raise the stakes for upcoming electoral contests. The proposals now before the Congress would put more power in the hands of local and State officials. Therefore, it is all the more important that the Federal Government guarantee that the mechanisms whereby those local and State officials are chosen be completely fair. If State and local governments are now going to make key decisions about which agencies receive funds to administer health and social service programs, which of the currently existing programs will continue, and even what the eligibility criteria will be which will determine who will continue to receive a needed service, hen it is extremely important that all the people be represented.

It was black Mississippians who understood the need for services and fought to bring poverty programs into our State, often over the strenuous objection of the State and local officials. It was black initiative that brought many of the important programs to our State, and they are still identified by black and white people as being programs by and for black people.

The threatened reduction of Federal funds to our State will hit hardest among the poor black. In Jackson, the schools have terminated 142 teachers, 100 of whom are black, in preparation for the impending Federal cuts. This has made school people extremely nervous. It has made the threat of their jobs very real.

Similar cuts in other programs hangover the heads of black people who have only recently begun to gain access to some segments of the job market. This makes everyone extremely vulnerable to political pressure.

If poverty programs are eliminated or brought under the direct control of local governments, that vulnerability will increase. It was that dependency on the white power structure that helped perpetuate white control of government jobs and government services.

People remember the days when the commodity program was used as a means of political control, economic control rather than a means of alleviating hunger. People remember when teachers were prohibited from joining the NAACP or registering to vote. We are fearful that the proposed changes in Federal programs, particular-

ly if coupled with the elimination of the protections afforded by the Voting Rights Act, could bring back the bad old days when it was extremely difficult for black people to mount any effective political activities.

The political decisions of the next year could determine the fate of black participation in the political process for many years to come. The results of the 1980 census are now becoming available. The State legislature has commissioned a special committee to develop a congressional and legislative plan. Counties will begin to develop plans to redistrict their supervisory districts. Most of the activity will culminate in 1982, in preparation for our State's general elections in 1983. The decisions that are made could determine the pattern of representation for the next decade.

It is our feeling that if the Voting Rights Act is not extended, many of the jurisdictions will wait until the expiration of the requirment for preclearance before the final action. According to the 1980 census there are now 117 supervisory districts in 45 of the State's 82 counties that are majority black. More than one-third of these could be lost by clever redistricting procedures. If there is no preclearance, it will be impossible for private citizens to prevent this dilution of black voting strength.

Illiteracy and the failure to provide for honest assistance to illiterates remains one of the primary barriers to effective access to the political process. Mississippi has no law governing the right to voting assistance for illiterates. We receive complaints every election of people being directed to use the services of certain designated assisters. This is often an intimidating factor, particularly if the voter feels uncomfortable with the designated person who assists them.

Should sections of the Voting Rights Act be allowed to expire or mutilated by the Hyde amendment, local officials will feel more free to take liberties for the procedures for assisting illiterates. There are over 200 pages of State laws governing elections and hundreds of different officials involved in administering those laws, making for lots of room for a wide variety of practices to preserve the vestiges of the old racial order. The removal of the protections of the Voting Rights Act would increase the probability that new practices would arise to become additional barriers to black participation in the political process.

Additional barriers exist now, hangovers, vestiges of the old racial order:

The requirement to vote for multiple candidates in city elections works to prevent black people sharing elective office with whites on city councils. Sometimes you can't quite figure out what a mathematical majority is.

There is a requirement that ballots contain an extra blank space and box under each set of candidates for an office—illegal to use except in the case of the death of the candidate—that often confuses less experienced voters and often is used to disqualify ballots marked in that space inadvertently.

Annexations have been used to build up the white percentage in several cities, diluting black votes.

Black subdivisions have been excluded from city boundaries in several cities with the effect of maintaining white majorities in those cities.

The requirement of registration at both county and city offices often makes it difficult for poor and working people to gain access to both electoral processes.

Absentee balloting has historically been used to increase white voting strength. Recently black people have become more sophisticated in the use of absentee ballots and have run into local practices that restrict their use. This year there was a proposal in the State legislature which fortunately did not pass, perhaps because of the deterrent effect of the Voting Rights Act, which would have restricted the use of absentee ballots, a proposal which would have had a discriminatory effect on black voters.

Registration and voting procedures do not comply with section 504 of the Rehabilitation Act, denying access to the vote to handicapped persons. There was an incident 2 weeks ago where a person in a wheelchair couldn't get up the stairs to vote for two black candidates they wanted to vote for, and they were denied the right to vote.

We have a long and painful history of racial exlusion from the political process. Progress to overcome that history has been slow. We are seeing a resurgence of Klan activity and other signs of potential reversion to the past history. We are loathe to trust our fate to a legislature that has only been desegregated for 2 years and has a long way to go before it achieves the status of being a unified, nonracial system.

The potential of placing our fate in the hands of local governments, with their history, is even more frightening. We must have the Voting Rights Act extended in its current form, leaving intact some protections for black Mississippians.

Thank you.

[The statement of Mr. Barber follows:]

PREPARED STATEMENT OF RIMS BARBER

Mr. Chairman and members of the subcommittee, I am Rims Barber of Jackson, Mississippi. I am pleased to be asked to speak to you today concerning the urgent need to extend the Voting Rights Act of 1965. My involvement in the Civil Rights movement in Mississippi pre-dates the enactment of the Voting Rights Act. I worked in those days with people who courageously attempted to register to vote only to be turned away by armed county officials, and later with local voter registration efforts after that act was passed. I have served as a poll watcher for various Black candidates in numerous elections since 1966, trained poll watchers and campaign workers, and analyzed the reports from elections since that time. I have participated in the canvassing of votes, in legal challenges to elections and in court cases regarding reapportionment and at-large voting matters. I am a registered lobbyist in Mississippi and have represented the views of the poor and dispossessed before the Mississippi Legislature. In sum, I have a broad-based experience as a participant and observer of political events in Mississippi.

There is a historic continuity of racism among White officials and voters in Mississippi.—I clearly remember Black citizens being turned away from the Madison County Courthouse by the Sheriff and other armed county officials. That same man is still Sheriff, and the same men constitute the majority of the County Board of Supervisors, in that majority Black County. Numerous attempts by Black political groups have been unsuccessful in unseating those officials who Black people perceive as the enemy of their liberty. In the County seat, although there are now three Black Aldermen on the seven person City Council, most issues are determined on a strictly racial four to three vote. Time and again that Council has voted by the same four to three vote to appoint Whites to the School Board which governs the

almost 100 percent Black school system. There four to three vote losses symbolize as much racism as the pre-Voting Rights Act all-White rule did. Black people in places like that are clear that even in the 1980's racial politics govern their lives. And they are not alone, for 20 percent of the Counties are controlled politically by the same people who governed during the days that brought the need for the Voting Rights Act vividly to the attention of the Nation sixteen years ago. Similarly, there has been little change in the state's legislative leadership from the days that brought us massive resistance.

Two weeks ago in my voting precinct two White people came in and took their ballots for the Democratic primary contest in the Jackson city elections. When they entered the booth, the man called out to the White poll workers, "Are any of these candidates for Commissioner colored?" When told by the officials that they honestly did not know, the man stated that he and his wife would only vote for Mayor so that they not inadvertently make a racial mistake. Such are the racial attitudes in the average White-dominated precinct in Mississippi today. The Black woman running for City Commissioner received only 3 to 5 percent of the White votes cast in the Democratic primary. Numerous other Black candidates in recent 1981 primaries when down to defeat only because of racial block voting. In 1980 Dr. Leslie McLemore received under 5 percent of the White vote in a bid for a Congressional seat, running second to the now resigned Jon Hinson. In many all-White precincts McLemore received either no votes at all or less than one percent of the total. Racial bloc voting prevents a Black candidate from having an even chance to participate in the governing of the political subdivisions of our State.

Even when they move, Whites attempt to maintain control. I recently researched a precinct's voting rolls in preparation for next week's Jackson city elections. There were 1431 registered voters in one precinct that is located in a changing neighborhood. Fifty-five percent of those on the books were White. However, I found from my research that 60 percent of the White registrants no longer lived in the precinct and nearly half no longer even lived in the City. Most have fled to the suburbs. Yet they come back to vote. There is no action on the part of the local election officials to prevent this from happening. It falls to the eagle eyes of poll watchers representing Black candidates to challenge this practice. In 1979 when we last worked to prevent non-residents from determining an electoral victory, some of our poll watchers were harassed by the precinct officials so that they were unable to work at maximum efficiency (my son, Bill, was illegally prevented from conducting any of his poll watching duties).

The programmatic proposals of the Administration raise the stakes for upcoming electoral contests.—The proposals now before the Congress would put more power in the hands of local and state officials. Therefore, it is all the more important that the federal government guarantee that the mechanisms whereby those local and state officials are chosen be completely fair. If state and local governments are now going to make key decisions about which agencies receive funds to administer health and social service programs, which of the currently existing programs will continue, and even what the eligibility criteria will be which will determine who will continue to receive a needed service, then it is extremely important that all the people be represented. Mississippi has provided the least dollars for education, the least benefits for Aid to Dependent Children, the most restrictive Medicaid program, the least access to health care in the Nation. If those who need these services are denied equitable access to the ballot box, they will never be able to receive the services that they need.

It was Black Mississippians who understood the need for services and fought to bring poverty programs into our state, often over the strenuous objection of the state and local officials. It was Black initiative that brought Head Start into being, created Health Centers and other important programs that are now on the federal chopping block. Black success at the voting booth brought additional programs and services. Bennie Thompson, who is testifying today, brought housing and jobs and simple city services like the ability to put out house fires to the town of Bolton when he became Mayor. Blacks elected to be School Superintendents have brought curricular reform and school breakfast. This kind of thing is of substantive importance to poor and Black people.

The reduction of federal funds to our state will hit hardest among the poor and Black. In Jackson, the schools have terminated 142 teachers, 100 of whom are Black, in preparation for the impending federal cuts. This has made school people extremely nervous. It has made the threat to their jobs very real. Similar cuts in other programs hang over the heads of Black people who have only recently begun to gain access to some segments of the job market. This makes everyone extremely vulnerable to political pressure. If poverty programs are eliminated or brought under the direct control of local governments, that vulnerability will increase. It was that

dependency on the White power structure that helped perpetuate White control of government jobs and government services. People remember the days when the commodity program was used as a means of control rather than a means of alleviating hunger. People remember when teachers were prohibited from joining the NAACP or registering to vote. We are fearful that the proposed changes in federal programs, particularly if coupled with the elimination of the protections afforded by the Voting Rights Act, could bring back the bad old days when it was extremely difficult for Black people to mount any effective political activities.

The political decisions of the next year could determine the fate of black participation in the political process for years to come.—The results of the 1980 Census are now becoming available. The State Legislature has commissioned a special committee to develop a Congressional and Legislative districting plan. Counties will begin to develop plans to redistrict their Supervisory districts. Most of this activity will culminate in 1982, in preparation for our General Statewide Elections in 1983. The decisions that are made could determine the pattern of representation for the next decade. It is our feeling that if the Voting Rights Act is not extended, many of the jurisdictions will wait until the expiration of the requirement for pre-submission before they take final action. There are now 117 Supervisory Districts in 45 of the State's 82 Counties that are majority Black. More than one-third of these could be lost by cleaver redistricting procedures. If there is no pre-clearance, it will be impossible for private citizens to prevent this dilution of Black voting strength.

A similar situation exists with respect to potential re-registration of voters problems. Many Counties conducted re-registration following their last redistricting. These activities were covered by the Voting Rights Act and subject to scrutiny. Such oversight prevented many abuses from occurring. Should mass re-registrations be ordered by the state of local governments after the expiration of Section 5, there would be numerous Black citizens who would end up being deprived of their right to vote. The Legislature has played with proposals governing re-registration, but has been kept from enacting any scrandalously discriminatory law by the deterrent effect of Section 5 of the Voting Rights Act.

Illiteracy and the failure to provide for honest assistance to illiterates remains one of the primary barriers to effective access to the political process.—Mississippi has no law governing the right to voting assistance for illiterates. There has been Court action designed to protect the right to a relatively secret ballot, but it remains largely unenforced. We receive complaints, every election, of people being directed to use the services of certain designated assisters. This is often an intimidating factor, particularly if the voter feels uncomfortable with the designated person who assists them. In poll watching, I once closely observed this practice and found significant differences in the vote patterns on the machines manned by a Black "assister" and the machines manned by a White "assister", although there was no siginficant difference in the racial composition of those entering the different voting booths. As late as this year we have had complaints about local polling officials denying the right of an illiterate person to take the person of his choice into the booth to assist in balloting. Since the last extension of the Voting Rights Act in 1975 we have had instances of poll watchers being restricted from informing voters of their rights to select the "assister" of their choice. During the last major election we had a report of officials listening to the procedure going on behind the curtain and lodging challenges to the votes of Black people who were allegedly improperly assisted by persons of their own choice. Those votes never counted. Should sections of the Voting Rights Act be allowed to expire, or mutalated as the Hyde bill, local officials will feel more free to take liberties with the procedures for assisting illiterates. The State might even pass a law that significantly infringes on the right of illiterates to cast a secret ballot free from intimidation.

In the over two hundred pages of State law governing elections and the hundreds of different officials involved in administering those laws there is room for a wide variety of practices to preserve the vestiges of the old racial order.—The removal of the protections of the Voting Rights Act would increase the probability that new practices would arise to become additional barriers to Black participation in the political process. Additional barriers exist now:

The requirement to vote for multiple candidates in city elections works to prevent Black people sharing elective office with Whites on City Councils.

There is a requirement that ballots contain an extra blank space and box under each set of candidates for an office (unused except in the case of the death of a candidate) that often confuses less experienced voters and often is used to disqualify ballots marked in that space by such voters.

Annexations have been used to build up the White percentage in several cities, diluting Black votes.

Black subdivisions have been excluded from city boundaries in several cities with the effect of maintaining White majorities in those cities.

The requirement of registration at both County and City offices often makes it difficult for poor and working people to gain access to both electoral processes.

Absentee balloting has historically been used to increase White voting strength. Recently Black people have become more sophsticated in the use of absentee ballots and have run into local practices that restrict their use. This year there was a proposal in the state Legislature to restrict the use of absentee ballots by the infirm and disabled, a proposal which would have had a discriminatory effect.

Registration and voting procedures do not comply with Section 504 of the Rehabilitation Act, denying access to the vote to handicapped persons.

We hava a long and painful history of racial exclusion from the political process Progress to overcome that history has been slow. We are seeing a resurgence of Klan activity and other signs of potential reversion to that past history. We are loathe to trust our fate to a legislature that has only been desegregated for two years and has a long way to go before it achievies the status of being a unitary non-racial system. The potential of placing our fate in the hands of local governments, with their history, is even more frightening. We must have the Voting Rights Act extended in its current form, leaving intact some protections for Black Mississippians.

Mr. EDWARDS. Thank you, Mr. Barber and Dr. Henry, for very impressive testimony.

Without objection, both statements will be printed in the record in full.

Mr. EDWARDS. I recognize the gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

I compliment both of these gentlemen on excellent statements.

I don't however, think the use of the word "mutilate" is helpful.

Mr. BARBER. Sorry, sir.

Mr. HYDE. We all do that with the jurors and get them inflamed. But I am not trying to mutilate anything. I am trying to save something. The alternative to a middle ground is either the Rodino 10 years or zero over on the other side. That is what we are faced with, and I am casting around to try and find a middle ground that may or may not fly.

I don't know. I am not satisfied with what I have come up with. Maybe a better bail-out provision is the way to go. But all or nothing at all may end up with nothing at all. I just want you to know that I am not seeking to mutilate anything. There may be some surgery necessary to save the patient, because there could be a terminal illness in the other body. I would just like to get that idea across.

The easiest thing in the world for me to do is to sit back and say "right," you know, and send it over there with 10 years and watch it sink, because that is a distinct possibility. So I would like you to know my motives are not a conspiracy with the forces of evil to mutilate anything. I don't want to mutilate anything. I want to save something. So I hope I have made my point.

Mr. BARBER. In order to get here, we took an airplane. In order to get to the airplane you go through a preclearance. It is one of those little boxes you walk through to see whether you have got something in your pocket. It is relatively unobtrusive. It seems somehow, when it first came, I was kind of offended. I am a law-abiding citizen.

Mr. HYDE. So was Senator Hartke. He didn't like it either.

Mr. BARBER. One day my 10-year-old boy had a toy cap pistol in a valise and they confiscated it. There was no question of intent. There was, no—I did not even feel that there was a questioning of

my integrity as a citizen. I think that preclearance devices that are nonobtrusive or relatively nonintrusive are absolutely essential in a variety of things in our society to insure that we have full law abiding safety and protections for our citizens.

Mr. HYDE. The problem is that those screening devices are in Seattle, in Boston, and in Hawaii and all kinds of places. That is the problem. Yes; they are not burdensome. Using the mails isn't a burden. But there is a stigma attached to a certain geographical area having a different standard apply. Maybe the perpetuation is justified. That is what we are holding these hearings for.

Mr. BARBER. No one has ever hijacked an airplane from the Jackson Airport, OK? But the mechanism is still there. It may have prevented hijackings, and it is good. In the same way that preclearance is a tremendously important deterrent to people who would return us to the old days, to the pre-voting rights days in many ways.

I think that is the point both of us have tried very clearly to make, that there are still vestiges of the old order remaining, and in other areas of civil rights, we have said that only when those vestiges are gone shall we lift the requirements, only when the vestiges are gone shall we proclaim it a unitary nonracial system.

Mr. HYDE. You understand the proposal I have offered does not eliminate the preclearance. It eliminates it as an automatic requirement from certain geographical areas, but if an isolated instance of voting rights abuse occurs, then section 3(c) can impose preclearance.

Under my proposal, if a pattern or practice, which means more than one, then mandatory preclearance for 4 years, 5 years. It is optional. So we are not eliminating preclearance. We are eliminating the present automatic preclearance, and I assume that is what you are referring to when you say that.

Mr. BARBER. I don't wish to argue with the gentleman.

Mr. HYDE. It is not an argument. I don't want you to misstate my position, which does not involve the elimination of preclearance. It is to use the courts to impose it on a case-by-case basis.

Mr. BARBER. I think that regardless of the intentions—and I think your intentions are honorable—I am sure the effect would be to eliminate preclearance in the vast majority of the now covered jurisdictions. And proving before Judge Cox in Jackson, Miss., that the State of Mississippi has a pattern and practice and should have it reimposed is going to be very difficult.

Mr. HYDE. Is that a Federal judge?

Mr. BARBER. Yes sir, and he ain't——

Mr. HYDE. He is on for life, isn't he? See, and when you get these judicial activists who want to run everything, and they are for life, you have got a problem, right?

Mr. BARBER. We have a problem—we have had a problem with him and his courtroom with its picture of slavery and so on in it, for years.

Mr. HYDE. Well, OK, thank you.

Mr. EDWARDS. The gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Yes.

Mr. Barber, as you may know, I support the extension of the section 5 preclearance provisions. I have been sitting through these hearings, and very frankly, I am getting more and more puzzled as time goes on about some of the election laws that are allegedly discriminatory on their face. One thing in your statement sticks out like a sore thumb. That is that there is a requirement that ballots contain an extra blank space and box under each set of candidates for an office. In Wisconsin, we have got that on every ballot that appears for every election, simply because it is a constitutional right of a voter to write in a candidate if he or she is displeased with the names that appear on the ballot.

Dr. HENRY. But you see, in Mississippi, that is illegal.

Mr. BARBER. It is illegal to write in anybody. You cannot use that box except in time of death when somebody has been nominated—if somebody dies within 10 days, it is the only time you can write in. It is so infrequently used as to be not useful. We have such a large number of people, especially where you have to vote for multiple candidates. If you have to vote for 5, and there are 7 boxes, 1 of which is blank, or 11 boxes, 1 of which is blank, that doesn't have a name by it, people get confused.

We have had people throw out the entire ballot because someone put a check by that blank space inadvertently. And on some occasions, there have been enough of those so-called mismarked ballots where the local canvas people could not determine the intent of the voter, to throw those ballots out and it determined the outcome of the election.

It is a problem because our State law does not allow write-in ballots.

Mr. SENSENBRENNER. It would have been more helpful had you put that explanation in your statement.

Mr. BARBER. I am sorry.

Mr. SENSENBRENNER. Because I think Mississippi probably is unique in prohibiting write-ins. When I lived in California, write-ins were allowed. I think they still are.

Mr. HYDE. Would the gentleman yield?

Mr. SENSENBRENNER. I yield to the gentleman from Illinois.

Mr. HYDE. I might advise you that in Chicago there is a proceeding called short penciling. There was a fellow named "Short Pencil" Lewis, who was known for concealing a bit of lead in his thumbnail and he would just mutilate those ballots as they would come through. There would be actions and circles and bullseyes, and, of course, all get thrown out.

It is called short penciling and it used to be practiced in Chicago before they got the machine.

We, I dare say, could learn from Mississippi and we could teach Mississippi a few things about how to abuse people's voting rights.

Mr. BARBER. I think we have enough——

Mr. HYDE. We will agree.

[Laughter.]

Mr. SENSENBRENNER. I yield back the balance of my time, Mr. Chairman.

Mr. EDWARDS. Well, certainly the gentleman from Illinois, Mr. Hyde, has been very helpful in all these hearings, and his bill, his intention in this bill is to assist us down the road in getting a bill

through. I have no argument with him, although I disagree with my good friend, Mr. Hyde, on this issue, because I think it is imperative that the House of Representatives, that has long been the legislative body that has written these various civil rights bills first, have an overwhelming vote, both Republican and Democrat, in favor of the bill as it is written.

The time to compromise is not in advance. If it is necessary to have a compromise somewhere down the road, let's talk about it at a later date. I don't think it is going to be necessary, if we have a two-thirds vote in the House, or something like that. I think we are very likely to get it.

Dr. HENRY. You see, when you go to the negotiating table with your fallback positions as your primary position, you are likely not to get that.

Mr. EDWARDS. Well, that happens to be my personal view. I think it would be such a signal, not only to the people of America, but to the people of the rest of the world, if the Voting Rights Act is diluted in any way that it could approach a national catastrophe. That is how serious I think the retreat would be. And I hope that these extended hearings in different parts of the country and here will impress the Members of Congress on both sides of the aisle into that view, and I think it is very likely to happen, because we have very splendid witnesses.

I am always impressed with the use of reregistration and purging as a means of denying the right to vote. That has been done in California off and on, too, and especially double registration. I believe it is the State of Wisconsin, Mr. Sensenbrenner, that registration is not required. Or, do you have the same day registration, is that correct?

Mr. SENSENBRENNER. If the gentleman will yield, in Wisconsin we have same day registration at the polls. I think that is an awful law, because somebody can go in with a fraudulent registration, and that vote is cast on the same voting machine and placed in the same ballot box as the people who are legitimately entitled to vote.

But in the rural areas of Wisconsin, we don't have registration at all. Part of the reason for that is that we don't register by party in Wisconsin. We get four ballots when we vote in the primary and decide which one to vote on in the privacy of the voting booth. Sometimes it is very tempting for me to pick up that Democratic ballot.

Mr. EDWARDS. Well, that is awfully good news.

Mr. SENSENBRENNER. If the gentleman will yield further, I don't think "good" in your eyes.

Mr. EDWARDS. I have no further questions.

Counsel?

Mr. HYDE. Would the gentleman yield to me just for a second?

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. I want to say that the hearings I think are most productive and most useful. I would say as of now, I have not heard anything that would make me want to advance my own legislation. All I have heard is the need to continue. I am impressed by it, I want you to know.

My legislation is a document for discussion, to get people thinking down the line and not suddenly confronted with an emergency

situation. It may be that my mind will be changed by other witnesses. There haven't been a lot of witnesses on the other side of the issue.

But I have not got a closed mind and my legislation and other legislation I am going to propose to simplify the bail-out, are to get people thinking about options and alternatives if we reach that position. It may well be that I won't even offer my legislation in the form of an amendment, I don't know. I am not advocating any position now, but one of listening carefully to what the testimony is.

I share the misgivings of the chairman, that any retrogression in voting rights would be a terrible signal to send anybody and everybody. I resist that. So I just want my position—I am not saying negotiate now. Maybe we send them over the best, toughest bill possible. But you have to have those people thinking in terms of something rather than nothing. That is really all I am doing. But enough of this introspection.

Thank you, Mr. Chairman.

Mr. EDWARDS. I thank the gentleman.

Ms. Davis.

Ms. DAVIS. Thank you, Mr. Chairman.

Dr. Henry, you noted at page 3 of your testimony that black and white attitudes in Mississippi have improved significantly. Many witnesses have appeared before this committee indicating that failure to extend section 5 of the Voting Rights Act will result in a return to the "bad old days." I wonder if you can explain why you share that view?

Dr. HENRY. Yes. The attitudinal posture of Mississippi today in many ways is a reflection of legislation that has come down that is sort of like a traffic light. I don't like to stop at traffic lights all the time, but the law says you must. As a result of that, you get accustomed to doing it, and it does not offend you so much.

So the kind of responses that blacks and whites make to each other, the kinds of assistance that they are to each other, and the number of real intimacies that exist between whites and blacks in the State have become possible because of the umbrella under which we have given people to stand to say it is all right to do it.

The Voting Rights Act is such a shelter, the Public Accommodations Act is such a shelter. Perhaps the action that has given us more of a reason, and more of a push toward becoming responsive to each other has really been the Office of Economic Opportunity Act that spun from Head Start. What you did with Head Start, you had to have a committee of blacks and whites in each community before the project got funded, and you were not able to do it all black, you were not able to do it all white, unless you could prove that one or the other of the racial groups refused to cooperate.

So the excuse of financing involved gave many whites an opportunity to sit down with their black brothers and sisters, and out of necessity, learn that each one of them put on their pants one leg at a time, just like everybody else. There is no basic difference between folks.

Finally, you got around to the situation where the black folks were saying to the white folks and white folks were saying to the black folks, "If we had known you all is like you is, we would have

been liking you all a long time ago." And the necessity of the law, the necessity of circumstances making it germane that you sit down together, and of course, this is what the Voting Rights Act has played a major role in, is giving the people the excuse that they need, without being vilified by their peers, for having a relationship and an association with blacks.

Ms. DAVIS. Excuse me, but haven't they been in the habit of feeling comfortable sufficiently long enough so that it is no longer——

Dr. HENRY. No, you are talking about a master-servant relationship that existed prior to the 1965 Voting Rights Act. I think what we are talking about, we have had, you know, racial segregation by law for better than 200 years in our country. We have only had integration around 25 or 30. I think that measuring the time we have had integration, as opposed to the time that we have a law of segregation, we have not given integration a long enough time to work at all.

Ms. DAVIS. Thank you.

Mr. Barber, at page 3 of your testimony you indicated that you discovered in your precinct instances of white persons who no longer live in that precinct and are still voting. I wonder if you can indicate to the committee what will be done about this and who has the authority to provide relief in this instance?

Mr. BARBER. The people who control the voting rolls are basically white. We can challenge ballots as poll watchers for black candidates, and be able to prevent the casting of the vote on that particular day. That has not led to the circuit clerk or the election commission permanently removing or changing the registration of those people who were challenged. It has simply removed that ballot for that day. Unless we are there every time, those people can still come back and vote again, even though they have been challenged once.

The officials have the duty and have the responsibility to do something about it, and have not. Although we have been speaking with them, using this practice in the polling places, duly making note of the fact that it exists, no one has taken any action who is an official in power.

Dr. HENRY. Let me elaborate on that just a moment with regard to the experience that I just mentioned regarding Mr. Hicks in my town. One of the proofs that he is using for the vote not being accurate has to do with a number of whites who have now moved away from the city into the suburban area. And blacks who were poll watchers at the polls who observed them coming in voting in the city election, and of course, these names have been turned over to the Voting Rights Section of the Justice Department here in terms of trying to make the best case we can for the declaration that this particular vote be carried over.

But that is exactly what you are talking about. If you live in the city, or if you live wherever you live, the chance of you coming back to where you once lived, although you no longer live in that precinct, particularly if you are white, your voting opportunity is permitted and really not seriously questioned by those who operate municipal or county elections.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman.

Mr. Barber, your statement indicates that you are a registered lobbyist in Mississippi?

Mr. BARBER. That is correct.

Mr. BOYD. For what organization do you lobby?

Mr. BARBER. I work for the Children's Defense Fund currently, for the last 4 years. And before that, with the Delta Ministry, and I have lobbied for a wide variety of issues concerning poor people, disenfranchised people, oppressed people.

Mr. BOYD. You also mention in your statement the presence of the resurgence of the Klan in the South as proof of the continuing attitude of racial discrimination; is that correct?

Mr. BARBER. Yes, I did. We have had the Klan soliciting money outside a Jewish delicatessen in their white robes. We have had a Klan candidate for the Fourth Congressional District, which election is next month.

Dr. HENRY. Klan march downtown in Jackson.

Mr. BARBER. We had a 68-year-old black man who was driving through a white neighborhood pause in front of a funny looking house that had Klan and Nazi flags flying side by side, and he got shot at by four people. I would say that that is a resurgence.

Mr. BOYD. Would you say it is fair to indicate that the Klan is active elsewhere, recent Federal arrests of the Imperial Wizard in Delaware I think, and also the Imperial Wizard of Maryland; is that correct?

Mr. BARBER. That is what we read in the newspapers, yes.

Dr. HENRY. But that makes Klan activity in Mississippi no less prevalent.

Mr. BARBER. The history of the approval of such activities officially, historically in Mississippi, makes it very scary for us, that if certain restrictions are lifted, that the result will be very different in Mississippi than it will be in Maryland with the Klan activity.

Mr. BOYD. Why would that be?

Mr. BARBER. There was official sanction, historically, for Klan and Klan-type activities historically in Mississippi.

Mr. BOYD. And in Maryland?

Dr. HENRY. I don't know if you have had State legislature funding the White Sovereignty Commission which is a segregation watchdog for the State?

Mr. BOYD. I don't know, I can't answer that.

Mr. BARBER. I think our particular history makes the resurgence of the Klan more scary in a State with as much—with the kind of history of intimidation that we have had.

Mr. BOYD. Thank you.

Mr. EDWARDS. Dr. Henry, your testimony is that there is still intimidation going on in Mississippi insofar as black Mississippians' voting privileges; is that correct?

Dr. HENRY. Yes, sir.

Mr. EDWARDS. Are there other signals that this intimidation will continue in the future, and will intensify if the Voting Rights Act is not extended?

Dr. HENRY. Yes, from my point of view, and from an overall observation of why intimidation, as bad as it is, is as minimal as it is at this point. If it were not for the Voting Rights Act, it would be

monumental, and the number of people and kind of intimidations people receive would have definitely grown I think.

I had the experience of talking with a young black fellow who ran for public office in my hometown. Of course, I live in the rural area of Mississippi, I live in the Mississippi Delta where the plantation system still prevails, where a number of blacks still work on plantations owned by whites. And the number of instances where blacks complain about the plantation owner saying, "I want you to vote this way. I don't want you to vote tomorrow because the vote might not turn out in our favor."

The blacks are told that unless you vote a certain way, I can find out how you voted. I don't think they can, but as long as there is this fear in the minds of people, that unless they are doing exactly what plantation owner says to do, that they are in some kind of difficulty, some kind of trouble. So whether the threat is real or not, as long as you believe it, it has the psychological effect of being real.

Mr. EDWARDS. Mr. Barber, what will be the signals from Mississippi, someday, that it is time to not extend the Voting Rights Act? How will we know when that time has come?

Mr. BARBER. You people knew how to ask to get witnesses to come forward today. If these same people, or people like us come forward today and say it is time, then you will know it is time. When we come together, you know.

I don't know how to judge that yet, because the time hasn't come. I just see too much, still the undercurrent of racial decision-making in a variety of public bodies that I monitor as part of my job. When it changes, I think I am bright enough to notice it. I will be glad to come and testify then that it is real.

Dr. HENRY. My head is set in a posture that suggests to me I would like to see the Voting Rights Act made as permanent as the 13th amendment to the Constitution that freed me from slavery. I don't want them to ever be able to do it no more. I would hope that the crime of denial of the right to vote somehow penetrates the thinking in America's mind that it is just as reprehensible as the crime of slavery.

Mr. EDWARDS. Thank you very much.

Are there further questions?

Your testimony has been very valuable. I thank you both.

The next witnesses will constitute a panel presentation. Frank Parker represents the Lawyers' Committee for Civil Rights Under Law, in Washington, D.C.; Fred Banks is a State representative from Jackson, Miss.; and Bennie Thompson is a supervisor in Hinds County, Miss.

TESTIMONY OF FRANK PARKER, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, WASHINGTON, D.C., ACCOMPANIED BY FRED BANKS, STATE REPRESENTATIVE, JACKSON, MISS., AND BENNIE THOMPSON, SUPERVISOR, HINDS COUNTY, MISS.

Mr. PARKER. Thank you, Mr. Chairman.

Mr. EDWARDS. Gentlemen, we welcome all three of you. Without objection, all of your statements will be printed in full in the record.

I believe the first witness to testify will be Mr. Frank Parker. You may proceed.

Mr. PARKER. Thank you, Mr. Chairman.

I am very happy to be here today in the company of this very distinguished panel. On my extreme left is State Representative Fred L. Banks, who is an attorney in Jackson. Mr. Banks is chairperson of the Mississippi State Black Caucus, also president of the Jackson branch of the NAACP.

Mr. Bennie Thompson is supervisor for district II in Hinds County, Miss., and former mayor of the town of Bolton, Miss., in Hinds County.

I am director of the voting rights project of the Lawyers' Committee on Civil Rights Under Law, a project established to help protect the rights of minority citizens secured by the Voting Rights Act, and to help insure that the Voting Rights Act is effectively enforced. For the past 12 years, I was a staff attorney and then chief counsel of the Lawyers' Committee, Jackson, Miss., office, and I have been involved in more than 30 voting rights cases both in Mississippi and in the district court for the District of Columbia, some of which are still going on.

Sixteen years after the passage of the Voting Rights Act of 1965, its goal of fair and effective participation for all citizens in the electoral process remains unfulfilled in many parts of the South, and especially in Mississippi. Efforts to discriminate against black voters have not abated and the desire to cancel out black voting strength still exists.

Nationally, 66.5 percent of all discriminatory election law changes blocked under section 5 have been objected to since 1975, when the act was last extended by Congress. Similarly, in Mississippi, more discriminatory election law changes have been objected to since 1975 than in the previous 10-year period.

The temporary provisions of the Voting Rights Act should be extended, not to punish the South for past wrongs, but to protect minority voters from present discrimination. Just 2 weeks ago, on May 14, a three-judge district court in Mississippi found that the city of Indianola had violated the Voting Rights Act by engaging in a series of annexations of predominantly white areas in 1965, 1966, 1967, and 1968 which reduced black voting strength by more than 30 percent—all of these changes were made without section 5 preclearance, and the violations affected the results of three municipal elections held since 1964.

Mr. EDWARDS. Who brought that, Mr. Parker?

Mr. PARKER. This was brought by the president of the Sunflower County branch of the NAACP and 13 voters of the city of Indianola, not the Justice Department.

Mr. EDWARDS. Why didn't the Justice Department bring the suit?

Mr. PARKER. Mr. Chairman, I don't know.

While these annexations were occurring, the majority white city council also refused requests to annex several adjacent, predominantly black subdivisions containing more than 3,500 persons. These subdivisions have received city water and sewer services and city fire protection, but their inhabitants have been excluded from participation in city elections. Also, during this same period, much of the housing occupied by poor blacks within the city was con-

demned, forcing black city residents to seek adequate housing outside the city.

These violations, held to be violations 2 weeks ago, have had the apparent purpose and clear effect of perpetuating majority white city government in a major community in the Mississippi Delta, an area of Mississippi which is heavily black in population. As a result of these annexations, blacks constitute only 48 percent of Indianola's registered voters, and only one black has been elected to the seven-member city board of aldermen.

Mr. Chairman, in the short time I have been given to complete my testimony, it is impossible for me to describe in detail, or at all, the 40 objections which have been made to election law changes in Mississippi since the Voting Rights Act was last extended by Congress in 1975. We have prepared a report entitled "Voting In Mississippi: A Right Still Denied."

This report is over 100 pages long. I would like to ask that this report be made part of the hearing record. It is an analysis of Federal court decisions and section 5 objections by the Justice Department in Mississippi, with special emphasis on the period 1975 to the present, and it describes the current Voting Rights Act violations that are still going on in the State of Mississippi, and which represent a continuation of the efforts of State and local officials to deny black people the opportunity to elect candidates of their choice.

Mr. EDWARDS. Without objection, the referred-to document will be made a part of the record.

Mr. PARKER. Let me just briefly describe some of the most egregious violations which are still occurring in Mississippi, and these relate specifically to county redistricting. I brought some maps with me, Mr. Chairman, to indicate to you the kinds of violations of the Voting Rights Act and constitutional rights of black people which are still going on in the State.

This first map represents the redistricting plan for Hinds County, Miss., which was submitted to a district court in 1975 and approved by the district court. Hinds County is the most populous county in the State, and is the site of the Jackson State Capitol. Jackson is the area which is in the eastern part of the county. The heaviest black population concentration in Hinds County is the shaded area on the right hand side of the map. Sixty-nine percent of all black people who live in Hinds County live in this shaded area which is a boot-shaped area in the central city of Jackson.

A 1975 county redistricting plan provided for five districts which spanned the county in long, odd-shaped corridors which sliced up the black population concentration in Jackson among all five districts, thereby depriving black people in Hinds County, who constituted 40 percent, and now 45 percent of the county population, of any opportunity to elect county officials of their choice. This is a discriminatory redistricting scheme which was commenced in 1969, which went on through 1975 and was not overcome until the court of appeals of the fifth circuit struck it down in 1977.

I might point out that the objection to a similar scheme in 1971 by the Attorney General's office was ignored by Hinds County officials, and the 1971 county elections were held under a scheme which is very similar to this.

The next map is the 1978 county redistricting plan for Warren County, Miss. Prior to redistricting, Warren County had three compact, regularly shaped districts, all located within the corporate limits of the city of Vicksburg. That is this area right here. District I is the northern part of the county, district V is the southern part of the county, and II, III, and IV, all were located in Vicksburg, which is in the western portion of the county. This is the Vicksburg area, right here.

All three of these districts are majority black, II, III, and IV. The 1978 county redistricting plan involved bringing all of the districts from the rural county area, like spokes of a wheel, into the central city of Vicksburg, and districts which are some of the most segregated districts I have ever seen in the State of Mississippi.

We call district IV, it looks like a prehistoric dinosaur, tyrannosaurus rex. Here is its head, the small forepaws, and here are the feet and the tail. These were the shapes of the districts in Warren County, and these are the shapes of the districts within the city of Vicksburg.

The next map shows the effect on black voting strength, the areas of black population concentration in Vicksburg shaded in yellow. The map shows that the boundaries of these districts, and especially tyrannosaurus, which comes into Vicksburg in the extreme southwest corner and ends up in the extreme northwest corner, sliced up this black population concentration among four of the five districts, thereby denying black voters an opportunity to elect candidates of their choice.

Mr. EDWARDS. While this redistricting was going on, was there any public or quiet discussion that people were cognizant of the fact that this was being done with that type of discrimination in mind?

Mr. PARKER. Yes, this was well known and publicized in the State, and in fact, the officials of Warren County filed this plan in the district court for the District of Columbia. They bypassed Attorney General preclearance and filed this plan in the district court for the District of Columbia and asked the district court of the District of Columbia to approve this plan.

They rendered a declaratory judgment under section 5 that the plan was racially discriminatory in purpose and effect. Of course, they denied the relief requested, and specifically found that the county officials had failed to offer any justification for the discrimination of black voting strength for the grossly irregular boundaries in the city of Vicksburg which fragmented black areas.

Of course, the county officials appealed to the Supreme Court, and the Supreme Court summarily affirmed. These county redistricting schemes are typical of the kind of racial jerrymandering of county district lines which began in 1969 in Mississippi, and which are still continuing today. They clearly indicate that the Voting Rights Act protection provided by the Voting Rights Act, particularly the administrative preclearance provisions, which are the heart of the act's enforcement provisions, are still needed to protect black people in Mississippi from unlawful dilution of their voting strength.

No proposed amendment or remedy which deprives the act of its administrative preclearance provisions can possibly provide the

protections which are available today. Any proposal which is premised on litigation will be totally ineffective because litigation has proven to be most effective in combating widespread discrimination in voting.

Even today, voting rights suits are unusually onerous to prepare and are characterized by extreme delays. Relief can be denied for years.

The State legislature's latest reapportionment case, for example, went on for 14 years before any relief was provided. It was the longest running legislative reapportionment case in the history of American jurisprudence.

The Warren County and Hinds County redistricting cases went on for 8 years before any effective relief was provided, requiring thousands of hours of preparation for trial and various hearings, and tens of thousands of dollars of expenditures, for the private parties and their attorneys to obtain relief. These are only three examples to show that case by case litigation is still inadequate.

Furthermore, present provisions of section 5, which require preclearance either with the Attorney General or D.C. district court should be retained. There are a number of instances in which local district courts in Mississippi of unlawfully and erroneously precleared election law changes which were irrationally discriminatory and failed to meet the nondiscrimination standards of section 5.

To take preclearance authority away from the District of Columbia and to put it in the hands of local district courts, the facts as cited in my testimony show, would deny black voters in Mississippi protections which are currently provided. If the Voting Rights Act is repealed and section 5 is permitted to expire then each of the discriminatory election law changes which I described in my testimony and which are described in our report, would be permitted to go into effect. The kind of racial jerrymandering of county supervisors, district lines which these maps show dramatically, would be permitted to go into effect.

The chairman of the Political Sciences Department of the Mississippi State University, Prof. Howard Ball, has prepared a report which includes a survey of local officials. Dr. Ball reports in his report, which I have provided to the committee staff, that the local officials are determined that if section 5 is allowed to lapse, that these discriminatory changes will be permitted to go into effect.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Parker.

PREPARED STATEMENT OF FRANK R. PARKER, DIRECTOR, VOTING RIGHTS PROJECT, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, WASHINGTON, D.C.

I am Director of the Voting Rights Project of the Lawyers' Committee for Civil Rights Under Law, a project established to help protect the rights of minority citizens secured by the Voting Rights Act, and to help insure that the Voting Rights Act is effectively enforced. For the past 12 years, I was a Staff Attorney and then Chief Counsel of the Lawyers' Committee's Jackson, Mississippi Office, and I have been involved in more than 30 voting rights cases both in Mississippi and in the District Court for the District of Columbia, some of which are still going on.

Sixteen years after the passage of the Voting Rights Act of 1965, its goal of fair and effective participation for all citizens in the electoral process remains unfulfilled in many parts of the South, and especially in Mississippi. Analyses of court decisions and § 5 objections by the Attorney General show that efforts to discriminate against minority voters have not abated, and that the desire to cancel out minority voting strength still exists. *Nationally, 66.5 percent* of all discriminatory

election law changes blocked under § 5 have been objected to since 1975, when the Act was last extended by congress. Similarly, in Mississippi, more discriminatory election law changes have been objectd to since 1975 than in the previous ten-year period.

Most of these new discriminatory election law changes do not affect the right to cast a ballot (although some do).

Rather, most of them are subtle devices which minimize and cancel out black voting strength. As the Supreme Court said in a 1969 Mississippi case involving a switch to at-large elections, "The right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot. * * * This type of change could . . . nullify [minority voters'] ability to elect the candidate of their choice just as would prohibiting some of them from voting." *Fairley* v. *Patterson, decided sub nom. Allen* v. *State Bd. of Elections,* 393 U.S. 544, 569 (1969).

Thus, voting become a futile exercise when the voting strength of minorities is cancelled out by new discriminatory techniques which frustrate the purpose of the Act.

The temporary provisions of the Voting Rights Act should be extended, not to punish the South for past wrongs, but to protect minority voters from present discrimination. Just two weeks ago, on May 14, a three-judge District Court in Mississippi found that the City of Indianola had violated the Voting Rights Act by engaging in a series of annexations of predominantly white areas in 1965, 1966, 1967 and 1968 which reduced black voting strength by more than 30 percent—all of these changes were made without § 5 preclearance from the Attorney General or the District Court for the District of Columbia. None of these annexations had been submitted for § 5 preclearance, and the violations affected the results of three municipal elections held since 1964.

While these annexations were occurring, the majority-white city council also refused requests to annex several adjacent, predominantly black subdivisions containing more than 3,500 persons. These subdivisions have received city water and sewer services and city fire protection, but their inhabitants have been excluded from participation in city elections. Also, during this same period, much of the housing occupied by poor blacks within the city was condemned, forcing black city residents to seek adequate housing outside the city.

These violations have had the apparent purpose and clear effect of perpetuating majority-white city government in a major community in the Mississippi Delta, which is heavily black in population. Today blacks constitute only 48 percent of Indianola's registered voters, and only one black has been elected to the seven-member city board of aldermen.

We have just completed an extensive investigation of Federal court decisions and § 5 objections in Mississippi, and this report describes in detail the extensive efforts to maintain political white supremacy in Mississippi, with special emphasis on the period 1975 to present. Mr. Chairman, I request that this report, *Voting in Mississippi: A Right Still Denied,* be made part of this hearing record. Time restrictions which have been imposed upon my testimony do not permit me to detail all the violations of the voting rights of black Mississippians which have occurred since 1975, so I will attempt to summarize what we have found.

1975 violations

In 1975, the Mississippi Legislature enacted a racially discriminatory state legislative reapportionment plan under which a majority of both houses of the Mississippi Legislature were to be elected in at-large voting from multi-member legislative districts. This reapportionment plan cancelled out black voting strength by unnecessarily combining majority black counties with more populous majority white counties to create districtwide white voting majorities, and by creating countywide districts which submerged concentrations of black voting strength large enough for separate representation. Despite the fact that the Attorney General objected to the implementaion of this plan under § 5 and in violation of the Supreme Court's rule against multi-member districts in the court-ordered plans, the three-judge District Court ordered the plan into effect anyway—with some modifications in a few counties—for the 1975 legislative elections. This plan represented a continuation of the Legislature's efforts—begun in 1966—to deny black voters effective representation in the Mississippi Legislature. Blacks—who may up 35 percent of the state's population (1980 Census)—were denied an effective voice in state legislative affairs until the 1979 elections when—because of the protections of § 5 and the requirement of administrative preclearance with the Attorney General—the Mississippi Legislature finally was forced to implement a single-member districting plan, and 17 black legislators were elected.

Seven counties attempted to obtain § 5 preclearance of discriminatory changes from district to at-large, countywide elections for members of the county school

boards. Again, these submissions represented a continuation of efforts begun right after the Voting Rights Act was passed to deprive black voters in majority black supervisors' districts of an opportunity to elect county officials of their choice.

The all-white Board of Supervisors of Hinds County—in a county which was 39 percent black (1970 Census)—adopted, and the District Court in the county redistricting case approved, a racially discriminatory county redistricting plan which fragmented black population concentrations and denied black voters any opportunity to elect county officials of their choice. The bulk of the black population of Hinds County—69 percent of the black population—is concentrated in a boot-shaped area in central Jackson. Each district spanned the county in long, odd-shaped corridors and sliced up this black population concentration among all five districts, denying black voters a voting age population and registered voter majority in any of the five districts. This plan went into effect for the 1975 county elections, all the black candidates for county office were defeated, and the plan remained in effect until held unconstitutional by the Court of Appeals for the Fifth Circuit in 1977. *Kirksey v. Board of Supervisors of Hinds County,* 554 F. 2d 139 (5th Cir.) (*en banc*), *cert. denied,* 434 U.S. 968 (1977).

The City of Grenada attempted to preclear a total of seven discriminatory municipal annexations—originally implemented between 1965 and 1973 without Federal preclearance—which added large numbers of white voters to the city's voter registration rolls to prevent the election of black city council members. At the same time, the city denied repeated requests from black citizens to annex the Pine Hill community, a contiguous, predominantly black community. As a result of these discriminatory annexations, Pine Hill was surrounded on three sides by the city's corporate limits, but its residents were denied the opportunity to participate in city elections.

The Mississippi Legislature continued its efforts to manipulate the election laws of the state by moving back the qualifying deadline for independent candidates—most of whom since 1965 have been black—in an effort to deny black independents an opportunity to run for office. The Attorney General found, in objecting to this change, that indpendent candidates who originally had five months to collect signatures on their qualifying petitions and file their other qualifying papers were given less than two months to qualify to run for office. The 1976 statute was virtually identical to a provision in a racially discriminatory 1966 law which was aimed at preventing black candidates affiliated with the Mississippi Freedom Democratic Party from running as independents, and which was blocked by a Supreme Court decision and a § 5 objection finding racially discriminatory purpose and effect.

Two counties attempted to move polling places in three precincts to new locations remote from concentrations of black voters, which had the effect of making it more difficult for black voters, but easier for white voters, to get to the polls to vote.

1976 violations

In 1976, the Mississippi Legislature again enacted—and the Attorney General again objected to—Mississippi's unique "open primary" bill which abolishes the traditional system of political party primaries and establishes a majority vote/runoff requirement to win elective office. In 1968, the bill's sponsor, Representative Stone Barefield, stated that one of the purposes of the bill was to cut down the changes of a "minority" candidate being elected. The state Senate debate in 1970 focused on whether or not the bill would "encourage Negro bloc voting" and whether it would "aid or thwart the power of minority groups." The chairman of the Senate Elections Committee said at the time, "Talk about the bloc vote . . . under present election laws, a minority candidate with a minority vote can come in and win a general election."

The purpose of this legislation has always been to prevent the possiblity of black independent candidates taking advantage of the opportunity presented by existing law to win public office with less than a majority of the vote—a plurality—in cases in which the white vote is split between white Democratic and Republican nominees in the general election.

Two large cities—Jackson and Vicksburg—brought large numbers of white voters into their city limits with the effect of preventing blacks—whose populations otherwise would be approaching a majority—from electing city council members in at-large voting. In Jackson, the Attorney General found that as the black percentage of the total population continued to climb, the city in three successive annexations annexed heavily white areas (1960—90 percent white, 1971—84.5 percent white, and 1976—74 percent white) which prevented the black population from becoming a majority. Jackson elects its three-member city council on an at-large basis, and no blacks have been elected since 1912, when the at-large scheme was adopted. Vicksburg—in response to the Attorney General's objection—agreed to abolish its at-large voting system, and established a ward system for the election of its two city

commissioners under which a black city commissioner—the first since Reconstruction—was elected in 1977. Jackson, on the other hand, not only refused to adopt a ward plan to ameliorate the discriminatory impact of its annexations, but also has defied the Attorney General's 1976 objection and has continued to permit voters in the newly-annexed area to vote in city elections. Efforts to persuade the Justice Department to file suit to enforce the objection have failed, and as a result, black candidates for Mayor and City Commissioner in the June 2, 1981 city election probably will be defeated.

The City of Koscuisko, which was only 37 percent black (1970 Census), attempted to dilute black voting strength by adopting a whole panoply of discriminatory devices, including a switch from ward to at-large, citywide elections, a majority vote requirement, and numbered posts.

Grenada County adopted a racially discriminatory county redistricting plan, which split up the county's largest black population concentration in the western part of the City of Grenada among four of the five districts, thus denying black voters any opportunity to gain representation in county government.

1977 violations

In 1977, the State of Mississippi submitted—for the first time—a state statute enacted in 1966 and amended in 1968 switching from district to at-large, countywide election of county school board members in ten Mississippi counties. The Attorney General found that each county to which the change applied had a substantial black population, and that "blacks in these counties have been and may still be repressed in their participation in the political process." As a result of this change, the school boards of these counties, which implemented the changes, remained all-white, except one. Two counties did not comply with the statute, and blacks had been elected in district voting.

The United States Supreme Court strongly condemned racial gerrymandering in a District Court-ordered state legislative reapportionment plan which contained unexplained departures from neutral guidelines "which have the apparent effect of scattering Negro voting concentrations among a number of white majority districts," including the "adoption of irregularly shaped districts when alternative plans exhibiting contiguity, compactness, and lower or acceptable population variances were at hand." *Connor* v. *Finch*, 431 U.S. 404, 422 (1977).

The City of Lexington, in which whites comprise a majority of the voting age population and registered voters, attempted to switch from ward to at-large, citywide city elections.

Tunica County, in which a black Circuit Clerk was elected countywide in 1975, attempted to abolish the post of county superintendent of education as an elective position, and allow the superintendent to be appointed by the county school board. Although the county school system was predominantly black, the five-member county school board had only one black member. Tunica County's submission represented a continuation of efforts—begun in 1966 with the passage by the Mississippi Legislature of a state statute prohibiting the election of county school superintendents in ten counties—to prevent the election of black county school superintendents.

The Attorney General in 1977 also objected to a racially discriminatory plan for re-registration of all the voters in Lee County, a redistricting plan in the City of Canton which diluted black voting strength, and a municipal annexation in the Town of Sidon which reduced the black population from 41 percent to 33 percent.

1978 violations

In 1978, Warren County instituted a declaratory judgment action in the District Court for the District of Columbia seeking § 5 approval of a racially gerrymandered county redistricting plan. Warren County is 37 percent black (1980 Census), but because of continuous gerrymandering of supervisors' district lines, blacks have been prevented from electing any county officials since the Voting Rights Act was enacted. Each of the five odd-shaped districts converged on Vicksburg—where the black population of the county was concentrated—and split the black population up among four of the five new districts. The District Court for the District of Columbia refused to approve the new plan in 1979, holding that the county officials failed to offer any justification for the diminution of black voting strength or the grossly irregular proposed district boundaries in the City of Vicksburg which fragmented black residential areas, and the Supreme Court summarily affirmed. *Donnell* v. *United States*, Civil No. 78-0392 (D.D.C. July 31, 1979), *aff'd* 444 U.S. 1059 (1980).

In the 1978 U.S. Senate race in which black candidate Charles Evers ran as an independent candidate against two white Democratic and Republican nominees, election officials in Hinds County (Jackson) changed the location of 30 polling places several weeks before the general election, but did not announce or publicize the

changes until the afternoon before the election. Eleven of these polling places were in predominantly black precincts where two-thirds of the black registered voters of Jackson—Evers' primary political support—resided. These changes were not submitted—as required by § 5—until approximately three weeks before the election, and the Attorney General's approval had not been obtained by election day. Election officials refused to rescind these unprecleared changes, and litigation to enjoin them was unsuccessful.

The Attorney General objected to a proposed county redistricting plan for Walthall County which split up a black population concentration formerly included in one district.

1979 violations

In 1979, the Mississippi Legislature again enacted—and the Attorney General again objected to—Mississippi's "open primary" law. The Attorney General determined that he was unable—as in past objections—to find that the changes effectuated by the "open primary" law would not lead to a retrogression of black political participation in Mississippi, nor could he conclude that such a retrogression was not intended.

The Mississippi Legislature enacted a statute which imposed harsh and unique restrictions on the kinds and amount of assistance which could be given to voters, such as illiterates, needing assistance in casting their ballots. The new law required that anyone giving assistance must be a registered voter of that precinct, that one person could not give assistance to more than five voters, and that the polling place manager—most of whom are white—must be present while the assistance is given. The statute would have had a racially discriminatory impact on assistance to illiterate voters in Mississippi—most of whom are black. It would have denied older black illiterate voters assistance from family members who live or are registered to vote outside the precinct, and would have prevented black voters from receiving assistance from poll watchers for black candidates—a common practice in Mississippi—more than five times. The Attorney General objected to this statute, finding that the new restrictions were "more restrictive than those of most other comparable states and. . . we have received no explanation of why such restrictive rules are necessary." The new statute would have undermined a 1977 ruling of the Mississippi Supreme Court which liberalized the rules governing assistance to illiterates and allowed unlimited assistance from any person of their choice, *O'Neal* v. *Simpson*, 350 So.2d 998 (Miss. 1977), and represents a continuation of state efforts to hamper voting by illiterate black voters which were begun in 1966 when the state legislature completely repealed the state statute allowing assistance to illiterates.

1980 violations

In 1980, the Board of Trustees of the Louisville Municipal Separate School District, which functions as the countywide school board, submitted a racially discriminatory majority vote requirement for the election of its members. Winston County is 39 percent black (1980 Census). The Attorney General found that the special application of this majority vote requirement, unique in Mississippi, would have a racially discriminatory effect, since blacks were not in the majority in any of the five supervisors' districts from which school board members were elected, voting in Winston County was racially polarized, and no black person had ever been elected or appointed to the school board, the county board of supervisors, or the Louisville City Board of Aldermen.

The Attorney General also objected to a city redistricting plan for the City of Batesville, which diluted black voting strength, and the incorporation of a new, almost all-white community in Harrison County called Orange Grove. The Justice Department investigation revealed that "racially invidious considerations played a significant role both in the decision to create a new city and in determining which areas and which people would be included within the proposed city"of Orange Grove.

In Mississippi today there are also racially discriminatory voting practices and procedures which are not presently covered by § 5 because they are not changes. Of the 79 cities and towns with populations of 2,500 and over, half—39—elect members of their municipal governing bodies under at-large election schemes in effect since before 1964. Sixty-nine percent—27—have significant black populations, but these at-large election systems continue to deny black voters any representation in municipal government (most of the remaining 12 are majority black). For example, in Jackson, since at-large elections were adopted in 1912, no blacks have been elected to any position on the City Council despite the fact that Jackson is 40 percent black. These at-large election systems deny 130,000 black people—40 percent of the total black population living in cities and towns over 2,500 in population—any opportunity to gain representation in city government. Mississippi also still requires a major-

ity vote to win nomination in a party primary or to win a special election to fill a vacancy in office, and prohibits single-shot voting, voting laws which have denied black voters equal access to the political process.

The Supreme Dourt in City of *Mobile* v. *Bolden* has erected a difficult burden of proof for minority voters challenging election practices such as these—which have a demonstrably discriminatory effect—by requiring proof of racially discriminatory intent to obtain relief under the Fourteenth and Fifteenth Amendments. The Act should be amended to clarify the remedy available in § 2 to enable minority voters to challenge election and voting procedures which are racially discriminatory in purpose or result.

This continued pattern of persistent and widespread racial discrimination affecting the right to vote in Mississippi since 1975 shows not only that the protections of the Voting Rights Act still are needed, but also that any alternative proposal which relies on litigation would be totally inadequate to provide an effective remedy.

The Administrative preclearance requirement of § 5 was premised on Congressional findings that litigation had proven ineffective in combatting widespread and persistent discrimination in voting, *South Carolina* v. *Katzenbach*, 383 U.S. 301, 314 328 (1966), and that conclusion is still true today. Today voting rights lawsuits are still unusually onerous to prepare, sometimes requiring thousands of hours of work preparing for trial. My experience with Mississippi voting rights litigation has been that it is exceedingly slow, and effective relief can be denied for years.

The Mississippi legislative reapportionment case challenging racially discriminatory legislative districts, *Connor* v. *Johnson* (then *Williams, Waller, Finch,* and now *Winter*), commenced in 1965, went on for fourteen years—including nine trips to the Supreme Court—before effective relief finally was obtained in 1979. Thousands of hours and thousands of dollars were expended before the plaintiffs obtained the relief to which they were entitled. During this period, three statewide legislative elections were held which unconstitutionally minimized and cancelled out black voting strength, and the effects of these discriminatory elections can never be undone.

The Hinds County redistricting case, *Kirksey* v. *Board of Supervisors,* started in 1971, went on for eight years before relief finally was obtained in 1979. During this entire period, blacks—who make up 45 percent of the population—were totally denied any representation in county government.

Warren County implemented its first racially gerrymandered county redistricting plan—over the Attorney General's § 5 objection—in 1971, and litigation took eight years before a nondiscriminatory county redistricting plan was finally ordered into effect in Warren County. Also during this period, blacks—who make up 37 percent of the county's population—were denied any representation in county government, in direct violation of the Voting Rights Act.

These are only three examples of many cases which could be cited throughout the South and Southwest to show that—even with the present protections of the Voting Rights Act—case-by-case litigation is still inadequate and ineffective to remedy voting rights denials.

The present provisions of § 5 which require preclearance either with the Attorney General or the District Court for the District of Columbia should be retained. There are good reasons for limiting judicial preclearance to the District Court for the District of Columbia, rather than with local District courts. First, this limitation is necessary to preserve uniformity of decisions among the Federal judiciary. The purposes of the Act would be severely undermined if the legal standards governing § 5 preclearance applied in New York were different from those applied in Mississippi. Second, there are instances in which Federal Judges in the South have erroneously and unlawfully approved voting law changes which have failed to meet § 5 nondiscrimination requirements.

In the *Connor* case, the District Court ordered into effect for the 1967, 1971, and 1975 legislative elections, racially discriminatory multi-member districting plans which diluted black voting strength and denied black voters legislative representation of their choice. In 1975, the District Court violated clear Supreme Court precedent and unlawfully precleared a legislatively-enacted reapportionment plan which failed to meet § 5 requirements. The Supreme Court reversed, *Connor* v. *Waller,* 421 U.S. 656, rev'd, 396 F. Supp. 1308 (S.D. Miss. 1975) (three-judge court), and when the plan was submitted to the Attorney General, a § 5 objection was lodged. Then, when the District Court finally complied with Supreme Court instructions and ordered single-member districts, the Supreme Court found that the boundary lines of the court-devised districts supported charges of impermissible racial dilution. *Connor* v. *Finch,* 431 U.S. 407 (1977).

In *Perkins* v. *Matthews,* the District Court violated both the procedures and requirements of § 5 and approved racially discriminatory changes from ward to at-

large elections in municipal boundaries which increased the number of white voters and polling place locations in the City of Canton, Mississippi. 301 F. Supp. 565 (S.D. Miss. 1969) (three-judge court), rev'd 400 U.S. 410 (1971).

In the *Kirksey* case, the District Court in 1969 and 1975 approved plans devised by the Hinds County Board of Supervisors which unnecessarily fragmented black voting strength and denied black voters their constitutional rights.

In the Warren County redistricting litigation, the District Court in 1975 exceeded its jurisdiction and approved a county redistricting plan which split up black voting strength in Vicksburg, and totally excluded any opportunity for black representation in county government. See *United States* v. *Board of Supervisors of Warren County,* 429 U.S. 642 (1977).

One of the most difficult problems of voting rights litigation in the South has been the refusal of some Federal District Judges to accept strict requirements of nondiscrimination. Placing the Federal preclearance authority in the hands of these Southern District Judges would cancel out the most important protection currently provided by the Voting Rights Act.

VOTING IN MISSISSIPPI: A RIGHT STILL DENIED

One: Summary and overview

In 1965 Congress enacted the Voting Rights Act to allow black people the right to register, vote, and run for political office freely without discrimination. In his message to Congress urging the passage of the Act, President Lyndon B. Johnson proclaimed:

"In our system, the first right and most vital of all our rights is the right to vote. Jefferson described the elective franchise as the 'arc of our safety.' It is from the exercise of this right that the guarantee of all our other rights flows."

"Unless the right to vote be secured and undenied, all other rights are insecure and subject to denial for all our citizens. The challenge of this right is a challenge to America itself. We must meet this challenge as decisively as we would meet a challenge mounted against our land from enemies abroad."

Sixteen years after the passage of the Voting Rights Act of 1965, its goal of fair and effective participation for all citizens in the electoral process remains unfulfilled in many parts of the South. Throughout the South and Southwest, discrimination against blacks and Mexican Americans in the electoral process continues to be widespread. The Voting Rights Act was passed not only to secure the right to register and vote to disenfranchised minority citizens, but also to prevent the implementation of new and sophisticated gerrymandering and election manipulation techniques which have the purpose or effect of negating newly-gained minority voting strength. These subtle forms of voting discrimination persist throughout covered jurisdictions. Thus, voting becomes a futile exercise when the voting strength of minorities is cancelled out by new discriminatory techniques which frustrate the purpose of the Voting Rights Act.

John Lewis, former Director of the Voter Education Project, has termed the Voting Rights Act "the lifeblood of black political progress." In Mississippi, the Voting Rights Act has been extremely effective in allowing blacks to register, vote, and run for office. Directly as a result of implementation of the Voting Rights Act in Mississippi:

Black voter registration has increased from 6.7 percent of the voting age population (1964) to more than 60 percent at the present time;

The number of black elected officials has increased from 29 (1968) to 387, more than any other state in the country.

Despite this progress, discriminatory barriers to full participation in the political process create a significant disparity between the proportions of whites and blacks registered to vote, and blacks continue to be excluded from representation at every level of government in a state which is 35 percent black:

Of a total of 5,271 elective offices in Mississippi, only 7.3 percent are held by blacks.

There are still no black elected officials in Mississippi's seven-member Congressional delegation or in state-wide elected state offices.

Of the 22 counties which are majority black in population, eight still have no black representation on their county boards of supervisors, and black county supervisors make up a majority in only two counties.

Of the 1,420 city council members, only 143 (10 percent) are black.

This report reflects the findings of an extensive investigation conducted by staff of the Voting Rights Project of the Lawyers' Committee for Civil Rights Under Law of racial discrimination affecting the right to vote in Mississippi, with special emphasis on continued discrimination since the Voting Rights Act was last extended by Congress in 1975. It is based on an analysis of voting rights litigation in Mississip-

pi—much of it handled by Lawyers' Committee staff attorneys—and the records of the U.S. Justice Department's enforcement of the Act. The report describes in detail the efforts—many of them since 1975 and much of it successful—to maintain political white supremacy. Analyses of court decisions and the Justice Department's Section 5 objections show that sixteen years after the passage of the Act, efforts to discriminate against black voters have not abated, and that the desire to cancel out black voting strength still exists in Mississippi. For example, more discriminatory election law changes have been objected to by the Attorney General since 1975 than in the previous ten-year period.[1]

A wide variety of techniques have been used in Mississippi to perpetuate white control at all levels of government.

From 1965 to 1979 black voters were denied all but token representation in the Mississippi Legislature by the discriminatory use of multi-member legislative districts with at-large voting in areas of black population concentrations. When the Legislature finally was forced to abandon at-large voting by a Section 5 objection and litigation challenging these multi-member districts, the number of blacks in the Legislature increased from 4 (1975) to 17 (1980). Blacks still comprise only 10 percent of the membership of the Mississippi Legislature, however.

Thirteen counties have attempted to switch to at-large elections for members of the county boards of supervisors, and 22 counties have attempted to switch to at-large elections for county school board members with the purpose or effect of preventing the election of blacks. Efforts to implement these changes persisted as late as 1977, but were blocked by Section 5 objections and court challenges. Without the protections afforded by Section 5, many—if not most—of these switches to at-large voting would be in effect today.

Fourteen counties have attempted to gerrymander the boundaries of their county supervisors' districts—which serve as election districts for county supervisors, justices of the peace, constables, county school board members, and county election commissioners—to deny black voters an effective voting majority in district elections. Most of these discriminatory districting plans were blocked by Section 5 objections. In some instances, however, Section 5 objections were ignored, and litigation was necessary. As a result of these successful challenges to at-large county elections and gerrymandered redistricting plans, Mississippi now has 27 black county supervisors, but at the present time they constitute only 7 percent of the 410 county supervisors in Mississippi.

Since 1966 the Mississippi Legislature has attempted to manipulate state election laws to prevent the election of black candidates running as independents. This discriminatory legislation has taken a variety of forms—increasing the number of signatures required on qualifying petitions, manipulating the qualifying deadlines, abolishing party primaries, and eliminating the present plurality vote provision and requiring a majority of the vote in general elections to win office. One of these statutes, Mississippi's notorious "open primary" bill, which abolishes party primaries and imposes a majority vote/runoff requirement to win office, was repeatedly enacted in 1966, 1970, 1975, 1976, and 1979, and was blocked by a court decree and three consecutive Section 5 objections. Mississippi is still attempting to gain Section 5 approval of this statute, and it is still in litigation.

Both before and after the passage of the Voting Rights Act, 46 cities and towns have attempted to switch to at-large municipal elections to prevent the election of black city council members. These changes were blocked by a Supreme Court decision in 1971, a District Court decision in 1975, and Section 5 objections. Twenty-seven majority white cities and towns with populations over 2,500 which are not covered by existing court decrees, however, continue to hold citywide elections for city council members to the total exclusion of any black representations under election systems adopted prior to the period of Section 5 protection.

Several municipalities with at-large voting schemes have attempted to prevent blacks from becoming a citywide majority by annexing predominantly white residential areas. For example, in Jackson, the state capital, as the black percentage continued to climb, the city in three successive annexations annexed heavily white areas (1960—90 percent white, 1971—84.5 percent white, and 1976—47 percent white) which prevented the black population from becoming a majority. When in 1976 the Attorney General objected under Section 5 to the last annexation for dilution of black voting strength, this objection was ignored, and the city continues to permit voters in the annexed area to vote in city elections.

---

[1] Of the 77 discriminatory election law changes objected to by the Attorney General, 40 were objected to from 1975 to present.

When black voters started electing black public officials to various offices, several counties and cities switched from election to appointment of officials to prevent blacks from getting elected.

In a number of cases, counties and cities have switched polling places to make it more difficult for black voters to get to the polls to cast their ballots. In the 1978 U.S. Senate race in which Charles Evers was a candidate, election officials in Hinds County, the state's most populous county, changed the location of 30 Jackson polling places in precincts in which two-thirds of the black registered voters resided, and failed to announce the moves until the day before the election.

Racial bloc voting, especially white voters banding together to defeat black candidates, continues to be the rule throughout Mississippi. One expert on voting patterns in Mississippi contends there is still "a race war over voting," and the high levels of white racial bloc voting show the persistence of racial discrimination at the polls in the state.

Mississippi election law still prohibits voters from "single-shot" voting, and requires a majority vote to win party nomination—which in many areas is tantamount to election—which prevents blacks from electing candidates of their choice in any district in which they do not comprise a voting majority.

Several of the key provisions of the Voting Rights Act designed to protect black voters from efforts to nullify their newly-gained voting strength are due to expire in August 1982. Section 4 of the Voting Rights Act suspends the use of discriminatory voter registration requirements, including literacy and interpretation tests, educational requirements, good moral character requirements, and voucher requirements as a condition to registering to vote. Section 5 requires that before any covered state or political subdivision can enforce any change in voter qualifications or election laws different from those in force or effect on November 1, 1964, they must first obtain a ruling from the United States Attorney General or the United States District Court for the District of Columbia that such change is not racially discriminatory in purpose or effect.

Sections 6, 7, and 8 allow the United States Attorney General to dispatch Federal voting registrars (examiners) to register qualified voters and Federal poll watchers (observers) to monitor voting to insure nondiscrimination in the conduct of elections and the counting of ballots.

The Federal preclearance requirements of Section 5 of the Act are currently the most effective part of the Act to prevent discriminatory nullification and dilution of black voting strength and to insure that black condidates for office are not discriminated against. From 1965 to 1980 the State of Mississippi and its political subdivisions attempted to implement 77 voting and election law changes which were ruled racially discriminatory and objected to by the Attorney General.[2] The number of discriminatory changes by category is listed as follows:

Redistricting (legislative, county, and city)	18
Switches to at-large voting	11
Changes in methods of election (majority vote requirement, numbered posts, etc.)	14
Municipal annexations	13
Polling place changes	6
Changes in voting methods	3
Changes from election to appointment	4
Precinct changes	2
Reregistration or voter purges	2
Municipal incorporations	2
Changes in candidate qualifications	2
Total	77

Without the protection of the preclearance provisions of Section 5, black voters in every instance would have to file lawsuits challenging each of these changes. Obtaining favorable court rulings in each case would have been extremely difficult. In Section 5 submissions, the burden of proof is on the state or political subdivision to prove to the Attorney General or the District Court that the change is not racially discriminatory; in private lawsuits the burden of proof is on the black voters or candidates bring the suit. Also, in Section 5 submissions, the change may not be approved if it is racially discriminatory in purpose or effect; under recent Supreme Court decisions the plaintiffs in private litigation must prove that the change was

[2] These statistics are based on § 5 submission and objection data provided by the Voting Section, Civil Rights Division, United States Department of Justice.

enacted for with specific discriminatory intent, and mere discriminatory effect is not enough.

In the following sections, this report describes the continuing barriers to full political participation by black people in Mississippi. The report describes the critical role played by Section 5 in preventing the black vote in Mississippi from being nullified, but also describes discriminatory voting techniques not presently reached by Section 5. The report also analyzes the damaging consequences to black people in Mississippi of these frequently successful efforts to deny black people equal rights to political participation.

TWO: VOTER REGISTRATION AND ATTAINING ELECTIVE OFFICE

A. Current impediments to registration by blacks

As a result of the provisions of the Voting Rights Act banning literacy tests and the poll tax and allowing the Attorney General to dispatch Federal registrars (examiners) to covered states, black registration in Mississippi has increased dramatically. Before the Voting Rights Act was passed, only 28,500 black voters—6.7 percent of the black voting age population—were registered to vote.[3] Now over 300,000, more than 60 percent of the black voting age population, are registered—an increase of more than 270,000 black voters.[4]

Despite this tremendous increase in black registration attained under the Voting Rights Act, significant problems remain. A Bureau of the Census statewide survey reveals that a significant disparity continues to exist between the percentages of eligible whites and blacks registered to vote: [5]

COMPARISON OF MISSISSIPPI VOTER REGISTRATION BETWEEN WHITES AND BLACKS

	Voting age population	Number registered	Percent registered
White	984,715	690,272	70.1
Black	486,994	304,146	62.5

According to this survey, more than 150,000 voting age blacks in Mississippi still are not registered to vote. In some local areas, the disparity is even greater. In Jackson, Mississippi's most populous city, records kept by the City Clerk's office indicate that while 64.5 percent of the eligible whites are registered, only 47.8 percent of the eligible blacks are registered to vote in municipal elections.[6]

This continued disparity between white and black registration shows that all the effects of past discrimination have not yet been overcome:

"The effect of Mississippi's past history of racial discrimination in voting and other areas continues to affect black people in many portions of the state today, which has resulted in a generally lower participation by blacks than whites in the political process. Consequently, proportionally fewer blacks are registered to vote than whites, and black voters turn out at the polls at a lower rate than white voters." [7]

In many parts of the state, especially in the rural areas, fear of reprisals, economic dependence, and subtle forms of intimidation still deter many blacks from registering and voting. As David L. Jordan, president of the Greenwood Voters League, pointed out in sworn testimony in a Mississippi voting rights case:

"We have a lot of fear of voting in Leflore County because of reprisal, and this plantation mentality there. Most of the people who live in Greenwood came off the plantation, and it's a very frightening situation, that as insensible as it may seem for a person to be just able to go from the courthouse to the city and get his name on the books, that's the way it is. We're talking about people who can merely read

---

[3] United States Commission on Civil Rights, "Political Participation," p. 222 (1968). Before the act was passed, 69.9 percent of the eligible whites were registered.

[4] Mississippi, unlike some other states covered by the Voting Rights Act, still refuses to keep official voter registration statistics by race. Thus, racial voter registration statistics for Mississippi are either estimates or are based on survey data. The figures used here are from Bureau of the Census, "Registration and Voting in November 1976—Jurisdictions Covered by the Voting Rights Act Amendments of 1975," Series P-23, No. 74 (1978) (hereinafter "Census Survey"), and are based on survey data.

[5] Census Survey, pp. 6, 16.

[6] *Kirksey* v. *City of Jackson*, 461 F. Supp. 1282, 1288 (S.D. Miss. 1978).

[7] *Mississippi* v. *United States*, 490 F. Supp. 569, 575 (D.D.C. 1979) (three-judge court), aff'd, 444 U.S. 1050 (1980).

and write, and some who cannot, who want to participate in the political system, who from past experience have fear.

"Based on what I've been working with for more than a decade, the blacks in rural Leflore County are on the plantation, and they are controlled by the plantation owner. They do not have the flexibility nor the knowledge, as the person would in the urban area, and there is a lot of fear there, and they will not participate.

"As an example, on voting days we have had it to the point where we have tried to bring people in from the county, actually picked them up, and for some strange reason they have to do more work that day on election day than any other day. There have been cases where they haven't had a job until election day, and there's a job found, or work late to keep them from going to the poll.

"There are all kinds of obstacles or difficulties that confront us in trying to move the rural black to the voting polls on election day. And it's very difficult to get them to register.

"They will openly tell you, 'I like what you're doing, but due to where I live and my livelihood, I'm afraid and I will not participate.'

"We get those kinds of answers. And they are, in my opinion, they are legitimate because of the past history of the county, reprisal [against] people trying to participate in the political system." [8]

Further, Mississippi continues to maintain structural impediments to voter registration which disproportionally affect black citizens. In Mississippi today, persons can only register to vote at the Circuit Clerk's office usually located in the county courthouse. Registration at precinct polling places or other locations is rarely allowed, and there is no provision for the appointment of citizens to serve as deputy registrars to go door-to-door or register voters at shopping centers and the like. Thus, for example, voter registration for persons living in the northern part of Sunflower County involves a round trip journey of 100 miles to the county courthouse at Indianola. Voter registration generally is allowed only during business hours on weekdays; registration is rarely allowed on Saturdays or holidays for working people. In addition, Mississippi continues to maintain a system of dual registration; voters must first register at the Circuit Clerk's office for national, state, and county elections, and then must register again at their City Clerk's office to vote in municipal elections.

B. Limited gains by blacks in attaining elective office

Blacks in Mississippi constitute 35 percent of the population (1980 Census), and Mississippi has 387 black elected officials—more than any other state. But despite this progress, discriminatory barriers to full participation in the political process still exist as shown by a closer examination of the number of black elected officials in comparison with the total number of elective offices:

BLACK ELECTED OFFICIALS IN MISSISSIPPI

	1972	1976	1980
U.S. Congress (7)	0	0	0
State officials (15)	0	0	0
State legislature:			
Senate (52)	0	0	2
House (122)	1	4	15
County:			
Supervisors (410)			27
Election commissioners (410)			19
Other			8
Municipal:			
Mayors (288)			17
Members, municipal governing bodies (1420)			143
Others			4
Justice and law enforcement:			
Supreme court (9)	0	0	0
County court judges			2
Justice court judges (420)			28
Sheriffs (82)			3
Constables (410)			39
Police chiefs/marshals			1
County attorneys (82)			1

[8] *Mississippi* v. *United States*, supra, Trial Transcript, pp. 999, 1009.

BLACK ELECTED OFFICIALS IN MISSISSIPPI—Continued

	1972	1976	1980
Court clerks			4
Education:			
County school superintendents (82)			7
School board members			67

Source: Joint Center for Political Studies, Washington, D.C. The total number of elected officials in each category is indicated in parentheses

Of a total of 5,271 elective offices in Mississippi, only 7.34 percent are held by blacks.[9]

There are still no black elected officials in Mississippi's Congressional delegation or in state offices elected statewide.

Of the 174 members of the Mississippi Legislature, only 17 (10 percent) are black.

Of the 410 members of county boards of supervisors—the county governing boards—only 27 (7 percent) are black.

Of the 1,420 city council members, only 143 (10 percent) are black.

An analysis of the racial composition of county government in Mississippi's 22 majority black counties (1980 Census) also shows that blacks continue to be excluded from important policy-making positions.

Of the 22 Mississippi counties which are majority black in population, eight still have no black representation on the county board of supervisors, and black supervisors comprise a majority of the board in only two of them.

Of the 110 county supervisors in these majority black counties, only 23 are black.

Only three of these majority black counties have black sheriffs, and these were only elected in the last election (1979).

Although the number of black elected officials has steadily increased over the past ten years, most of them hold relatively minor positions. The vast majority of black elected officials in Mississippi today are members of municipal governing boards—and most of these are aldermen in small, majority black towns—school board members in small, majority black school districts, and constables and justice court judges (justices of the peace) in majority black districts.

The continued exclusion of black representation in major, policy-making positions at the state and county levels show that the political process in Mississippi is not yet open to full and equal participation by the large minority population. Continuing problems in voter registration have been discussed above. These figures also demonstrate the persistent impact of discriminatory structural impediments in the electoral structure—such as at-large voting and racial gerrymandering of district lines—and in Mississippi's voting laws which prevent black voters from gaining representation of their choice.

WHO GOVERNS MAJORITY BLACK COUNTIES?

County	Population (1980 census)	Percent black (1980 census)	Number of supervisors	Blacks
Bolivar	45,965	62.15	5	1
Claiborne	12,279	74.53	5	4
Clay	21,082	50.00	5	1
Coahoma	36,918	64.01	5	1
Holmes	22,970	71.13	5	2
Humphreys	13,931	65.64	5	1
Issaquena	2,513	55.59	5	1
Jefferson	9,181	82.00	5	4
Jefferson Davis	13,846	53.60	5	0
Kemper	10,148	54.32	5	0
Leflore	41,525	59.13	5	1
Madison	41,613	55.88	5	0
Marshall	29,296	53.17	5	1
Noxubee	13,212	64.59	5	1
Quitman	12,636	55.98	5	1
Sharkey	7,964	65.66	5	0

[9] Joint Center for Political Studies, "National Roster of Black Elected Officials," vol. 10, table 6, p. 7 (1980). The statistics contained in this section are based in part on this compilation.

WHO GOVERNS MAJORITY BLACK COUNTIES?—Continued

County	Population (1980 census)	Percent black (1980 census)	Number of supervisors	Blacks
Sunflower	34,844	62.02	5	0
Tallahatchie	17,157	57.25	5	0
Tunica	9,652	73.04	5	0
Washington	72,344	55.59	5	0
Wilkinson	10,021	66.94	5	2
Yazoo	27,349	51.38	5	1

THREE: MULTIMEMBER LEGISLATIVE DISTRICTS

From 1965 to 1979, the voting rights of black Mississippians were denied by the persistent but unlawful use of discriminatory multi-member districts [10] in state legislative reapportionment plans which deprived black voters of the opportunity to elect candidates of their choice to the Mississippi Legislature. As the District Court for the District of Columbia held in the latter stages of Mississippi legislative reapportionment:

"Recent legislative reapportionments in Mississippi have failed to meet constitutional requirements and have been marked by the racially discriminatory use of multi-member districts. *Connor* v. *Williams*, 404 U.S. 549, 92 S. Ct. 656, 30 L. Ed. 2d 704 (1972); *Connor* v. *Johnson*, 402 U.S. 690, 91 S. Ct. 1760, 29 L. Ed. 2d 268 (1971). Such uses of multi-member districts have, in the past, tended to submerge black population concentrations in heavily white concentrations." [11]

These multi-member districts discriminated against black voters by unnecessarily combining majority black counties with more populous majority white counties to create white majority multi-member districts, and by creating countywide districts in majority white counties which cancelled out the votes of large black population concentrations within the county.

The Mississippi reapportionment case, filed as *Connor* v. *Johnson* in October, 1965 was the longest running active legislative reapportionment case in the history of American jurisprudence.[12] This lawsuit was vigorously litigated for 14 years—and went to the Supreme Court nine times—before multi-member districts finally were eliminated for the 1979 elections, and black representation in the Mississippi Legislature increased from 4 (1975 elections) to 17. Section 5 of the Voting Rights Act—which requires preclearance of any election law changes with the Attorney General or the District Court for the District of Columbia—played a critical role in finally protecting the voting rights of black people in Mississippi from being nullified by multi-member legislative districts.

The state legislative elections of 1967, 1971, and 1975 all were held on the basis of redistricting plans under which a majority of both houses of the Mississippi Legislature were elected from multi-member districts, and which denied black voters effective representation in the Legislature.

1967 elections.—When the District Court upheld plaintiffs' challenge to the existing legislative apportionment for violation of the one-person, one-vote principle in 1966,[13] the Mississippi Legislature responded by enacting a new plan which relied heavily on multi-member districts. This plan was held unconstitutional for excessive malapportionment, and the District Court formulated its own plan—based on the Legislature's plan—under which 85 percent of the members of the state House of Representatives and 50 percent of the members of the state Senate were elected from multi-member districts.[14] Only one black legislator was elected in the 1967 elections in a state which was then 38 percent black (1970 Census).

1971 elections.—The District Court struck down, for excessive malapportionment, a second legislatively-enacted plan using multi-member districts in 1971. Although the Supreme Court declared that in court-ordered plans "single-member districts

[10] Multi-member districts are legislative districts in which more than one legislator is elected from a single district in at-large voting. At-large voting "allows the majority to defeat the minority on all fronts." *Kilgarlin* v. *Hill*, 386 U.S. 120, 126 (1967) (Douglas, J., concurring). The opposite is single-member districts in which only one legislator is elected from each district.

[11] *Mississippi* v. *United States*, 490 F. Supp. 569, 575 (D.D.C. 1979), aff'd 444 U.S. 1050 (1980).

[12] The history of the case is set out in *Connor* v. *Coleman*, 440 U.S. 612, 614-24 (1979).

[13] *Connor* v. *Johnson*, 256 F. Supp. 962 (S.D. Miss. 1966).

[14] *Connor* v. *Johnson*, 265 F. Supp. 492 (S.D. Miss. 1967).

are preferable to large multi-member districts as a general matter,"[15] the District Court nevertheless—finding unsurmountable difficulties to the implementation of single-member districts—ordered into effect its own redistricting plan under which 89 percent of the Representatives and 62 percent of the Senators were elected from multimember districts.[16] Again, only one black legislator was elected.

1975 elections.—The Mississippi Legislature then enacted two new multi-member district plans, one in 1973 and another superseding plan in 1975.[17] Although the plaintiffs again strongly objected to the discriminatory use of multi-member districts and the excessive population variances, the District Court sustained the constitutionality of the Legislature's 1975 plan.[18]

Up to this point, the state officials had totally ignored the Federal preclearance requirements of § 5 of the Voting Rights Act, and had refused to submit any of the Legislature's plans for § 5 approval.[19] On appeal, the Supreme Court held that the 1975 reapportionment statutes "are not now and will not be effective as laws until and unless cleared pursuant to § 5" of the Voting Rights Act, and summarily and unanimously reversed the District Court's judgment approving the plan.[20]

The plan was then submitted for § 5 preclearance, and the Attorney General quickly interposed an objection, holding that "we are unable to conclude, as we must under the Voting Rights Act of 1965, that the implementation of H.B. 1290 and [S.B.] 2976 does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color."[21]

The Justice Department's reasons supporting the objection were set out in its *amicus curiae* brief previously filed in the Supreme Court.[22] The Department concluded, based on existing legal precedent, that multi-member legislative districts violate Fifteenth Amendment guarantees when they minimize or dilute black voting strength.[23] The Department inferred a racially discriminatory purpose from the particular manner in which the multi-member districts were drawn, noting the numerous instances in which majority black counties were combined with majority white counties, and concluded:

"In sum, it appears that where black majority counties were combined with white majority counties, white majority districts were produced wherever possible. In the four instances where black majority districts were formed by such a combination, three of the four majorities were too slim to be considered meaningful and in three of the four it is unlikely that a white majority [district] could have been formed from contiguous counties."[24]

For example, Marshall County, which was 62 percent black and had a sufficiently large black population to form a majority black single-member district, was combined with more populous, majority white Desoto county (64.7 percent white) to form a 54 percent white House district electing three representatives districtwide. Claiborne County, which was 74.6 percent black, was likewise combined with more populous Warren County (58.9 percent white) to establish a majority white House district from which three representatives were to be elected.

---

[15] *Connor* v. *Johnson*, 402 U.S. 690, 692 (1971).

[16] *Connor* v. *Johnson*, 330 F. Supp. 506 (S.D. Miss. 1971). vacated and remanded sub nom. *Connor* v. *Williams*, 404 U.S. 549 (1972).

[17] Miss. Laws, 1975, chs. 484, 510 (Senate Bill 2976 and House Bill 1290).

[18] *Connor* v. *Waller*, 396 F. Supp. 1308 (S.D. Miss. 1975), rev'd, 421 U.S. 656 (1975).

[19] In 1974, the Assistant Attorney General in charge of the Civil Rights Division of the Justice Department wrote to the Attorney General of Mississippi requesting submission of the 1973 legislatively enacted plan, but this request was rejected. Letter from J. Stanley Pottinger to A. F. Sumner, Dec. 20, 1974.

[20] *Connor* v. *Waller*, 421 U.S. 656 (1975).

[21] Telegram from J. Stanley Pottinger, Asst. Att'y Gen., Civil Rights Division, to A. F. Summer, Attorney General of Mississippi, June 10, 1975.

[22] *Connor* v. *Waller*, No. A-968, Memorandum for the United States as Amicus Curiae.

[23] Id., pp. 16-17.

[24] Id., App. B, p. B-6.

FREQUENCY OF MULTI-MEMBER DISTRICTS IN MISSISSIPPI LEGISLATIVE REAPPORTIONMENT PLANS[1]

Mississippi House of Representatives

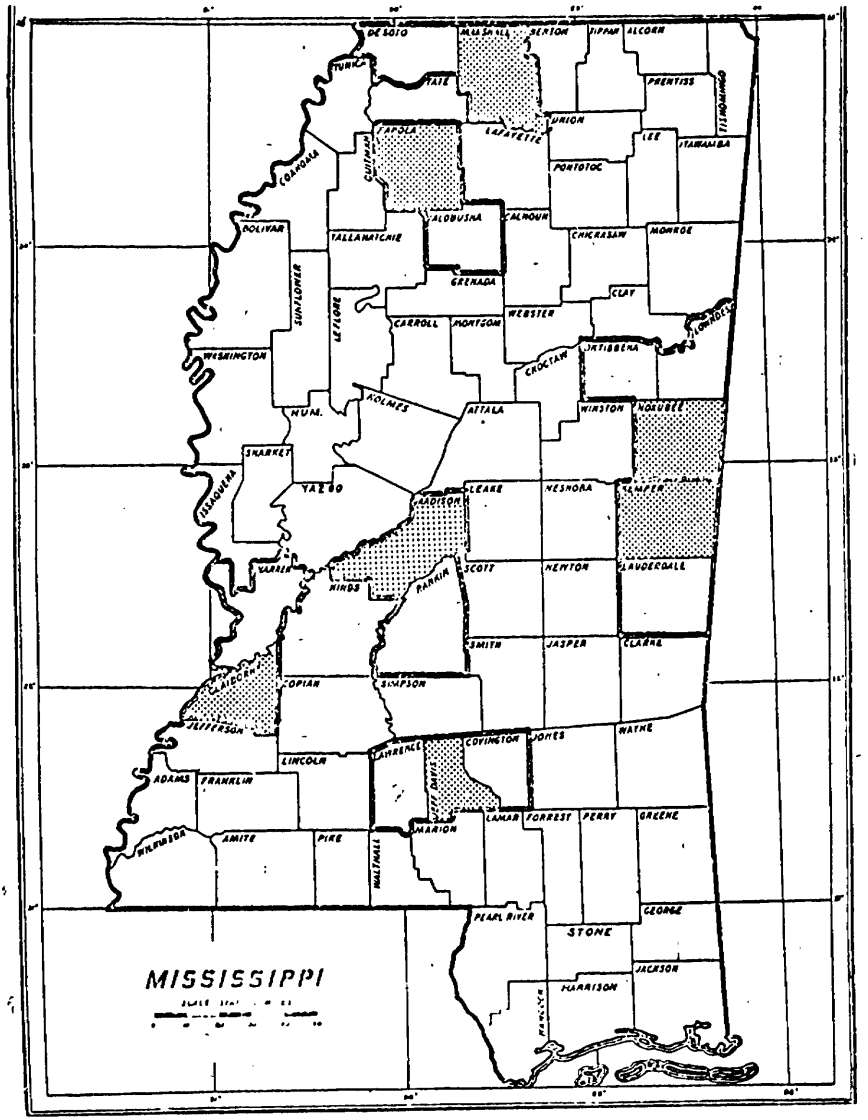
Plan	No. of Districts	No. of Multi-Member Dists.[2]	No. of Reps. from Multi-Member Dists.
1966 legislative plan	72	26 (36%)	80 (66%)
1967 court-ordered plan	52	34 (65%)	104 (85%)
1971 legislative plan	45	35 (78%)	114 (93%)
1971 court-ordered plan	46	33 (72%)	109 (89%)
1975 legislative plan	46	33 (72%)	109 (89%)
1975 court-ordered plan	84	51 (61%)	89 (73%)

Mississippi Senate

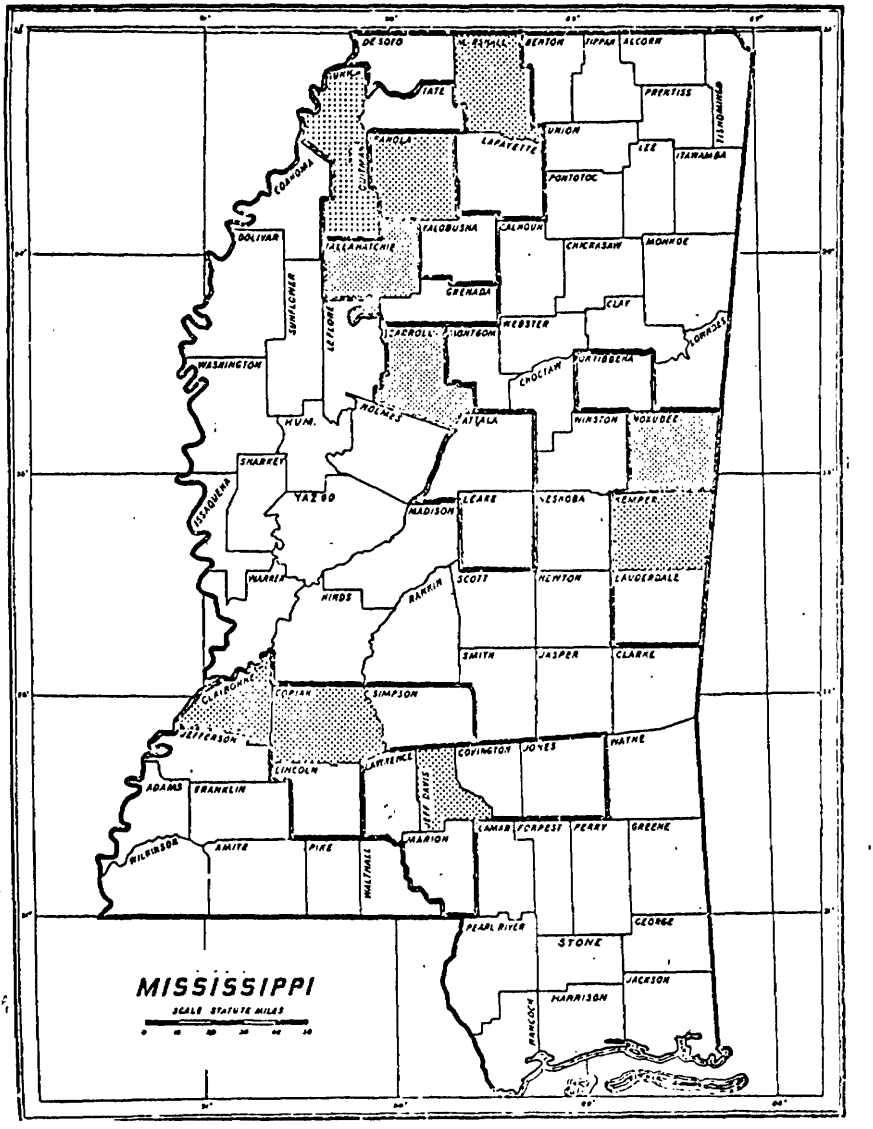
Plan	No. of Districts	No. of Multi-Member Dists.	No. of Sens. from Multi-Member Dists.
1966 legislative plan	41	8 (20%)	19 (37%)
1967 court-ordered plan	36	10 (28%)	26 (50%)
1971 legislative plan	35	14 (40%)	34 (65%)
1971 court-ordered plan	33	14 (42%)	33 (62%)
1975 legislative plan	33	14 (42%)	33 (62%)
1975 court-ordered plan	39	15 (38%)	28 (54%)

[1] The 1966 and 1971 legislative plans were declared unconstitutional for excessive malapportionment and were never used in state legislative elections. The 1975 legislative plan was objected to under § 5 of the Voting Rights Act. The 1967, 1971, and 1975 Mississippi legislative elections were conducted on the basis of the District Court-ordered plans.

[2] Multi-member districts include floterial districts, in which one or more legislators are elected from subdistricts, and others are elected districtwide.



Map 1. Map showing House districts in H.B. 1290 in which Black majority counties are combined with more populous white majority counties to create district-wide white majorities.



Map 2. Map showing Senate districts in S.B. 2976 in which Black majority counties are combined with more populous white majority counties to create district-wide white majorities.

The Justice Department also objected to at-large, countywide voting in majority white counties which diluted the vote of substantial black population concentrations within the county.[25] For example, in Hinds County the black population was sufficiently large (84,000) to create at least five majority black single-member House districts and two majority black single-member Senate districts. Black voting strength was cancelled out, however, when the Legislature's plan required that the entire county delegation (12 Representatives and 5 Senators) be elected county-wide in a coutny which was 60 percent white.

Despite the Attorney General's § 5 objection to this plan which prevented state officials from implementing it as law, the District Court in the reapportionment case ordered the plan into effect anyway as a "temporary" court-ordered plan for the 1975 legislative elections.[26] The District Court did, however, subdivide Hinds County into single-member districts, and three additional black Representatives were elected from Hinds County in the 1975 elections, raising the total number of black House members to four. The Mississippi Senate remained all-white.[27]

1979 elections.—Faced with the Supreme Court's 1975 ruling that any state reapportionment law would have to pass § 5 review, the Attorney General's objection to multi-member districting, the Mississippi Legislature finally abandoned its historic practice of multi-member districting and in 1978 enacted a new plan under which the entire legislature was elected exclusively from single-member districts.[28] The Attorney General objected to the configuration of certain districts, but his objection was overturned by the D.C. District Court.[29] In the 1979 legislative elections, 17 blacks were elected to the Mississippi Legislature, 15 to the House and two to the Senate.

The use of discriminatory multi-member districts in state legislative elections from 1965 to 1979 meant that the black voters of Mississippi newly enfranchised by the Voting Rights Act of 1965 were denied any effective representation or voice in state legislative affairs for fourteen years. This almost total exclusion of black representation had the most serious consequences for the operation of state government.

Black voters were denied any effective voice in the appropriation and allocation of state funds. As a result, the historically all-black colleges and universities in Mississippi were consistently underfunded and denied benefits and programs accorded the historically all-white schools. Also, Mississippi continued to maintain the lowest level of welfare payments (28 to 32 percent of need) of any State in the nation, and the desperate needs of the poor black population in such areas as housing, education, health, and employment were not met.

An atmosphere of racism and disregard for the black community was perpetuated in legislative actions. During this period the Mississippi Legislature enacted measure after measure designed to impede the registration of black voters, dilute black voting strength through disciminatory electoral mechanisms, make it more difficult for black candidates to get elected, provide state tuition payments to support the establishment of a private, statewide network of segregation academies formed to avoid public school desegregation, and the like. Approximately 20 discriminatory state laws enacted during this period by the Mississippi Legislature were struck down by the Federal courts as unconstitutional or voided by § 5 objections under the Voting Rights Act.

Despite studies showing that conditions at the State Penitentiary were "philosophically, psychologically, physically, racially and morally intolerable," the State Legislature failed to take any action to correct conditions for the predominantly black inmate population until enjoined by the Federal District Court.[30]

---

[25] *Id.*, pp. 17-23.

[26] *Connor* v. *Finch*, Civil No. 3820(A), Order Establishing Certain Temporary Districts For The Election Of Senators and Representatives in the Mississippi Legislature for the Year 1975 Only, July 11, 1975.

[27] In 1976, the District Court formulated a single-member district court-ordered plan, but the Supreme Court reversed for excessive population variances and racial gerrymandering of districts. *Connor* v. *Finch*, 419 F. Supp. 1072, 1089, 422 F. Supp. 1014 (S.D. Miss. 1976), rev'd, 431 U.S. 407 (1977). The Supreme Court again rejected the use of multi-member districts despite "defendants' unalloyed reliance on Mississippi's historic policy against fragmenting counties," 431 U.S. at 415. The District Court also had to be twice ordered by the Supreme Court to develop final plans in compliance with Supreme Court decrees. *Connor* v. *Coleman*, 425 U.S. 675 (1976); *Connor* v. *Coleman*, 440 U.S. 612 (1979). Finally, the District Court, in 1979, ordered into effect a compromise single-member district plan acceptable to all the parties, *Connor* v. *Finch*, 469 F. Supp. 693 (S.D. Miss. 1979), but this plan was superseded by the plan enacted by the Mississippi Legislature, which was used in the 1979 elections.

[28] Miss. Code Ann. §§ 5-1-1, 5-1-3 (1972) (1980 Cumm. Supp.).

[29] *Mississippi* v. *United States*, supra.

[30] *Gates* v. *Collier*, 349 F. Supp. 881 (N.D. Miss. 1972), aff'd 501 F.2d 1291 (5th Cir. 1974).

Black voters were deprived of any significant influence in the operations of state government, including the employment practices of state agencies. A study of state employment conducted by the Mississippi Council on Human Relations in 1974 found that 44 of 68 state agencies had no black employees at all, and that blacks constituted only 5.8 percent of all state employees in a state which was almost 40 percent black. Since 1969 at least eleven employment cases alleging racial discrimination have been filed against state agencies, including such agencies as the Mississippi Highway Patrol (which had no black uniformed patrol officers until 1973), the Mississippi Cooperative Extension Services (which had no black county agents until 1974), the Joint Legislative Committee on Performance Evaluation and Expenditure Review (a watchdog agency of the state legislature itself), the Board of Trustees of Institutions of Higher Learning (which supervises the state universities system), the State Welfare Department (which had no black county welfare directors until 1980), the Mississippi Agricultural and Industrial Board (established to attract industry and tourism to the state), the State Attorney General's Office (which consistently defends with vigor racial discrimination suits filed against the state), and the Mississippi Air National Guard.[31]

Black people, denied opportunities to improve the quality of their lives in Mississippi, left the state at an alarming rate to seek better jobs, housing, and educational opportunities.[32]

If the § 5 preclearance requirements of the Voting Rights Act are allowed to lapse, black citizens of Mississippi will be deprived of the important protections against at-large legislative voting provided by that section, and Mississippi would be legally free to return to multi-member legislative districts. If that happened, black citizens would be deprived of the gains they have made thus far, and black representation in the Mississippi Legislature would be considerably diminished.

Discriminatory multi-member districting represents a continuing problem in Southern legislature reapportionment. As a result of the enforcement of § 5 and reapportionment litigation, discriminatory, multi-member districts have been eliminated in Texas, Louisiana, Alabama, and Georgia. Multi-member districts and at-large voting still are used, however, in the Arkansas House of Representatives, in both houses of the Florida Legislature, in both houses of the North Carolina General Assembly, in the South Carolina Senate, and in the Virginia House of Delegates. Arkansas has only three black representatives, Florida has no black senators and only four black representatives, North Carolina has one black senator and only three black representatives, and the South Carolina Senate remains all-white.

FOUR: AT-LARGE COUNTY AND MUNICIPAL ELECTIONS

During the Fifth Circuit oral argument in *Bolden* v. *City of Mobile*, the lawsuit challenging at-large city voting in Mobile, Alabama, Circuit Judge John Minor Wisdom called at-large voting "the last vestige of racial segregation in voting in the South." At-large voting in Mississippi generally denies black voters any opportunity for representation in county and city government. Section 5 of the Voting Rights Act has played a crucial role in Mississippi in preventing counties, cities, and towns from switching to at-large voting. Section 5, however, does not reach at-large voting systems in effect before November 1964, and pre-existing at-large municipal voting systems which cancel out black voting strength presently pose one of the most difficult barriers to equal political participation by black people in Mississippi.

1. Switching to at-large elections: The role of § 5

Section 5 of the Voting Rights Act prevents Mississippi counties, cities, and towns from switching from district to at-large voting when the change has either a racially discriminatory purpose or effect. In its first legislative session following the passage of the Voting Rights Act, the Mississippi Legislature enacted several statutes requiring and allowing members of county boards of supervisors and county school boards—previously elected by district—to be elected at-large in countrywide voting.[33] When several counties switched to at-large voting for county supervisors,

---

[31] Individual and systematic, class-wide racial discrimination in state employment has been found by the courts in the following Mississippi cases: *Morrow* v. *Crisler*, 491 F.2d 1053 (5th Cir. en banc), *cert. denied*, 419 U.S. 895 (1973) (Department of Public Safety and Highway Patrol); *Wade* v. *Miss. Cooperative Extension Service*, 372 F. Supp. 1256 (N.D. Miss. 1974), *aff'd in relevant part*, 528 F.2d 508 (5th Cir. 1976); *Phillips* v. *Joint Legislative Committee on Performance Evaluation and Expenditure Review*, 637 F.2d 1014 (5th Cir. 1981 (three state agencies).

[32] E. Nolan Waller, "Net Migration for Mississippi's Counties, 1969-1970" (1975).

[33] See F. Parker, "County Redistricting in Mississippi: Case Studies in Racial Gerrymandering," 44 Miss. L. J. 391, 393-98 (1973); Washington Research Project, "The Shameful Blight: A Survival of Racial Discrimination in Voting in the South" (1972); United States Commission on Civil Rights, "Political Participation" 22-23 (1968).

private lawsuits were filed challenging these changes for lack of § 5 preclearance. The defendants in these cases maintained that changes in election procedures—as opposed to changes in voter registration procedures—were not covered by § 5. In 1969 the Supreme Court, noting the potential for dilution of black voting strength present in at-large county voting, held these enactments subject to § 5 preclearance:

"The right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot. See *Reynolds* v. *Sims*, 377 U.S. 533, 555 (1964). Voters who are members of a racial minority might well be in the majority in one district, but in a decided minority in the county as a whole. This type of change could therefore nullify their ability to elect the candidate of their choice just as would prohibiting some of them from voting." [34]

Enforcement of the statutes affecting supervisor elections was enjoined pending § 5 preclearance, and when finally submitted, the Attorney General lodged an objection to its implementation, finding that it and other statutes enacted at the same time "Had as their purpose and have had as their effect the denial and the abridgment of the right to vote on account of race or color." [35] Similar statutes were reenacted by the Mississippi Legislature in 1968 and 1971, only to be blocked again by § 5.[36]

Discriminatory efforts to switch from district to at-large county elections to nullify the black vote have been extensive. At least 13 counties have switched or attempted to switch to at-large voting for county supervisors,[37] and 22 counties have switched or attempted to switch to at-large elections for county school board members with the purpose or effect of diluting black voting strength.[38] Most of these counties had one or more majority black supervisors' districts (which also serve as election districts for school board members), but were majority white countywide. In other instances, the counties were majority black in population, but had white countywide voting majorities which precluded the election of black candidates on a countywide basis.

Despite the Supreme Court's decision noting the discriminatory potential of at-large voting in Mississippi counties, and despite court decisions and § 5 objections blocking at-large voting efforts, state and county officials have persisted in their efforts to implement discriminatory at-large county voting. In 1975 and 1977, the State submitted for § 5 review two state statutes [39]—first enacted in 1966—requiring at-large voting for school board members in 22 counties. The Attorney General objected to these changes in 17 counties and requested additional information concerning the others.[40]

If allowed to go into effect, these at-large voting changes would have had a disastrous impact on the opportunities of black voters to elect candidates of their choice. As a result of the operation of § 5, nineteen black school board members and four black supervisors have been elected on a district basis in counties in which switches to at-large voting would have precluded any black representation in county government.

Section 5 also prevents cities in Mississippi from switching to at-large elections after the effective date of the Act, November 1, 1964, for a racially discriminatory purpose or effect. The City of Canton switched from ward elections to citywide elections of members of its Board of Aldermen in 1969 and refused to submit the change for Federal review as required by § 5. The Supreme Court, in reversing the refusal of the Mississippi District Court to enjoin the change, held that the change could not go into effect without § 5 preclearance.[41] Subsequently, three Mississippi cities, Grenada, Kosciusko, and Lexington, attempted to switch from ward to at-large voting. When these changes were submitted to the Attorney General for approval, the Justice Department lodged § 5 objections to these changes because

---

[34] *Fairley* v. *Patterson decided sub nom. Allen* v. *State Board of Elections*, 393 U.S. 544, 569 (1969).

[35] Letter from Jerris Leonard, Asst. Attorney General, Civil Rights Div., U.S. Dep't of Justice, to A. F. Summer, Miss. Att'y Gen. May 21, 1969.

[36] F. Parker, *County Redistricting in Mississippi*, supra, at 396 n. 32.

[37] United States Commission on Civil Rights, "The Voting Rights Act; Ten Years After" 272 (1975).

[38] Section 5 objection letters from J. Stanley Pottinger, Asst. Att'y Gen., Civil Rights Div., U.S. Dep't of Justice, to John L. Hatcher, attorney for the Bolivar County Bd. of Election Comm'rs, April 8, 1975, W. H. Jolly, Sr., attorney for the Lowndes County Bd. of Education, June 23, 1975, and A. F. Summer, Miss. Att'y Gen., December 1, 1975; letter from Drew S. Days, Asst. Att'y Gen., Civil Rights Div., U.S. Dep't of Justice, to A. F. Summer, July 8, 1977.

[39] Miss. Code Ann. §§ 37-5-13, 37-5-15 (1972).

[40] Letters of Dec. 1, 1975 and July 8, 1977, supra.

[41] *Perkins* v. *Matthews*, 400 U.S. 379 (1971).

these cities failed to show that the changes would not have a racially discriminatory purpose or effect.[43]

In Grenada, for example, blacks were in the majority in certain wards, but whites had a 56.4 percent majority citywide. The change would have prevented blacks from obtaining any representation on the city council. As a result of this § 5 objection, two black city council members have been elected in Grenada in ward voting.

2. Preexisting at-large voting systems

The preclearance requirements of § 5, however, do not reach at-large municipal election schemes in effect before 1964, and these preexisting at-large systems have as great an impact on black political participation as recent changes from ward to at-large voting. Without any direct protection from § 5 of the Voting Rights Act, black voters denied municipal representation by preexisting at-large voting must go to Federal Court and attempt to prove on a case-by-case basis that at-large voting denies them rights secured by the Fourteenth and Fifteenth Amendments to the United States Constitution. Although several of the early lawsuits were successfully litigated or settled, the Supreme Court in April 1980 substantially decreased the likelihood of success of such cases in its *City of Mobile* v. *Bolden* decision.[43]

Of the 79 cities and towns in Mississippi with populations of 2,500 and over, half—39—elect the entire city council under at-large systems in effect before 1964. Of these 39 cities and towns with at-large election systems, 69 percent (27) have no black representation on their city councils. Of the 12 cities and towns which do have one or more black city council member elected at-large, seven are majority black in population. These at-large election systems deny 129,735 black people—40 percent of the total black population living in cities and towns over 2,500 in population—any opportunity to gain representation on the city councils which govern city affairs in their communities.

The discriminatory impact of at-large voting systems may be illustrated by the case of Jackson, the state's largest city and the state capital. Jackson has a commission form of government under which the mayor and two city commissioners all are elected citywide. Blacks compose 40 percent of the population of Jackson, and 26 voting precincts—located mostly in the central city—are majority black in registered voters. Since the at-large voting system was adopted in 1912, no black has won election to the city council in citywide voting. Thus, at-large voting has allowed the 60 percent of the population which is white consistently to gain 100 percent of the representation on the Jackson City Council.

FORM OF GOVERNMENT

Classification	Number of cities	Mayor-aldermen	Commission	Mayor-council	Council-manager	Method of election	
						At-large	Ward/district
Total, all cities	79	[1] 61	[2] 8	[3] 6	[4] 4	39	40
Population group:							
20,000 and over	13	1	7	3	2	8	5
10,000 to 19,999	11	10	0	0	1	1	10
5,000 to 9,999	20	18	0	1	1	6	14
2,500 to 4,999	35	32	1	2	0	24	11

[1] 77 percent. [2] 10 percent. [3] 8 percent [4] 5 percent.

Voluntary efforts to change to ward voting to provide some black representation in city government have failed. In 1977, a citywide referendum was held in Jackson seeking a change to a mayor-council form of government under which nine city council members would be elected from single-member districts or wards. If the referendum had passed, black voters would have had the opportunity to elect three or more black council members in ward voting. The referendum was defeated; 72.4 percent of the white voters voted to retain the existing system, and 97.9 percent of the black voters voted for the change.[44]

---

[43] Letter from David L. Norman, Asst. Att'y Gen., to W. H. Fedric, City Attorney, Grenada, Mar. 20, 1972; letter from J. Stanley Pottinger to John D. Guyton, City Attorney, Kosciusko, Sept. 20, 1976; letter from Drew S. Days III, to J. R. Gilfoy, City Attorney, Lexington, Feb. 25, 1977.

[43] 466 U.S. 55 (1980).

[44] Citywide referendums to change to ward voting also have been defeated by white voting majorities in Greenwood and Hattiesburg, which also have commission forms of government.

The retention of at-large elections clearly shows that attitudes have not significantly changed, and that there is still a prevailing desire, on the part of whites, to exclude blacks from representation in government. A poll taken of the white Jackson voters who voted to retain at-large voting under the commission form of government in the 1977 referendum showed that a majority—61 percent—of those who voted against the change did so for one or more racial reasons.[45] Different voters responded to different racial reasons:

	Percent
(a) Might cause racial tension	33
(b) Would encourage black participation in city government	36
(c) Might make it possible for blacks to serve as City Councilmen	40
(d) Might result in my being represented by a person of another race	33

3. Litigation.

Since 1965, twelve lawsuits have been filed challenging the constitutionality of Mississippi at-large voting systems. In *Stewart* v. *Waller,*[46] the most successful case to date, black voters challenged the constitutionality of a 1962 Mississippi statute which required all cities with a mayor-alderman form of government—the most popular form of government in Mississippi—to elect their aldermen on an at-large basis. Prior to 1962, cities over 10,000 in population were required to elect six aldermen by wards and one at-large, and cities under 10,000 had the option of at-large or ward voting. The author of the bill urged on the floor of the Mississippi Legislature that the law was needed "to maintain our southern way of life."[47]

A three-judge District Court in 1975, holding that the Act's provisions were "indicative of an intent to thwart the election of minority candidates to the office of altermen,"[48] declared the statute unconstitutional "as a purposeful device conceived and operated to further racial discrimination in the voting process."[49] The District Court, however, limited its injunction only to those cities and towns which switched to at-large voting pursuant to the 1962 statute, and refused to enjoin at-large election systems in effect before 1962, holding that the constitutionality of these systems would have to be "left for case-by-case examination."[50]

In the 1977 municipal elections following the District Court's judgment, 19 black aldermen were elected in ward voting to previously all-white boards of aldermen in cities and towns covered by the court's decree.

Individual lawsuits challenging all-at-large election systems have been filed against the cities of Aberdeen, Canton, Columbus, Greenwood, Greenville, Hattiesburg, Hazelhurst, Jackson, Picayune, West Point, and Yazoo City. Plaintiffs were successful in obtaining injunctions against at-large voting in the Canton and West Point cases, and Aberdeen, Columbus, Hazelhurst, Picayune, and Yazoo City settled the cases against them prior to trial and instituted ward voting systems. In each of the cities which have held city council elections since the ward voting systems went into effect, black candidats have been elected. The cities of Jackson, Hattiesburg, Greenwood, and Greenville, however, refuse to abolish their at-large voting systems, and those cases are still in litigation.

4. The Mobile decision

Efforts in Mississippi to challenge at-large voting systems in effect before 1964 through litigation received a severe, perhaps fatal, setback when in April 1980, the United States Supreme Court handed down its decision in *City of Mobile* v. *Bolden.*[51] Before the *Mobile* decision, black voters were able to overturn at-large voting systems by proving that factors such as a history of voting discrimination, a majority vote requirement to win election, exclusion of minority representation in at-large voting, and unresponsiveness of the elected officials to minority needs denied black people equal access to the political process in at-large voting.[52] In the *Mobile* decision, a heavily divided Supreme Court held that discriminatory impact alone was not sufficient to render at-large municipal voting schemes unconstitutional, and

---

[45] Multi Quest International, Inc., "Attitudes of Jacksonians Toward the Form of City Government" (1980). A number of voters also offered unsolicated racial comments, such as "I don't want a 'Nigra' representing me." and "Blacks are human, but whites are more efficient."

[46] 404 F. Supp. 206 (N.D. Miss. 1975) (three-judge court).

[47] 404 F. Supp. at 213.

[48] 404 F. Supp. at 214.

[49] 404 F. Supp. at 215.

[50] 404 F. Supp. at 128.

[51] 446 U.S. 55 (1980).

[52] *White* v. *Regester,* 412 U.S. 755 (1973) (at-large legislative districts, Texas Legislature); *Zimmer* v. *McKeithen,* 485 F.2d 1297 (5th Cir. 1973) *(en banc), aff'd on other grounds sub nom. East Carroll Parish School Bd.* v. *Marshall,* 424 U.S. 636 (1976) (Louisiana parish at-large voting).

that it was not sufficient merely to prove that black voters were prevented from electing candidates of their choice. "A plaintiff must prove that the disputed plan was 'conceived or operated as [a] purposeful device to further racial discrimination.'" the majority ruled.[53] In addition, the majority of the Court refused on the facts of that case to infer discriminatory intent from the circumstances of the adoption and maintenance of at-large voting in Mobile, rejecting reasonable inferences showing a discriminatory purpose which had been accepted by the Court in other cases, particularly the Northern school desegregation cases.[54]

Plaintiffs in lawsuits challenging at-large voting will rarely be able to adduce direct evidence that the system has been adopted or maintained for a specific racial purpose. As Eddie N. Williams, President of the Joint Center for Political Studies in Washington has noted:

"The requirement to prove discriminatory intent is extremely difficult (some say impossible) to meet. Local governments can hardly be expected to articulate unambiguously any intent they may have to dilute black votes. Moreover, it is not clear at this time what kind of evidence the courts will accept as proof of intent to discriminate. Consequently, black and other minorities face the prospect of continued exclusion from thousands of local governmental bodies which are elected at-large."[55]

The Supreme Court's *Mobile* decision has already had its impact upon Mississippi at-large voting challenges. In *Kirksey* v. *City of Jackson*[56] the District Court on January 23, 1981, ruled against the plaintiffs' challenge to at-large municipal elections in Jackson. Plaintiffs presented evidence that blacks had been denied any representation in city government since at-large voting was adopted in 1912, that in the early 1900's at-large voting was viewed in Mississippi as another device to prevent black political praticipation,[57] that in the 1977 referendum whites voted overwhelmingly against the change to ward voting, and that the change to ward voting was opposed by the White Citizens Council and others for racial reasons. Nevertheless, the District Court found that "race was not a motivating factor in the enactment of the legislation permitting the referendum of 1912 or the adoption of the commission form of government with at-large voting by the electorate of Jackson in 1912," and that "the plaintiffs have failed to prove any intentional and purposeful racial motivation for the retention or maintenance of Jackson's form of government. . . ."[58]

5. Consequences to the black community

As a consequence of at-large voting, black citizens feel disenfranchised and denied an effective voice in the operation of city government. As State Rep. Fred L. Banks, Jr., President of the Jackson Branch of the NAACP, testified in the Jackson trial:

"I mean that a black cannot vote for a person who is responsible to the black community solely or mostly who can articulate the needs of the black community. A black vote is no more than about 25 percent [of the total number of registered voters]. We have an at-large form of government. There are only three people who are elected in the City of Jackson. All three of these people have to run city-wide. Being in such a minority blacks cannot elect a black or elect anyone who would be solely responsible to them as his constituency."[59]

The result is a form of racial segregation in which blacks are excluded from the democratic processes. Blacks believe that they are forced to remain on the outside looking in. Henry J. Kirksey, who in 1979 was elected State Senator from Jackson, testified:

"First of all, there is a separation of races in the City of Jackson, a very definite clear-cut separation. There is no conventional, social relationship between the races. There is, for example, still opposition to blacks going to white churches, so that we

---

[53] 446 U.S. at 66 (plurality opinion).

[54] See Note "The Supreme Court, 1979 Term," 94 Harv. L. Rev. 75, 147 (1980).

[55] E. Williams, "Supreme Court Halts District Elections." *Focus*, p. 4 (May 1980).

[56] 461 F. Supp. 1252 (S.D. Miss. 1978), *vac'd and remanded for reconsideration in light of Mobile* v. *Bolden*, 625 F.2d 21 (5th Cir. 1980).

[57] For example, State Sen. J. L. Hebron, who was President *Pro Tem.* of the Mississippi Senate in 1908, and who supported and voted for the legislation allowing Mississippi cities to switch to the commission form of government with at-large voting, argued in opposition to a proposed change to ward voting in his hometown of Greenville:

"I opposed the bringing of the negro back into politics which going under the Code and allowing the wards to select their Aldermen, will surely do." Greenville *Times*, Nov. 24, 1906, p. 1.

[58] *Kirksey* v. *City of Jackson*, Civil No. J77-0075(N), S.D. Miss., Post-Remand Supplemental Memorandum Opinion, filed Jan. 23, 1981, pp. 19, 23.

[59] Trial Trascript, *Kirksey* v. *City of Jackson*, Civil No. J77-0075(N), S.D. Miss., Vol I, p. 60 (July 6, 1978).

are separated throughout the—the relationship is one of racial separation. That means that in terms of your question about having a white government, we cannot relate to them as our peers. They are not, in fact, our peers. They are from a completely separate environment. I object because things happen in city government about which the black community has little information, very little information. . ."[60]

Data and statistics developed in lawsuits challenging at-large municipal voting and racial discrimination in the provision of municipal services in Mississippi show that the exclusion of black representation in city government through at-large voting also results in discrimination against black citizens in the operation of city government and in the provision of municpal services. Evidence gathered in these cases involving cities with at-large elections shows discrimination against blacks in appointments to municipal boards and commissions, city employment, street paving and maintenance, street lighting, sewer service, water service, fire protection, police protection, parks and recreation facilities, education and city planning. (See Appendix A, Discrimination Against Black Citizens in the Provision of Municipal Services in Cities with At-Large Elections.)

FIVE: RACIAL GERRYMANDERING OF DISTRICT LINES

In 1977, the United States Supreme Court strongly condemned the apparent racial gerrymandering of state legislative districts in a plan ordered into effect by the District Court in the state legislative reapportionment case.[61] The Court noted unexplained departures from neutral guidelines "which have the apparent effect of scattering Negro voting concentrations among a number of white majority districts," including the "adoption of irregularly shaped districts when alternative plans exhibiting contiguity, compactness, and lower or acceptable population variances were at hand." As examples, the Court noted:

(1) The senatorial districts for Hinds County which corresponded to "five oddly shaped beats [supervisors' districts] that extend from the far corners of the county in long corridors that fragment the City of Jackson, where much of the Negro population is concentrated," and

(2) Splitting up two contiguous, majority black counties—Jefferson and Claiborne Counties—and unnecessarily combining them with majority white counties or parts of counties to make up two separate senatorial districts, one with a white majority and another with only a slight Negro voting-age majority. These configurations, the Supreme Court held, support:

"A charge that the departures are explicable only in terms of a purpose to minimize the voting strength of a minority group. The District Court could have avoided this charge by more carefully abiding by its stated intent of adopting reasonably contiguous and compact districts, and by fully explaining any departures from that goal."

"Impermissible racial dilution"[62] through gerrymandering of election district lines continues to deny the voting rights of black voters in Mississippi at the state, county, and local levels. Althugh the right to cast a ballot remains intact, voting becomes a futile exercise when the voting strength of minorities is fragmented and cancelled out by sophisticated gerrymandering techniques which frustrate the purpose of the Voting Rights Act.

1. *County Redistricting.*—In Mississippi, each county is divided into five supervisors' districts, which serve as election districts for the election of members of the county board of supervisors (the county governing board), constables, justice court judges (justices of the peace), county school board members, and, recently, members of the county board of election commissioners. Racial gerrymandering of county supervisors' districts to dilute black voting strength, primarily through splitting up black concentrations, has been[63] and continues to be widely used to deny black voters in Mississippi representation of their choice in county government. Since the Voting Rights Act was enacted, eight major lawsuits have been filed challenging racial gerrymandering of supervisor's district lines,[64] and the Attorney General has

[60] Transcript of Hearing on Motion for Preliminary Injunction, *Kirksey* v. *City of Jackson*, supra, p. 39 (March 31, 1977).

[61] *Connor* v. *Finch*, 431 U.S., 404, 421-26 (1977).

[62] Id. at 422.

[63] *F. Parker, County Redistricting in Mississippi: Case Studies in Racial Gerrymandering*, 44 Miss. L. J. 391 (1973).

[64] *Howard* v. *Adams County Bd. of Supervisors* 452 F. 2d (5th Cir. 1971), *cert. denied*, 407 U.S. 925 (1972), 480 F. 2d 978 (5th Cir. 1973, *cert. denied*, 415 U.S. 975 (1974; *Henry* v. *Coahoma County Bd. of Election Comm'rs*, Civil No. DC-71-50-S (N.D. Miss., filed June 11, 1971; *United States* v. *Bd. of Supervisors of Forrest County*, 571 F. 2d 951 (5th Cir. 1978); *Grenada County Chapter, NAACP* v. *Grenada County Bd. of Supervisors*, Civil No. WC 75-42-K (N.D. Miss. filed

lodged 14 § 5 objections against county redistricting plans in ten counties for racial gerrymandering.[65]

WARREN COUNTY

The critical role currently played by § 5 is shown by the Warren County (Vicksburg) redistricting case. From 1970 to 1979, the all-white Warren County Board of Supervisors prevented the election of black county officials in this 41% black county by redistricting plans which fragmented the black population concentration in Vicksburg among several districts. This effort would have succeeded, but for three § 5 objections by the Attorney General, a Justice Department lawsuit to enforce those objections when they were ignored by county officials, and the refusal of the United States District Court in Washington in a § 5 preclearance proceeding brought by the Board to approve any further gerrymandering efforts.

Prior to Warren County's first redistricting effort in 1970, the county had three majority black supervisors' districts, all located within Vicksburg. In 1970 the Board of Supervisors devised an "apple pie" county redistricting plan which split these three Vicksburg districts up among all five new districts, eliminating one of the three majority black districts and substantially reducing the black percentages in the other two to the point that no black candidate could win in either of them. When the plan was submitted to the Justice Department for § 5 review, the Attorney General objected to the plan because discrepancies in the population information submitted by the Board and 1970 Census data made it impossible for the Department to determine whether the plan would have a racially discriminatory effect, and when additional information was submitted, the Attorney General objected again.[66]

Despite these § 5 objections, county officials defied the Attorney General's objections and conducted the 1971 county elections under the objected-to plan. Whites were elected to all five seats, and two black candidates were defeated. Two years later, the Board submitted additional population data on its new districts, and the Attorney General entered a third § 5 objection to the plan, this time for the reason that the plan fragmented areas of black population concentration, thereby minimizing the number of black voters in each district and diluting black voting strength.[67] When county officials refused to set aside the results of the unlawful 1971 district elections, the Department of Justice filed suit and further use of the 1971 plan was enjoined.[68]

In 1978 the Board of Supervisors devised a new county redistricting plan, and instead of submitting it to the Justice Department, filed a lawsuit in the District Court for the District of Columbia seeking a declaratory judgment pursuant to § 5 that the plan was not racially discriminatory in purpose or effect.[69] Again, all five districts converged from the rural county area into Vicksburg, this time splitting up the black population concentration in Vicksburg—which contained 68 percent of the total black population of the county—among four of the five districts. The shapes of the proposed districts were bizarre. Proposed District 4, which started at the extreme southwest portion of the county and terminated in northeast Vicksburg, closely resembled the prehistoric dinosaur, Tyrannosaurus rex.

The District Court refused to approve the new plan, holding that the Board had failed to meet its burden under § 5 of proving that the new plan was not racially

---

May 5, 1975); *Kirksey* v. *Bd. of Supervisors of Hinds County*, 402 F. Supp. 658 (S.D. Miss. 1975), *aff'd*, 528 F. Ed 536 (5th Cir. 1976), *rev'd on rehearing en banc*, 554 F. 2d 1139 (5th Cir.), *cert. denied*, 434 U.S. 968 (1977); *Hall* v. *Issaquena County Bd. of Supervisors*, 453 F. 2d 455 (5th Cir. 1971), *cert. denied*, 407 U.S. 925 (1972); *Moore* v. *Leflore County Bd. of Election Comm'rs*, 361 F. Supp. 603, 609, *aff'd*, 502 F. 2d 621 (5th Cir. 1974); *Donnell* v. *United States*, Civil No. 78-392, D.D.C., decided July 31, 1979, *aff'd 62 L. Ed. 2d 743 (1980)*.

[65] Attala County, Copiah County, Grenada County (two objections), Hinds County, Leake County, Marion County, Tate County (two objections), Walthall County, Warren County (three objections), and Yazoo County.

[66] Letter from Jerris Leonard, Asst. Att'y General, to Landman Teller, attorney for the Warren County Bd. of Supervisors, April 4, 1971; letter from David Norman, Asst. Att'y General, to Teller, Aug. 23, 1971.

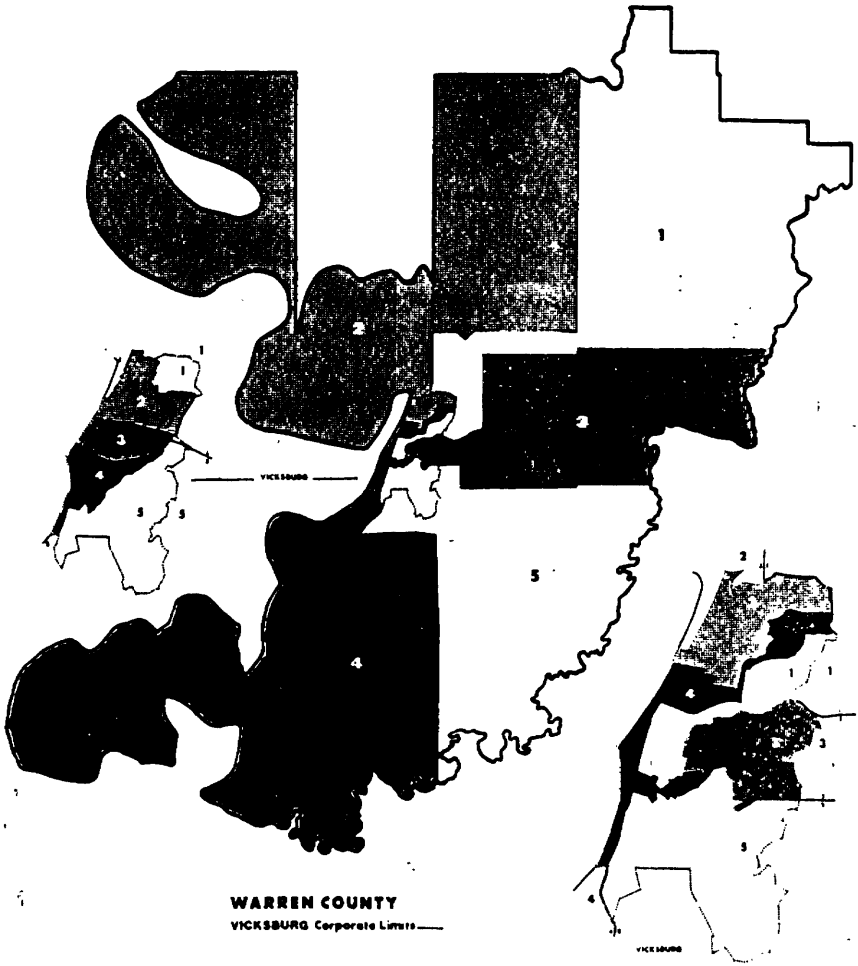
[67] Letter from J. Stanley Pottinger, Asst Att'y General, to John W. Prewitt, attorney for the Warren County Bd. of Supervisors, Feb. 13, 1973.

[68] *United States* v. *Bd. of Supervisors of Warren County*, Civil No. 73W-48(N) (S.D. Miss., Orders of June 19, 1975, and May 13, 1976). The District Court also enjoined the 1975 district elections, and subsequently ordered into effect a new plan proposed by the Board. The Supreme Court reversed, holding that the three-judge District Court convened to enforce the § 5 objection exceeded its jurisdiction. *United States* v. *Bd. of Supervisors of Warren County*, 429 U.S. 642 (1977). The 1975 district elections initially enjoined by the District Court, however, were never held, and the all-white Board elected in 1971 remained in office until 1980.

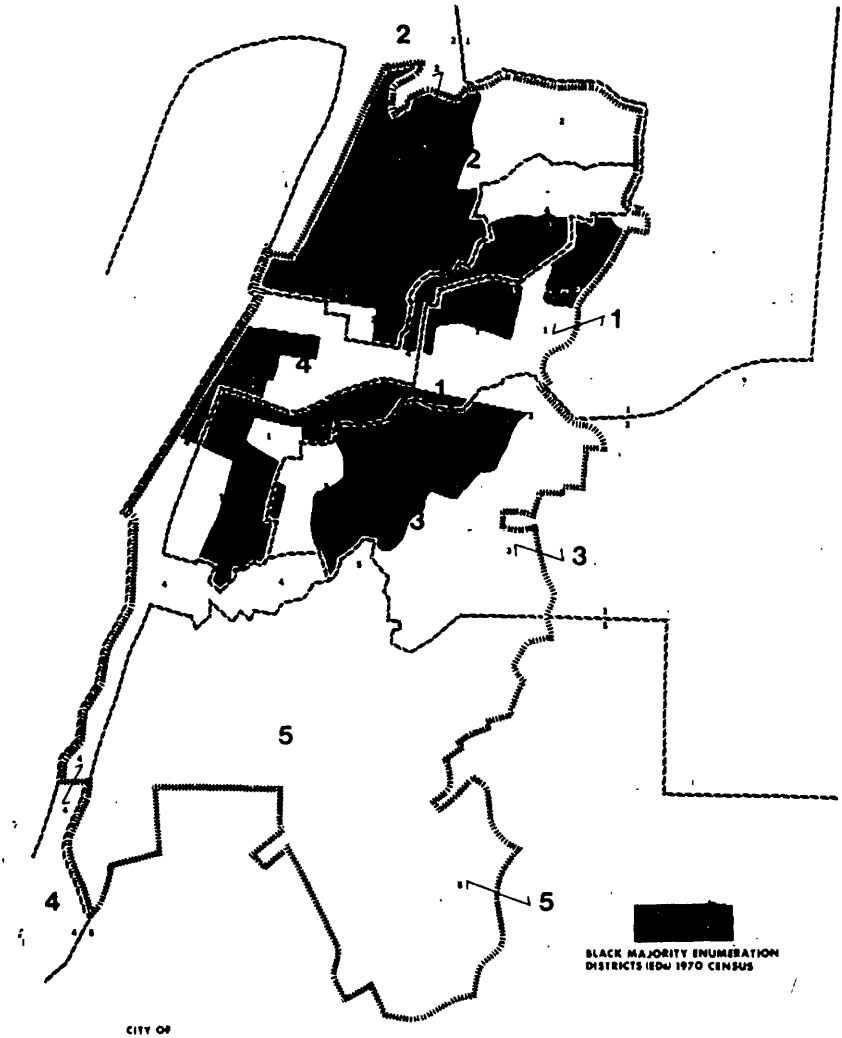
[69] *Donnell* v. *United States*, Civil No. 78-0392 (D.D.C., filed March 6, 1978).

discriminatory in purpose or effect, and the Supreme Court affirmed.[70] The District Court found not only that the proposed districts carved up black neighborhoods (at one point a one block black area was split up among three districts) and were irregular in shape and noncontiguous, but also that the Board members were aware of these features.[71]

[70] *Donnell* v. *United States*, supra, Order of July 31, 1979, aff'd mem., 62 L. Ed. 2d 743 (1980).
[71] Findings 22-25, Findings of Fact, p. 5.



Map showing the boundaries of the former districts within Vicksburg (left), the shape of the new proposed districts countywide (middle), and the shape of the new districts within Vicksburg (right)



Under the proposed plan, the black population concentration within Vicksburg (shaded) was split up among four districts.

The Board argued that the plan should be approved because two of the districts were 58 and 57.2 percent black in voting age population. The District Court found, however, that the past history of voting discrimination in Warren County and resulting low black voter registration and turnout, combined with racial bloc voting by whites, made it necessary for a supervisors' district to be at least 65 percent black in population or 60 percent black in voting age population for black voters to have an opportunity to elect candidates of their choice. Under the Board's plan, the District Court held, "no district has a voting age population greater than 58 percent black and thus, under the proposed plan, it is unlikely that black citizens will be able to elect a candidate of their choice in any of the districts." [72]

Following the D.C. District Court's rejection of the Board's plan, the District Court for the Southern District of Mississippi in a separate lawsuit ordered into effect a county redistricting plan which avoided unnecessary fragmentation of black voting strength in Vicksburg.[73] This court-ordered plan provided for one district entirely within Vicksburg, and created two majority black districts which were 64.55 and 62.74 percent black in voting age population. In the 1979 county elections, one black county supervisor, one black justice of the peace, and two black constables were elected, the first black elected officials in Warren County since Reconstruction.

HINDS COUNTY

As in Warren County, the all-white Hinds County Board of Supervisors was able to exclude black representation in county government from 1965 to 1979 in a county which is 39 percent black by gerrymandering the black population concentration in Jackson and preventing black voters from gaining a decisive majority of the voting age population in any of the five supervisors' districts.

The black population of Hinds County is most heavily concentrated in 48 contiguous, majority black Census enumeration districts (ED's) in central and west Jackson, where 69 percent of the total black population of Hinds County resides. Prior to redistricting, two of the districts were 76.26 percent 67.92 percent black. In 1969, after the first black candidates attempted to run for county office, the Board devised a new county redistricting plan. The new plan created five oddly shaped districts which spanned the county in long, narrow corridors which extended into the City of Jackson and split the black area up among the five districts, all of which were majority white. The new plan was ordered into effect by the Federal District Court in a private lawsuit filed by a white plaintiff, without any trial or notice to the black community that the new plan had been implemented.[74]

In 1971 the plan was submitted to the Department of Justice for § 5 review, and the Department entered an objection finding that:

"The district boundary lines are located within the City of Jackson in a manner that suggests a dilution of black voting strength will result from combining a number of black persons with a larger number of white persons in each of the five districts." [75]

Despite this objection, county officials put the plan into effect for the 1971 county elections.[76]

In 1971, six black Hinds County voters filed a class action alleging that the county redistricting plan unconstitutionally diluted black voting strength, failed to comply with one-person, one-man vote guarantees, and violated their rights secured by § 5.[77] The District Court refused to enjoin use of the plan for the 1971 county elections, and all the black candidates for county office that year were defeated. In 1972 the District Court held the plan unconstitutional for excessive malapportionment, and ordered the county to devise a new plan. The Board then prepared a revision of the 1969 plan, and over plantiffs' objections this plan was ordered into effect by the District Court in 1975.[78] Like the 1969 plan, each of the five districts of the 1975 plan stretched across the county and sliced up the black population concentration in central Jackson. District 4 closely resembled a baby elephant, and District 3 looked like a turkey. Although two districts had slight black population majorities (54.0 and 53.4 percent black), all five districts were majority white in voting age population. Again, in the 1975 county elections all the black candidates for county office

---

[72] Finding 38, Findings of Fact, p. 8.

[73] *Stokes* v. *Warren County Election Comm'n*, Civil No. J79-0425(C), S.D. Miss., Sept. 20, 1979.

[74] *Smith* v. *McGee*, Civil No. 4483 (S.D. Miss., Order of Dec. 19, 1969).

[75] Letter from David L. Norman, Acting Asst. Att'y Gen., to Thomas Watkins, attorney for the Hinds County Board of Supervisors, July 14, 1971.

[76] A Justice Department lawsuit to enforce this objection, *United States* v. *Board of Supervisors of Hinds County*, Civil No. 4983 (S.D. Miss., filed Sept. 17, 1971), was dismissed when the 1969 plan was declared unconstitutional for excessive malapportionment.

[77] *Kirksey* v. *Bd. of Supervisors of Hinds County*, Civil No. 4939 (S.D. Miss., filed July 27, 1971).

[78] 402 F. Supp. 658 (S.D. Miss. 1975).

lost. On appeal, the decision of the District Court was affirmed by a panel of the Court of Appeals for the Fifth Circuit,[79] but on rehearing *en banc* the Fifth Circuit in 1977 held the plan unconstitutional for perpetuating a purposeful denial to black people in Hinds County of equal access to the political process:

"By fragmenting a geographically concentrated but substantial black minority in a community where bloc voting has been a way of political life the plan will cancel or minimize the voting strength of the black minority and will tend to submerge the interests of the black community." [80]

Following the mandate of the Fifth Circuit to fashion a remedy the District Court then ordered the board to submit another plan which equalized population among the districts and which did not minimize or cancel out black voting strength. The new plan revised the district lines within Jackson to avoid the fragmentation and dilution of black voting strength contained in the 1975 plan, and resulted in two majority black districts which were 66.6 and 55.9 percent black in voting age population.[81]

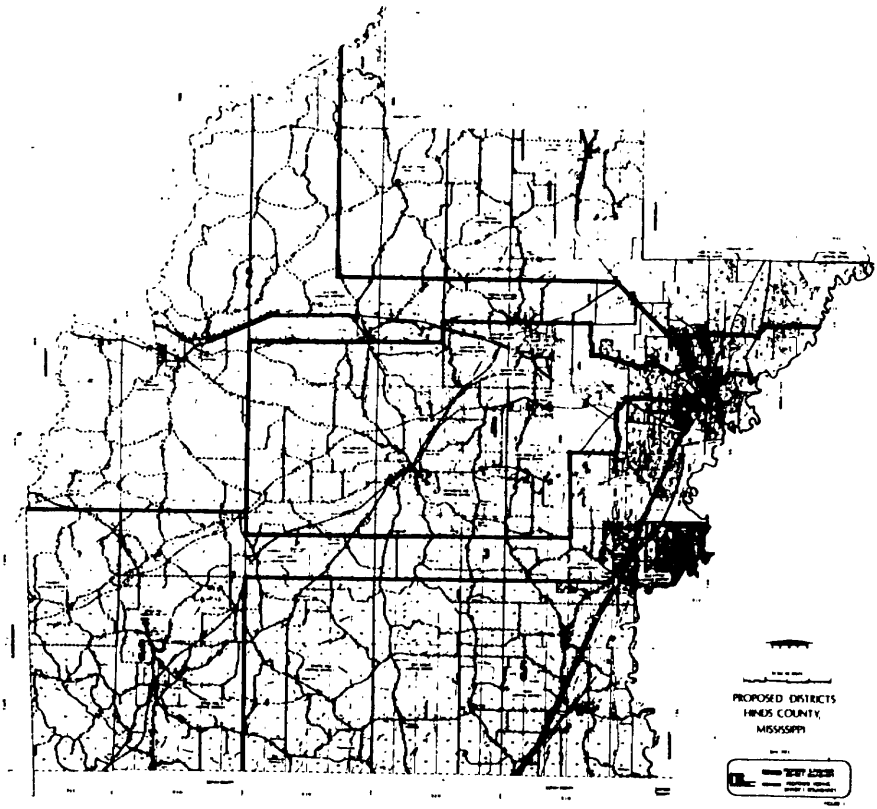
In the 1979 county elections, two black county supervisors, two black justice court judges, and two black constables were elected in the two majority black districts, the first since Reconstruction.

---

[79] 528 F.2d 536 (5th Cir. 1976).

[80] 554 F.2d 139, 151 (5th Cir. 1977) (*en banc*), *cert. denied*, 434 U.S. 968 (1977).

[81] When the District Court ordered the 1979 plan into effect, plaintiffs appealed again to the Fifth Circuit contending that the black population and voting age population of the second majority black district was too low to enable black voters to elect candidates of their choice. When three black candidates won in this district in the 1979 elections, the appeal was dismissed. 608 F.2d 669 (5th Cir. 1979).


PROPOSED DISTRICTS
HINDS COUNTY,
MISSISSIPPI

GRENADA COUNTY

In Grenada County, which is 44 percent black, half of the black population of the county is concentrated in the City of Grenada, mostly in the western part of town. The all-white Board of Supervisors devised a new county redistricting plan which split up this heavy black concentration among four of the five districts. When the plan was submitted for § 5 preclearance, the Attorney General objected.

After a careful examination of the information you have furnished and a review of all the facts available, I find that portions of the boundary lines for districts 2, 3, 4, and 5 of the reapportionment plan are drawn in a manner which unnecessarily fragments two cognizable black neighborhoods in the City of Grenada, thus diluting or minimizing the voting strength of blacks. Our analysis also shows that this effect could be substantially corrected by modifying only a few sections of the boundary lines.[82]

Grenada County persisted, however, in its efforts to get the plan approved. County officials requested reconsideration of the Attorney General's ruling in February, 1974, and again in January 1975, but the Attorney General declined to withdraw his objection.[83] Despite the section 5 objection, and despite the Attorney General's repeated refusals to withdraw the objection, county officials proceeded to implement the plan and use it for the 1975 county elections until they were stopped by the District Court just prior to the elections.[84]

In 1976 the Board of Supervisors submitted a revised plan devised and ordered submitted in the county redistricting litigation. Again, the Attorney General determined that the revised plan unnecessarily fragmented the black sections of the City of Grenada among four districts with "the clear effect of dividing significant portions of the black community" and diluting black voting strength.[85] Subsequently, a compromise plan was developed by the parties to the redistricting litigation and approved by the Attorney General under section 5.

FORREST COUNTY

Although Forrest County, named for Nathan Beford Forrest, the Confederate general who founded the Ku Klux Klan, is only 24 percent black (1970 Census), the black population is sufficiently concentrated that a majority black supervisors' district could be created. However, the Board of Supervisors to date has been successful in preventing the formation of a majority black district and in minimizing the opportunities of black voters to elect candidates of their choice.

Eighty-eight percent of the black population of Forrest County is concentrated in four clusters within a 24-square-mile area, three in eastern Hattiesburg, the county seat, and a fourth two miles south of Hattiesburg in a community called Palmer's Crossing. Prior to redistricting in 1973, three of the four black population clusters were in District 3, which was 49 percent black. Following the passage of the Voting Rights Act, the all-white Board of Supervisors switched to at-large elections pursuant to a 1966 state statute, and the 1967 county supervisor elections were held at-large. In 1967 black voters challenged the switch to at-large voting, and the Supreme Court ruled that the 1966 enabling statute could not be implemented without section 5 preclearance.[86] In 1969 when the statute was submitted pursuant to section 5 the Attorney General interposed an objection based on the failure of the state to prove that the statute was not racially discriminatory in purpose and effect.[87]

In 1975 a white voter intervened in this litigation challenging malapportionment of the existing supervisors' districts, and over the objections of the black palintiffs, the District Court in 1973 ordered into effect a redistricting plan proposed by the Board of Supervisors which divided the four black population clusters among four of the five districts. The prior plan, in effect since 1907, had divided Hattiesburg between only two districts, but the 1973 plan divided Hattiesburg up among all five districts, which utilized north-south corridors to connect black population clusters in and near Hattiesburg with white population concentrations in the rural portions of the county. District 5 connected portions of East Hattiesburg with the southernmost

---

[82] Letter from J. Stanley Pottinger, Asst. Att'y Gen., to William O. Semmes, attorney for the Grenada County Board of Supervisors, Aug. 9, 1973.

[83] Letters from Pottinger to Semmes, Apr. 2, 1974, and Feb. 20, 1975.

[84] *Grenada County NAACP, et al. and United States* v. *Grenada County Board of Supervisors, et al.*, Civil Nos. WC 75-42-K, 75-44-K (N.D. Miss).

[85] Letter from Pottinger to Semmes, Mar. 30, 1976.

[86] *Fairley* v. *Patterson, decided sub nom. Allen v. State Bd. of Elections*, 393 U.S. 544, 563-71, 572 (1969).

[87] Letter from Jerris Leonard, Asst. Att'y Gen., to Mississippi Attorney General A.F. Summer, May 21, 1969.

part of the country by a corridor which was 19 miles long and one mile wide. The district with the largest percentage of the black population, District 4, was only 43.9 percent black.

In 1975 the Justice Department filed a separate lawsuit alleging that the 1973 plan was unlawful because it had not been cleared pursuant to section 5 and because it diluted black voting strength.[88] The District Court upheld the plan, but on appeal the Fifth Circuit held that sufficient evidence of vote dilution had been presented, and vacated and remanded the case back to the District Court for further findings.[89] The Fifth Circuit panel, however, questioned whether black access to the political process would be more enhanced by creating a majority black district or by creating two or more districts with substantial black voter populations "such that all candidates in those districts must be responsive to the needs and aspirations of the black electorate."[90]

On remand, the Justice Department submitted a proposed redistricting plan to the District Court which avoided unnecessary dilution of black voting strength and provided one majority black district which was 66.1 percent black. The Board of Supervisors submitted a revision of its 1973 plan which increased the black population in District 4 to 48.8 black in population and 43.6 percent black in voting-age population, and the District Court ordered the Board's proposed plan into effect as a court-ordered plan.[91]

In the 1979 county elections, a black woman attorney was elected justice court judge in District 4, but the Board of Supervisors remains all-white.

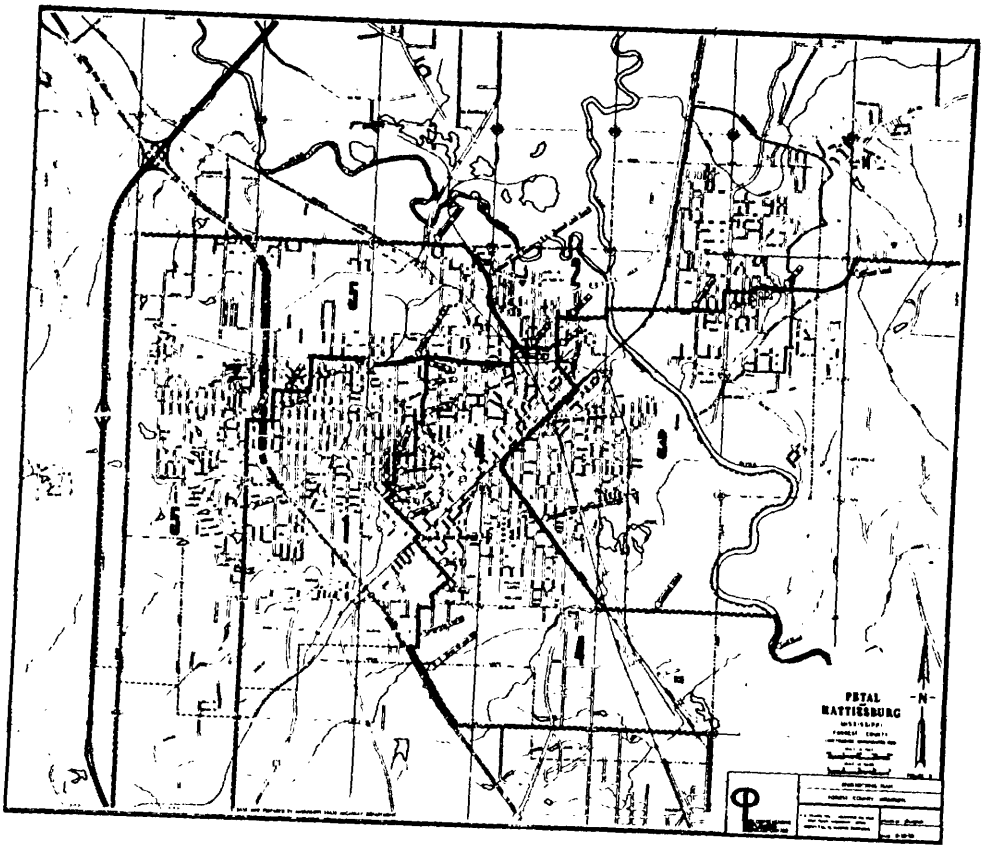
---

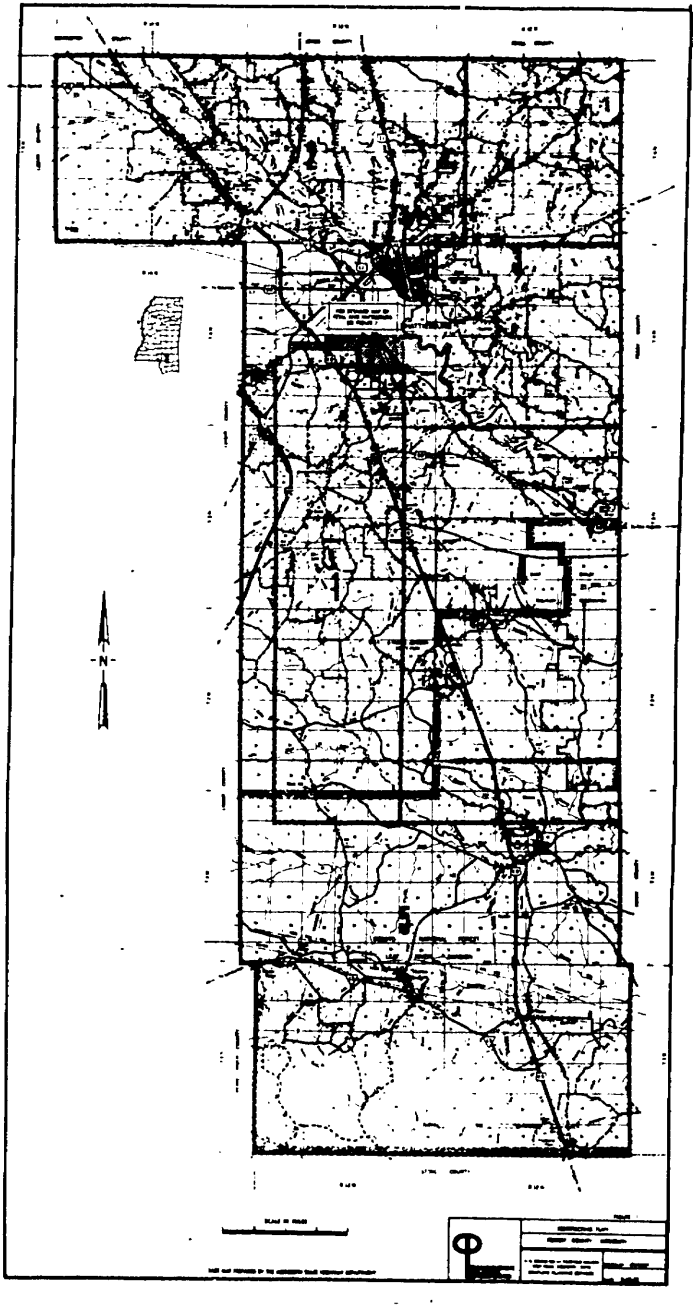
[88] *United States* v. *Board of Supervisors of Forrest County,* Civil No. H75-71(C) (S.D. Miss., filed July 21, 1975). On appeal the section 5 claim was dropped under existing precedent holding that court-ordered redistricting plans are not subject to section 5 preclearance, see *East Carrol Parish School Bd.* v. *Marshall,* 424 U.S. 636 (1976).

[89] *United States* v. *Board of Supervisors of Forrest County,* 571 F.2d 951 (5th Cir. 1978).

[90] 571 F.2d at 956.

[91] *United States* v. *Board of Supervisors of Forrest County,* supra, judgment of July 6, 1979.


5
2
3
4
5
1
4
PETAL
HATTIESBURG
N


N

YAZOO COUNTY

In Yazoo County, the section 5 preclearance requirement forced the county to abandon its repeated efforts to split up the black population concentration in Yazoo City among all five districts, and requested in the development of a new plan under which black candidates could get elected to county government.

Black people in Yazoo County are most heavily concentrated in seven majority black Census enumeration districts (ED's) in central and south Yazoo City, the county seat. Yazoo City itself is 60 percent black, and prior to redistricting in 1970 was located entirely within one district. In 1971 the Board of Supervisors devised a new plan, purporting to equalize population disparities among the districts, which combined rural and urban areas in each district and which fragmented the black population concentration in Yazoo City among all five districts.[92] In 1971 the Attorney General objected to the plan, noting that the districts were not equal in population, that black residential areas in Yazoo City were unnecessarily divided into each of the five districts, and that the proposed district lines did not seem to be related to equalizing population or achieving compactness or regularity of shape.[93]

In 1974 the Board made revisions based on the 1971 plan, but the Justice Department indicated that the revised plan retained the objectionable features of the objected-to plan. The Department found that:

"Given the number and location of black persons in the City of Yazoo, alternative district lines, drawn solely to achieve compact, regularly shaped districts within the city, would naturally result in two of the county's five supervisors' districts having black populations in excess of 64 percent." [94]

The Department then made suggestions for revising the plan which would cure its objectionable features. Subsequently, the Board developed a new plan which still split Yazoo City up among all five districts, but which avoided the fragmentation of black voting strength of the prior plan by putting the bulk of the black population in Districts 3 and 5. Under the new plan, District 3 was 61 percent black and District 5 was 69 percent black. The Justice Department approved the new plan in 1979 and in the 1979 county elections, a black county supervisor, the county's first since Reconstruction, was elected from District 5.

2. City redistricting

In two significant instances since 1975, the Attorney General has objected to city redistricting plans in Canton and Batesville, In both instances, the section 5 objections were based upon findings that wards containing black population concentrations were malapportioned, resulting in unlawful dilution of black voting strength. Malapportionment devalues the votes of persons living in overpopulated districts, and enhances the value of the votes of persons living in underpopulated districts.[95] Thus, districts which are larger in population than the ideal-sized district are "underrepresented," and districts which are smaller in population than the ideal are "overrepresented." A districting plan is racially discriminatory when majority black districts are underrepresented and majority white districts are overrepresented.

In 1977 the Attroney General objected to a redistricting plan for Canton, a city involved in two lawsuits which prevented a switch to at-large voting.[96] The city submitted a redistricting plan based upon its own population census which significantly understated the black population and overstated the white population.[97] As a result, the Attorney General determined that the plan unnecessarily packed black population concentrations into two majority black wards which—because of malapportionment—were underrepresented in ward voting?

"Thus, even though we have received information that the City's house count itself may not be accurate, if the 3 and 4 person factors are applied to the white and

---

[92] See F. Parker, *County Redistricting in Mississippi*, supra, pp. 404, 419.

[93] Letter from David L. Norman, Asst. Att'y Gen., to Griffin Norquist, attorney for the Yazoo County Board of Supervisors, July 19, 1971.

[94] Letter from Gerald W. Jones, Chief, Voting Section, Civil Rights Division, U.S. Dept. of Justice, to Griffin Norquist, Jan. 20, 1975.

[95] See *Reynolds* v. *Sims*, 377 U.S. 533 (1964).

[96] *Perkins* v. *Matthews*, 400 U.S. 379 (1971); *Stewart* v. *Waller*, 404 F. Supp. 206 (N.D. Miss. 1975).

[97] The city's population census was based upon counting houses and multiplying the number of houses by the citywide average number of persons per house (3.5) as shown by the 1970 Census. This estimation process failed to take into account the fact that there were statistical differences in the number of person per household for whites and blacks. The average white household consisted of approximately 3 persons, and the average black household contained approximately 4 persons. The city's method of calculation overstated the number of whites in each ward, and understated the number of blacks.

black house count data, respectively which the city has provided, the City is 59.6 percent black, Wards 5 and 6 [two majority black wards] are significantly overpopulated, and the majority white wards are all underpopulated. The result of this is that blacks are, in general, underrepresented and whites are overrepresented." [98]

In 1980 a similar objection was lodged in a Batesville redistricting plan based on a special house-count census survey conducted by the city. The Attorney General determined that one ward had only a slight black population majority (51.4 percent), and that blacks were overly concentrated in this ward—resulting in underrepresentation—while whites were overrepresented in more sparsely populated majority white wards.[99] The Attorney General also determined that the district configuration unnecessarily deprived black citizens, who constituted 25 percent of the city's population, of any opportunity to elect aldermen of their choice:

"Our analysis further reveals that voting in the county and the various school district elections appears to follow racial lines. Thus, blacks under this plan would appear to have no effective opportunity to elect an alderman of their choice. On the other hand, we find that a reasonable and fairly drawn alternative plan which eliminated the malapportionment extant in the submitted plan likely would contain a district with a significantly larger black majority than does the proposed Ward No. 2. In fact, we understand that such an alternative was available to and considered by the city prior to its adoption of the plan now under submission. In our view, the adoption of a plan that would maintain black voting strength at a minimum level, where alternative options would provide a fairer chance for minority representation, is relevant to the question of an impermissible racial purpose in its adoption (see *Wilkes County* v. *United States*, 450 F. Supp. 1171 (D.D.C. 1978), aff'd 439 U.S. 999 (1978))." [1]

SIX: DISCRIMINATORY MANIPULATION OF STATE ELECTION LAWS

Since 1966 to the present, the Mississippi Legislature and units of local government have made sustained and persistent efforts to manipulate the election laws of the state to prevent the election of black candidates. These include establishing a majority vote/runoff requirement to win elective office and abolishing party primaries, manipulating the qualifying deadlines for independent candidates, switching from election to appointment for certain offices, and creating numbered posts. Each of these discriminatory election law changes has been blocked by section 5 objections or, in some cases, litigation.

1. The "Open Primary" statutes and the majority vote requirement

In 1979 the Mississippi Legislature—for the fifth time—reenacted an "open primary" law abolishing the traditional system of political party primaries and establishing a majority vote runoff requirement to win elective office.[2] The Attorney General determined—for the third time—that the state had failed to meet its burden of showing that implementation of this law would not be retrogressive for black political participation in Mississippi or that this retrogression was not intended.[3] In December, 1979 Mississippi filed a lawsuit in the District Court for the District of Columbia seeking to overturn this section 5 objection, and this litigation is continuing.[4]

Mississippi traditionally has required a majority vote to win party nomination, but candidates running in the general election can win with less than a majority—a plurality—of the vote.[5] Black candidates running in party primaries against several white candidates frequently have received the largest number of votes—but less than a majority—only to lose in the primary runoff in a head-to-head contest with the white candidate receiving the largest number of votes. Under the plurality requirement applicable in general elections, if there is a split in the white vote between the white Democratic and Republican candidates, black independents have a chance of winning even in elections in which black voters do not have a voting

[98] Letter from Drew S. Days, III, Asst. Att'y Gen., to R. L. Goza, Apr. 13, 1977, p. 2.
[99] Letter from Days to Richard T. Phillips, Sept. 29, 1980.
[1] Id., p. 2.
[2] Miss. Laws, 1979, ch. 452.
[3] Section 5 objection letter from Drew S. Days, III, Asst. Att'y Gen., to Miss. Att'g Gen. A. F. Summer, June 11, 1979. The Supreme Court has held that a § 5 objection is required under the discriminatory effect standard if the change would "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer* v. *United States*, 425 U.S. 130, 141 (1970). Under § 5, and implementing Justice Department regulations, 28 CFR § 51.39 (1981), the burden of proof is on the submitting state or locality.
[4] *Mississippi* v. *United States*, Civil No. 79-3469 (D.D.C., filed Dec. 27, 1979).
[5] Miss. Code. Ann. § 3279 (1956 Recomp.).

majority.[6] Underlying most Mississippi elections is the fact of racial bloc voting; most whites refuse to vote for black candidates regardless of their qualifications.[7]

Since 1966, the Mississippi Legislature has on five separate occasions—in 1966, 1970, 1975, 1976, and 1979—enacted "open primary" statutes aimed at preventing black independent candidates from winning in the general election with less than a majority of the vote. Under this proposal, all candidates—independents as well as party candidates—are required to qualify and run at the same time in a "preferential election." Candidates affiliated with political parties may run with the party label, but more than one political party candidate can run for the same office—political party nominations are not permitted by the legislation. If no candidate receives a majority, the two top vote-getters are required to run in general election "runoff." These statutes enacted a radical new system for electing public officials in Mississippi from Governor to constable, and, in various versions, congressional and municipal officials as well.

"Open primary" legislation in Mississippi has a long and involved history tainted with strong evidence of racially discriminatory intent. The Mississippi Legislature first passed "open primary" legislation in 1966, but it was vetoed by Gov. Paul Johnson who stated that "this is an inopportune time for racial changes to be made in our election procedures" and was concerned that approval of the law might subject "our entire election procedures to a multiplicity of litigation." [8] Renewed interest in the "open primary" scheme was sparked when in the 1967 elections, 195 black candidates ran as independents and 23—more than ever before—were elected to office (including the state's first black state legislator). Also, in a 1968 special election to fill a vacancy in Congress, black candidate Charles Evers got more votes than any of the white candidates (he lost in the runoff). The sponsor of the 1968 "open primary" bill, state Rep. Stone Barefield of Hattiesburg, stated that it would cut down the chances of a "minority" candidate being elected.[9] He told newsmen that the Evers special election campaign illustrated the need for such a change, but it was not directed against Evers personally.[10] The bill—dubbed the "Charles Evers bill"—passed the Mississippi House of Representatives by a vote of 103 to 4, but died in the Senate Elections Committee amid doubt "whether the bill would have withstood a court challenge." [11]

"Open primary" legislation again passed both houses in 1970. The House sponsor of the legislation indicated that it was "almost indentical" to the 1968 proposal.[12] The Senate debate focused on whether or not it would "encourage Negro bloc voting" and whether it would "aid or thwart the power of minority groups." [13] The chairman of the Senate Elections Committee warned that the legislation was necessary to prevent the election of "minority" candidates:

"Talk about the bloc vote . . . under the present election laws, a minority candidate with a minority vote can come in and win a general election." [14]

When the legislation was submitted to the Attorney General for preclearance, the Assistant Attorney General in charge of the Civil Rights Division (who acts for the Attorney General on section 5 submissions) wrote Mississippi officials that "there appear to be some indications from the reported statements of proponents and the statements of purpose made with respect to prior similar proposals" that one

---

[6] In Mississippi, large numbers of black candidates have run for office as independent candidates, who can qualify to run by submitting nominating petitions containing the required number of signatures. Many blacks have run as independents because of their past exclusion from effective participation in party affairs, see *Riddell* v. *Nat'l Democratic Party*, 508 F.2d 770 (5th Cir. 1975), and because of the possibility of winning in the general election with less than a majority of the vote.

[7] See Appendix B, Racial Bloc Voting.

[8] 1966 House Journal, pp. 1111-12. Also in 1966, the Mississippi Legislature enacted racially discriminatory legislation increasing tenfold or more the number of nominating petition signatures required for independent candidates to qualify. This statute was enacted after three black members of the Mississippi Freedom Democratic Party announced their intention to run as independents in the general election for the U.S. Senate and House of Representatives. See United States Commission on Civil Rights, "Political Participation," pp. 44-46 (1968). The Supreme Court held that the new qualifying requirements were subject to Federal preclearance under the Voting Rights Act, *Whitley* v. *Williams, decided sub nom. Allen* v. *State Bd. of Elections*, 393 U.S. 544, 570 (1969), and the Attorney General objected to their implementation as racially discriminatory in both purpose and effect. Letter from Jerris Leonard, Asst. Att'y Gen., to Miss. Att'y Gen. A. F. Summer, May 21, 1969.

[9] Andrew Reese, Jr., United Press International (UPI), Feb. 9, 1968.

[10] James Saggus, Associated Press (AP), Mar. 28, 1968.

[11] UPI, Apr. 4, 1968.

[12] UPI, Jan. 29, 1970.

[13] UPI, Mar. 24, 1970; (Memphis) Commercial Appeal, Feb. 25, 1970.

[14] (New Orleans) Times-Picayune, Mar. 25, 1970.

purpose of the bill was to prevent the election of independent black candidates.[15] However, he stated that he was unable to make a determination within the alloted 60 days provided by the Act, and therefore was taking no action on the submission:

"Under these circumstances, the Attorney General is not prepared at this time—60 days after receipt of these statutes—to make any determination of the validity or invalidity of Acts 362 and 363 under the Voting Rights Act."[16]

Terming this a "Pilate-like response," a three-judge Mississippi District Court held that the Assistant Attorney General had failed to perform his duty under the Act and enjoined implementation pending proper § 5 review.[17]

This legislation was not resubmitted to the Attorney General until 1974, and this time the Attorney General concluded that the effect of this legislation "likely will be to minimize the opportunity of black voters to elect a candidate of their choice for a substantial number of district and countywide offices." [18]

Unable to conclude that the legislation did not have a racially discriminatory purpose and would not have a racially discriminatory effect, the Attorney General lodged an objection.[19]

"Open primary" statutes were again enacted by the state legislature in 1975 and 1976. The 1975 legislation was vetoed by Gov. William Waller, and the Attorney General objected to the 1976 legislation for the same reasons stated in the 1974 objection letter.[20] Proponents of the "open primary" have contended that the law would treat all candidates alike—regardless of race—and help cut down on rising costs of conducting campaigns and holding elections. However, most of the independent candidates who have run since 1965 in state and county races have been black, and there are less discriminatory alternatives available for reducing campaign costs and election expenses.[21]

The Justice Department's position regarding this "open primary" legislation was recently sustained by the Supreme Court in *City of Rome, Georgia* v. *United States* [22] when it affirmed a three-judge District Court's determination that a similar majority-vote, runoff-election requirement failed to pass § 5 muster because of its discriminatory effect:

"With respect to the majority vote and runoff election provisions, the discriminatory effect is clear beyond peradventure. Under the plurality-win system, a black candidate in Rome would stand a good chance of election if the white citizens spilt their votes among numerous candidates and the black voters engaged in "single-shot" voting, i.e., voted only for the candidate or candidates of their choice. Under the majority vote/runoff election scheme, however, the black candidate, even if he gained a plurality of votes in the general election, would still have to face the runner-up white candidate in a head-to-head runoff election in which, given bloc voting by race and a white majority, the black candidate would be at a severe disadvantage."[23]

Despite the Attorney General's three successive objections to this legislation, and the Supreme Court's decision, Mississippi has not given up in its efforts to implement this discriminatory "open primary" legislation. Although the provisions of the "open primary" law remain unenforceable because of these § 5 objections, they are still published in the Elections sections of the Mississippi Code Annotated with state approval, apparently awaiting the day when § 5 will lapse or be repealed and this unique law can go into effect.

Also, despite these repeated § 5 objections to the "open primary" legislation, units of local government in Mississippi have attempted to institute their own local majority vote requirements.

Louisville Municipal Separate School District.—In 1980, the Board of Trustees of the Louisville Municipal School District—which functions as a countywide school district[24]—attempted to gain Attorney General approval of a new election plan under which board members would be elected from each of the five supervisors'

---

[15] Letter from Jerris Leonard, Asst. Att'y Gen., to Miss. Att'y Gen. A. F. Summer, Sept. 21, 1970.

[16] *Id.*

[17] *Evers* v. *State Bd. of Election Comm'rs*, 327 F. Supp. 640 (S.D. Miss. 1971) (three-judge court), appeal dism'd, 450 U.S. 1001 (1972).

[18] Letter from L. Stanley Pottinger, Asst. Att'y Gen., to A.F. Summer, Apr. 26, 1974.

[19] *Id.*

[20] Letter from Pottinger to Summer, Aug. 23, 1976.

[21] For example, election expenses could be reduced by moving the date for party primaries closer to the date for holding the general election, and by eliminating primary runoffs.

[22] — U.S. —, 64 L.Ed.2d 119 (1980), *aff'g*, 472 F. Supp. 221 (D.D.C. 1979) (three-judge court).

[23] 472 F. Supp. at 244 (footnotes omitted).

[24] In most counties in Mississippi, there is a county board of education, each member of which is elected from one of the five supervisors' districts. As in most other elections in Mississippi, candidates may win in the general election with a plurality of the votes cast.

districts, but a majority vote/runoff requirement would apply. On facts showing that this system was unique in Mississippi, that blacks constituted 39 percent of the county population but lacked a majority in any of the five supervisors' districts, that there was racially polarized voting, and no black person had ever been elected or appointed to the school board, the board of supervisors, or the Louisville Board of Aldermen, the Attorney General was unable to conclude that the special application of this majority vote requirement would not have a discriminatory effect.[25]

City of Kosciusko.—In 1976, the City of Kosciusko, which was only 36.7 percent black (1970 Census), attempted to reinstitute an at-large election system struck down by the District Court in *Stewart* v. *Waller,*[26] coupled with majority vote and numbered posts requirements. Since blacks comprised a distinct minority of the community, implementation of this new system would have made it impossible for black voters to elect candidates of their choice or significantly influence city elections, and the Attorney General concluded that he was unable to find that the new election system would not have a racially discriminatory effect.[27]

City of Grenada.—Although blacks made up only 43 percent of the population of the City of Grenada (1970 Census), the City attempted to implement a new city council election scheme involving a switch from district to at-large elections, numbered posts for two candidates, and a majority vote requirement. Relying upon Federal Court decisions finding these devices to be racially discriminatory and having the effect of curtailing minority voting power, the Attorney General objected to the changes.[28]

2. Manipulating qualifying deadlines

Although for most state and county elections, party primaries are held three months before the general election, independent candidates have had up until 40 days before the general election to submit their qualifying papers.[29] In the 1975 general election, over 100 black candidates decided to run as independents, but the Mississippi Legislature attempted to defeat their efforts by moving up the qualifying deadline for independent candidates to make it coincide with the qualifying deadline for candidates in political party primaries.

In 1975, under existing law, independent candidates had until September to qualify to run for office in the state and county elections held that year. The Mississippi Legislature, however, enacted a statute that year requiring independents to qualify by the same date as candidates for the party primaries.[30] The statute was not enacted until April 8, giving the independent candidates less than two months before the June 6 qualifying deadline to obtain the necessary petition signatures to qualify, and was not submitted to the Attorney General for § 5 preclearance until April 18. Requiring independent candidates to qualify and begin their campaigns before the primaries—in which they were not running—and five months before the general election—in which they were running—would have caused confusion in the electoral process and would have greatly increased the campaign expenses of the independents. Noting that the timing of this legislation placed an "inordinate burden . . . on potential independent candidates in terms of the resulting confusion, uncertainty and the limited period for obtaining the necessary petition signatures to qualify for the 1975 elections," and that most of the independent candidates in recent Mississippi history have been black, the Attorney General lodged an objection.[31]

This 1975 provision was virtually identical to a similar provision enacted in 1966, aimed at preventing candidates of the Mississippi Freedom Democratic Party from running for Congress as independents in the general election. The 1966 law, in addition to requiring independent candidates to qualify at the same time as party candidates, also increased tenfold or more the number of signatures required on nominating petitions for independents, and disqualified any independent candidates who had voted in a primary election.[32]

---

[25] Letter from Drew S. Days, III, Asst. Att'y Gen., to James C. Mayo, Mar. 28, 1980.
[26] 404 F. Supp. 206 (N.D. Miss. 1975). The *Stewart* decision is discussed supra, pp. 41-42.
[27] Letter from J. Stanley Pottinger, Asst. Att'y Gen., to City Attorney John D. Guyton, Sept. 20, 1976.
[28] Letter from David L. Norman, Asst. Att'y Gen., to City Attorney W. H. Fedric, Mar. 20, 1971.
[29] Miss. Code Ann. § 3260 (1956 Recomp.).
[30] Miss. Laws, 1975, S.B. 2218.
[31] Letter from J. Stanley Pottinger, Asst. Att'y Gen., to Miss. Att'y Gen. A. F. Summer, June 4, 1975.
[32] See supra, pp. 72-73.

3. Switching from election to appointment of certain offices

In 1966, the Mississippi Legislative also attempted to prevent the election of black county school superintendents by making the office appointive, rather than elective, in ten counties—eight of which were majority black—and giving other counties the option of making the position appointive.[33] The county boards of education, which were to make the appointments, all were majority white. The Supreme Court in holding that this statute was subject to § 5 preclearance, noted that it had a direct effect on the right to vote:

"The power of a citizen's vote is affected by this amendment; after the change, he is prohibited from electing an officer formerly subject to the approval of the voters."[34]

Subsequently, implementation of this statute was blocked by a § 5 objection,[35] and black county school superintendents have been elected in five counties in which appointment would have been required.[36]

Tunica County, undeterred by the Supreme Court's decision and the Attorney General's objection, made the change in 1966, but did not submit the change for § 5 review until 1976. Although Tunica County is majority black, the county board of education had been all-white until 1976 when the first black was elected. The Attorney General lodged an objection to this change, noting the prior § 5 objection to the statute and the fact that increased black political participation resulted in the election of a Circuit Clerk countywide in 1975 and a school board member in 1976.[37]

4. Numbered posts requirement

The numbered posts requirement—in which candidates must run for Post No. 1, Post No. 2, and the like—has a racially discriminatory potential because it separates out the various positions to be filled by posts, instead of allowing all candidates to run together for several positions. Thus, when black candidates qualify for one or more posts, the most popular white candidates, instead of running against each other, may qualify for the separate post positions in which the black candidates are running. In the context of racial bloc voting in which whites have a voting majority, this insures the defeat of all the black candidates.

The Supreme Court has held that this requirement may "enhance [ ] the opportunity for racial discrimination."[38] The courts have noted that "each candidate must limit his candidacy . . . to a particular place on the ballot," and "its ultimate effect is to highlight the racial element where it exists."[39] Thus, it "may have the effect of curtailing minority voting power."[40]

The Attorney General has lodged six section 5 objections to election law changes in Mississippi introducing a numbered post requirement, most often in the context of a switch to at-large elections.[41] In each instance, the numbered posts requirement, coupled with at-large voting and sometimes a majority vote requirement, would have had the effect of defeating the opportunities of black voters to elect candidates of their choice. In 1977, the Jackson City Council, whose at-large municipal election system was being challenged in litigation, considered adopting a numbered posts system as authorized by state statute for the election of its two city commissioners, but decided against it because of the possibility of section 5 objection to the change.[42]

SEVEN: MUNICIPAL ANNEXATIONS

Since 1975 seven cities and towns in Mississippi with at-large voting systems have annexed adjoining predominantly white areas with the purpose or effect of diluting

---

[33] Miss. Laws, 1966 ch. 406. See United States Commission on Civil Rights, "Political Participation," pp. 42-43 (1968).

[34] *Bunton* v. *Patterson, decided sub nom. Allen* v. *State Bd. of Elections,* 393 U.S. 544, 569-70 (1969).

[35] Letter from Leonard to Summer, May 21, 1969.

[36] Holmes, Noxubee, Jefferson, Humphreys, and Claiborne Counties. Noxubee and Humphreys still have all-white county school boards. Joint Center for Political Studies, "National Roster of Black Elected Officials," Vol. 10, pp. 168-171 (1980).

[37] Letter from J. Stanley Pottinger, Asst. Att'y Gen., to John W. Dulaney, Jan. 24, 1977.

[38] *White* v. *Regester,* 412 U.S. 755, 766 (1973).

[39] *Graves* v. *Barnes,* 343 F. Supp. 704, 725 (W.D. Tex. 1972), (three-judge court), *aff'd in relevant part sub nom. White* v. *Regester, supra.*

[40] *Dunston* v. *Scott,* 336 F. Supp. 206, 213 n. 9 (E.D.N.C. 1972) (three-judge court).

[41] Changes to a numbered posts requirement were objected to in submissions involving at-large municipal elections for Kosciusko (Sept. 20, 1976), and Grenada (Mar. 20, 1972), and for Indonesia, which already had at-large elections (Apr. 20, 1973), and involving at-large county elections for Attala County (June 30, 1971), Grenada County (June 23, 1971), and statewide (Sept. 10, 1971).

[42] See *Kirksey* v. *City of Jackson,* 461 F. Supp. 1282, 1288 (S.D. Miss. 1978).

black voting strength in municipal voting. Because of the potential of such annexations for minimizing and cancelling out black voting strength, the Supreme Court in a 1971 Mississippi case held that municipal annexations must be precleared under section 5.[43] Annexations which dilutes the votes of black citizens—and this usually occurs in the context of at-large elections and racial block voting—are discriminatory changes:

The annexation of an area with a white majority, combined with at-large councilmanic elections and racial voting, created or enhanced the power of the white majority to exclude Negroes totally from participation in the governing of the city through membership in the city council.[44]

The function of a section 5 objection to annexations by municipalities is often misunderstood. A section 5 objection does not affect the validity of any annexation nor prevent the annexation of any territory. The objection prohibits only the implementation of changes affecting voting—the municipalities may not change its election system by expanding it to the annexed area. Further, the Supreme Court has determined that the section 5 objection must be withdrawn if the municipality takes steps to "neutralize to the extent possible any adverse effect upon the political participation of black voters . . ." [45] Thus, any municipality may remedy the consequences of a discriminatory annexation by replacing at-large elections with ward voting which gives blacks an opportunity for representation in the enlarged community.

Indianola

The practices of the City of Indianola illustrate how annexations are used to disenfranchise black citizens. Indianola implemented three annexations after the enactment of the Voting Rights Act and one annexation seven months prior to its enactment. Although the annexations—all covered by section 5—have never been submitted for preclearance, the Mayor of that town has joined the chorus of those claiming section 5 is no longer needed, "I think its usefulness is over. The South's been the whipping boy long enough." [46]

Blacks made up 70 percent of Indianola's population in 1965 and stood to gain significant political power as a result of the protections of the Voting Rights Act. In 1965, 1966, 1967, and 1968, by annexing adjoining white neighborhoods, Indianola brought more than 1,000 white voters into the city, reducing black voting strength by more than 30 percent. None of these discriminatory annexations were submitted for Federal preclearance. At the same time, the predominantly white city council refused requests to annex 11 adjoining predominantly black subdivisions containing more than 3,500 persons. These predominantly black subdivisions receive city water and sewer services and city fire protection, but are excluded from articipation in the selection of municipal officials. During this same period, much of the housing occupied by poor blacks within the town was condemned, and this accelerated the move of blacks into housing outside the city. Today blacks constitute only 48 percent of the town's registered voters and only one black alderman has been elected to the seven-member board of aldermen.

On May 14, 1981, in a lawsuit brought by the President of the Sunflower County NAACP Branch and 13 black voters, a three-judge District Court held that the city had violated the Voting Rights Act by annexing these white neighborhoods without section 5 preclearance. However, the court refused to invalidate the city elections in which the newly-annexed white residents participated.

Jackson

The City of Jackson began a series of annexations in 1960 as blacks were nearing a majority of the population. The impact of the last annexation in 1976 reduces the black population to 38.1 percent. The Department of Justice objected to the 1976 annexations,[47] but the City has ignored the objection and in violation of the Voting Rights Act allows voters in the annexed areas to vote in municipal elections.[48]

Year	Total	White	Percent	Black	Percent
1960 (preannexation)	120,761	70,694	58.5	49,994	41.4
1960 (postannexation)	144,422	92,793	64.3	51,556	35.7

[43] *Perkins* v. *Matthews*, 400 U.S. 379, 388 (1971).
[44] *City of Richmond* v. *United States*, 422 U.S. 359, 370 (1975).
[45] *Id.*
[46] Mayor Phillip Fratesi, quoted in "The Voting-Rights Issue", *Newsweek*, p. 34 (May 11, 1981).
[47] Letter from J. Stanley Pottinger, Asst. Att'y Gen., to City Attorney John E. Stone, Dec. 3, 1976.
[48] *Kirksey* v. *City of Jackson*, Civil No. J77-0075(N) (S.D. Miss. Jan. 23, 1981).

Year	Total	White	Percent	Black	Percent
1970 (preannexation)	153,968	92,651	60.2	61,063	39.7
1971 (postannexation)	163,063	100,338	61.6	62,471	38.6
1976 (preannexation)	200,700	120,420	60	80,280	40
1976 (postannexation)	233,190	144,399	61.9	88,791	38.1

The 1976 annexation encompasses a 40-square-mile area containing 32,490 persons, 74 percent of whom are white. The Attorney General in his section 5 objection letter found that while the black percentage in Jackson's population continued to climb since 1960, Jackson in a series of annexations annexed heavily white areas (1960—90 percent white, 1971—84.5 percent white, 1976—74 percent white) which reduced black voting strength.

The Attorney General determined that the effect of the 1976 annexation was to reduce the city's total 1976 population from 40 percent to 38 percent, to reinforce a trend since 1960 of annexing white areas with "the effect of counteracting the impact of an otherwise growing black population percentage" which, without these annexations, "would be approaching a majority." Considering all the elements of the city's electoral system, including the at-large election of members of the city Council, the majority vote requirement, the full slate voting requirement, no blacks having been elected to the city council, and racial bloc voting, the Attorney General concluded:

"Thus the dilutive effect of the annexation combined with a system of election that minimizes the opportunity for minorities to be elected and with the existence of racial bloc voting makes it impossible for the Attorney General to conclude that the 1976 annexation will not have a racially discriminatory effect."

The Attorney General in his objection letter stated that the objection would be withdrawn if "at-large elections were replaced by a ward system of choosing councilmen." Jackson has refused to alter its election system, however, and continues to ignore this objection.

Grenada

The City of Grenada, where blacks were 48.5 percent of the population in 1960, made eight annexations between 1965 and 1973 which added only white residents.[49] Between 1962 and 1964, the City made three annexations which also included only white residents. The City refused the repeated requests from residents of Pine Hill, a concentrated black community, to be annexed—instead, the annexations result in this community being surrounded on three sides by the City's corporate limits. All these annexations were implemented without section 5 preclearance. The failure to comply with section 5 continued despite the City being clearly aware of its requirements in 1969, when a three-judge District Court enjoined the implementation of another change affecting voting until the City complied with section 5. The City implemented two annexations without preclearance after the entry of that Order and continued to implement prior unsubmitted annexations.

In December, 1974, the City submitted only the 1973 annexation—the last of the series—to the Department of Justice for preclearance. In objecting to that annexation, the Department informed the City that it was aware of the previous annexations and requested to be advised whether the City intended to comply with section 5 administratively or by litigation.

On March 4, 1975, the City asked the Department to reconsider its objection to the 1973 annexation and submitted the seven other annexations made since 1965. The Department objected to these annexations, noting the addition of only white residents to the City and the exclusion of black citizens. The Department objected on the bases that (a) the annexations were a part of a pattern by the City to annex areas with entirely one racial composition to the exclusion of other areas with an entirely different racial composition, and (b) the annexations had a racially discriminatory effect on voting by diluting black voting strength.

Vicksburg

The City of Vicksburg annexed an area in 1975 which was 98.5 percent white.[50] The black population, which had been rising steadily since 1960 was approaching a majority, but was reduced to 45.1 percent of the City population by the annexation.

[49] Letter of Objection, Feb. 5, 1975 and May 2, 1975.
[50] Letter of Objection, Oct. 1, 1976.

Year	White	Nonwhite	Percent	Total
1960	15,516	13,627	46.8	29,143
1970	12,824	12,654	49.7	25,478
1976 (postannexation)	15,458	12,685	56.1	28,143

This change was submitted to the Department of Justice in 1976 and an objection was entered. The Department noted that under Vicksburg's system a mayor and two council members were elected at-large with a majority vote requirement in the primaries, an anti-single shot voting law, and black candidates had never successfully run for office. Subsequently, Vicksburg modified its system to eliminate the discriminatory effect of the annexation by dividing the City into two wards for the election of the council members. In the first election held under ward voting in 1977, a black candidate was elected to represent one of the two wards.

Sidon

The City of Sidon annexed an exclusively white area in 1972 when blacks were 41.4 percent of the town's population.[51] The annexation reduced blacks to 33.4 percent of the population. The City did not submit this change for preclearance until 1977 and an objection was made. In examining the effect of the annexation, the Department of Justice noted that a black candidate in a 1977 special election would have been elected under the town's plurality system, but for the prohibition of a single-shot voting.

Mendenhall

That municipalities have not given up on racially discriminatory annexations is demonstration by the November, 1980 submission to the Department of Justice by the City of Mendenhall.[52] The City annexed an area of all-white residents which reduced the black population percentage of the City. The Department objected and noted that in the context of Mendenhall's at-large system, with majority vote primaries and full-state requirement, the annexation would dilute black voting strength.

EIGHT: DISCRIMINATORY CHANGES IN VOTING PROCEDURES

1. Polling place changes

In the 1978 U.S. Senate race in which Charles Evers, a black candidate running as an independent, was running against white Democratic and Republican nominees, election officials in Hinds County changed the location of 30 polling places several weeks before the election, bud did not announce the change until the afternoon before the election.[53] Eleven of these polling places were in predominantly black precincts where two-thirds of the black registered voters of Jackson—Evers' political base—resided. The change was not submitted—as required by § 5—until approximately three weeks before the election, and the Attorney General's approval had not been obtained by election day. The campaign director for the Democratic nominee commented, "It's an obvious attempt to confuse the voters. It's irresponsible not to have publicized [the change in polling places]." [54]

Evers, concerned that the confused might cost him votes, sought a temporary restraining order against the unprecleared change,[55] but the District Court refused to order anything more than the stationing of election officials at the old polling places to direct voters to the new ones, a measure that was not uniformly carried out, according to complaints. Although these changes eventually were approved by the Attorney General, this incident shows that even changes as seemingly minor as polling place changes can have a significant impact on the election process.

In 1971 in a major case originating in Mississippi defining the scope and application of § 5, the Supreme Court recognized that changes in polling place locations can have a significant detrimental racial effect:

"Even without going beyond the plain words of the statute, we think it clear that the location of polling places constitutes a 'standard, practice, or procedure with

[51] Letter Objection, Oct. 28, 1977.
[52] Letter Objection, Jan. 12, 1981.
[53] This incident is described in Howard Ball, Dale Krane, and Thomas Lauth, "Compromised Compliance: Implementation of the 1965 Voting Rights Act," pp. i-vii (1981).
[54] *Id.* p. ii.
[55] *Evers* v. *Hinds County Board of Supervisors*, Civil No. (S.D. Miss. filed Nov. 6, 1978). The District Court, after the change was approved, dismissed the complaint as moot, but the Fifth Circuit reversed, ruling that this was a change capable of repetition, yet evading review.

respect to voting.' The abstract right becomes a reality at the polling place on election day. The accessibility, prominence, facilities, and prior notice of the polling place's location all have an effect on a person's ability to exercise his franchise."[56]

In Mississippi, locating polling places in all-white churches, plantation stores, or other locations hostile to black participation, or at inconvenient distances from black communities, are continuing problems.[57] In 1975, the Attorney General objected to three polling place changes in Clay County (two) and Warren County (one) where local election officials attempted to relocate precinct polling places to predominantly white residential areas five to ten miles from the predominantly black areas of the affected precincts, and after local officials denied black community requests that they designate polling places more convenient for black voters.[58]

2. Assistance to illiterate voters

In 1966, just after the Voting Rights Act abolished literacy tests and required local officials to register qualified applicants who were illiterate, the Mississippi Legislature repealed the state statute providing for assistance to illiterate voters in casting their ballots. The Attorney General objected to ths change,[59] it was reinstituted by order of the Federal District Court.[60]

Nevertheless, problems remained. The state statute providing for assistance to blind and diabled persons allowed such persons to elect any person of their choice to assist them in voting, while the procedures applicable to illiterate voters allowed assistance only from polling place managers and clerks, the majority of whom have been white. In most areas, the vast majority of voters who are illiterate and require assistance are black, and black voters frequently have been reluctant to request assistance from white managers and clerks whom they often do not trust or whose presence in the voting booth might deter them from voting for the candidates of their choice. In 1977, the Mississippi Supreme Court ruled that the differences in assistance procedures between blind and disabled voters and illiterate voters were unconstitutional, and held that illiterate voters were entitled to assistance from any person of their choice.[61]

In 1979, the Mississippi Legislature attempted to limit the liberal scope of this new procedure by enacting a new statute applicable to all voters needing assistance which required that the person giving assistance must be a registered voter of that particular precinct, that one person may not assist more than five voters, and that the polling place manager must be present while the assistance is given.[62] The new restrictions would have denied older black illiterate voters assistance from family members who lived and were registered to vote outside the precinct, and would have prevented voters from receiving assistance from poll watchers for the candidates of their choice—a common practice in Mississippi—more than five times. Finding that these restrictions had a disproportionate impact on black voters, that most poll managers who were required to be present were white, and that the new limitations were "more restrictive than those of most other comparable states and . . . we have received no explanation of why such restrictive rules are necessary," the Attorney General interposed an objection.[63]

3. Use of sample ballots

Mississippi law does not prohibit the use of sample ballots by voters, and sample ballots frequently are used by both while and black voters to assist them in voting for the candidates of their choice when the ballots are long and there are dozens of offices to be filled. However, polling place managers in some precincts across the state have taken it upon themselves to deny black voters the use of sample ballots.[64]

Because § 5 covers any change in voting procedures, any change in procedures affecting the use of sample ballots must be precleared. In Hinds County, however, in

---

[56] *Perkins* v. *Matthews*, 400 U.S. 379, 387 (1971).

[57] See Washington Research Project, "The Shameful Blight, pp. 80-82 (1972); United States Commission on Civil Rights, Political Participation," pp. 81-82 (1968).

[58] Letters from J. Stanley Pottinger, Asst. Att'y Gen., to A.M. Edwards, July 25, 1975, and John W. Prewitt, June 16, 1975.

[59] Letter from Jerris Leonard, Asst. Att'y Gen., to Miss. Att'y Gen. A.F. Summer, May 26, 1969.

[60] *United States* v. *Mississippi*, 256 F. Supp. 344 (S.D. Miss. 1966) (three-judge court).

[61] *O'Neal* v. *Simpson*, 350 So.2d 998 (Miss. 1877).

[62] Miss. Laws, 1979, H.B. 854.

[63] Letter from Drew S. Days, III, Asst. Att'y. Gen., to Miss. Att'y Gen. A. F. Summer, July 6, 1979.

[64] "The Shameful Blight" supra, pp. 82-86; "Political Participation," supra,. pp. 73-74. The Fifth Circuit has ruled that to deny black voters the right to sample ballots while imposing no such restrictions on other voters violates the Fourteenth Amendment and the Voting Rights Act. *Gilmore* v. *Green County Democratic Party Executive Committee*, 435 F.2d 487 (5th Cir. 1970).

the 1980 general election for the U.S. House of Representatives, black candidate Leslie McLemore complainted that the Hinds County Election Commission instituted new instructions for polling place officials to deny voters the use of sample ballots, even though the change had not been precleared pursuant to § 5.

NINE: CURRENT DISCRIMINATORY STATE ELECTION LAWS—THE MAJORITY VOTE REQUIREMENT AND THE FULL-SLATE VOTING REQUIREMENT

Mississippi still requires a majority vote for a candidate to win party nomination in primary elections,[65] and to win a special election to fill a vacancy in public office,[66] and has a "full-slate" voting requirement which prohibits "single-shot" voting.[67] These statutes discriminate against black candidates for office and make it more difficult for black voters to elect candidates of their choice.

"Virtually unknown outside the South . . . the majority vote system tends to strengthen the majority's ability to submerge a political or racial minority . . ." [68] It "enhance[s] the opportunity for racial discrimination." [69] Thus, with racial bloc voting, unless black voters are in the majority, the majority vote requirement generally has the effect of denying black voters the opportunity to nominate or elect (in a special election) candidates of their choice for public office.

For example, in the 1980 Democratic primary in Mississippi's Fourth Congressional District, black state Senator Henry J. Kirksey—running against three white candidates—received the highest number of votes in his bid for the Democratic nomination for the U.S. House of Representatives. Analysis of the voting results show that Senator Kirksey was preferred by over 90 percent of black voters. In the primary runoff, however, in a head-to-head contest with the runner-up white candidate, who had never been elected to any public office, Senator Kirksey was decisively defeated by the majority vote requirement and white bloc voting.

Under this "full-slate," or "anti-single-shot" voting requirement, voters must vote for as many candidates on the ballot as there are positions to be filed in order to have their votes counted. Otherwise, their ballots are thrown out. Thus, if there are five positions to be filled, voters must vote for five candidates regardless of whether they want all five candidates elected.

this requirement is racially discriminatory in instances in which blacks are in the minority and less than a full slate of black candidates is running. Without a full-slate requirement, black voters can vote only for one or two black candidates, or slate-shot vote, and the black candidates have a chance of getting elected.[70] With the full-slate requirement, black voters are required to cast not only one or two votes for the black candidates they prefer, but also are required to vote for their white opponents, thus cancelling out their votes for the candidates they prefer. Voters are required to vote, not only for candidates they want elected, but also for candidates they don't want elected.

The fact that these discriminatory election laws remain on the books is indicative of a continued desire to dilute black voting strength and to prevent the election of black candidates to public office in Mississippi.

APPENDIX A: DISCRIMINATION AGAINST BLACK CITIZENS IN THE PROVISION OF MUNICIPAL SERVICES IN CITIES WITH AT-LARGE ELECTIONS

Aberdeen.—Aberdeen is a small (pop. 6,157) city in northeast Mississippi which is 41 percent black and which is governed by a mayor and board of aldermen. All five aldermen were elected at-large until 1980, and at least since 1919 no black person had been elected to the board of aldermen. In 1976 15 black citizens of Aberdeen filed a lawsuit challenging at-large voting for dilution of black voting strength, and in 1977 a Consent Judgment was entered abolishing at-large elections and requiring

---

[65] Miss. Code Ann. § 23-3-69 (1972).
[66] Miss. Code Ann. §§ 23-5-197, 23-5-203 (1972).
[67] Miss. Code Ann. §§ 3110 (1956 Recomp.).
[68] *Graves* v. *Barnes*, 343 F Supp. 704, 725 (W.D. Tex. 1972) (three-judge court), *aff'd in relevant part, White* v. *Regester*, 412 U.S. 755 (1973).
[69] *White* v. *Regester*, 412 U.S. 755, 766 (1973). The majority vote requirement and the full-slate voting requirement have been held to show that the electoral process in Mississippi is not equally open to blacks in a number of cases, but have not yet been declared unconstitutional. See, e.g., *Kirksey* v. *City of Jackson*, 461 F Supp. 1282, 1310 (S.D. Miss. 1978), *vac'd and remanded*, 625 F. 2d 21 (5th Cir. 1980); *United States* v. *Board of Supervisors of Forrest County*, 571 F. 2d 951 (5th Cir. 1978); *Kirksey* v. *Board of Supervisors of Hinds County*, 554 F. 2d 139 (5th Cir. 1977) (*en banc*), *cert. denied*, 434 U.S. 968 (1977).
[70] For an example of this, see United States Commission on Civil Rights, "The Voting Rights Act: Ten Years After," pp. 206-207 (1975).

election of aldermen from wards.[71] In 1980 two black aldermen were elected from majority black wards.

Data developed for the trial in that case and in conjunction with a 1975 lawsuit challenging racial discrimination in the use of revenue sharing funds and in the provision of municipal services, *Young* v. *City of Aberdeen*, showed that black residents of Aberdeen were being discriminated against in the provision of sanitary sewer service, street paving, fire protection, and water service.[72]

(1) Sewer service. Since 1958, the city had undertaken nine sanitary sewer improvement projects with revenue sharing funds, six in white areas (including five in a newly annexed white area), and three in black areas. Thirty-one thousand nine hundred forty-four feet of sewer lines (87.62 percent) were planned for white areas, while only 4,512 feet (12.38 percent) were planned for black areas. These improvements had the net effect of improving and extending coverage to newly annexed white areas while deferring or ignoring altogether similar improvements to older and established black areas with inferior service. On motion of the plaintiffs in *Young* v. *City of Aberdeen*, the District Court entered an order requiring that all revenue sharing funds received by the city after January 2, 1976, $188,463 for fiscal year 1976, be placed in escrow, and directing the city to begin construction of a sewer project in a predominantly black area.[73]

(2) Street paving. The data on paved and unpaved streets showed that although there were unpaved streets in both white and black residential areas, 30 percent of the homes occupied by blacks fronted on unpaved streets, while only 11 percent of the homes occupied by whites had unpaved streets. Although black-occupied homes represented only 39 percent of the total number of residences in Aberdeen, they represented 62 percent of the total number of residences on unpaved streets. Analysis of the location of paved streets showed that paving priorities favored the white residential areas and excluded black residential areas. Analysis of street paving projects showed that the bulk of the town's revenue sharing funds had been used for street improvements in the white areas. In 1975 the city improved 22 streets, 20 in white areas and 2 in black areas.

(3) Fire hydrants. Data provided by the city showed that although most areas of the white community were adequately served by the placement of fire hydrants, six areas of the black community did not have adequate fire protection.

(4) Water service. City data showed that there were 38 dwelling units in the city which were not connected to any water lines, all of them occupied by blacks.

On July 1, 1976, a final judgment was entered in *Young*, which was agreed to by the city, which enjoined the city from racial discrimination against black residents of Aberdeen in the provision and maintenance of sanitary sewer service, street paving and accompanying street drainage, fire protection through fire hydrant placement, and water service, and which further enjoined the city from racial discrimination in the spending of general revenue sharing funds.[74] In addition, the final judgment specifically ordered the city to pave 22 streets, to complete 6 sanitary sewer projects to provide sewer service to unserved black areas, to provide city water service to an unserved black area, and to install fire hydrants at six locations to provide fire protection to black neighborhoods.

Hattiesburg.—Hattiesburg, which is 29 percent black, adopted at-large elections under a commission form of government in 1910, and since then no black has been elected to the three-member city council. Surveys conducted for the lawsuit challenging at-large municipal elections show discrimination against the black community by the all-white city council.[75]

(1) City appointments. As of July 1980, of the 63 members of city-appointed boards and commissions, only 10 (16 percent) were black.

(2) Street paving conditions. Analysis of street paving conditions showed major differences between the conditions of streets in white areas and streets in black areas. In white neighborhoods, 70 percent of the street length was found to be excellent or good, as opposed to only 48 percent of the street length in black neighborhoods. In black neighborhoods, 56 percent of the street length was found to

---

[71] *Fears* v. *City of Aberdeen*, Civil No. EC 76-50-K, N.D. Miss., filed Mar. 19, 1976, Consent Judgment entered, Sept. 26, 1977.

[72] *Young* v. *City of Aberdeen*, No. EC 75-162-K, N.D. Miss., filed Oct. 20, 1975; John E. Foster, P.E., "Engineering Analysis, Sewer & Water, Aberdeen, Mississippi" (Sept. 19, 1977), "Comparative Analysis of Municipal Street Services Provided Black Residential Areas and White Residential Areas of Aberdeen, Mississippi" (Sept. 16, 1977).

[73] *Young* v. *City of Aberdeen*, supra, Order Escrowing Federal Revenue Sharing Funds, Jan. 5, 1976.

[74] *Young* v. *City of Aberdeen*, supra, Final Judgment, July 1, 1976.

[75] *Boykins* v. *City of Hattiesburg*, Civil No. H77-0065(C) S.D. Miss.; Alan Paller, P.E., "Review of Municipal Services in Hattiesburg, Mississippi" (Oct. 1979).

be fair or poor, as opposed to only 30 percent of the street length in white neighborhoods. Analysis of these data in terms of numbers of streets showed that 81 percent of the streets in white neighborhoods were rated excellent or good, as opposed to only 46 percent of the streets in black neighborhoods.

(3) Street resurfacing. Statistics for the years 1969, 1971, 1973, 1975, and 1976 (omitting 1974, when a major flood occurred) showed that 47 percent of the street length in white residential areas was resurfaced by the city, but only 25 percent in black residential areas. Thus, white residential streets were resurfaced at nearly twice the rate of black residential streets.

(4) Sewer system maintenance. Although 54 percent of the complaints received by the city during selected months in 1977 and 1978 came from black residential areas, only 35 percent of the number of maintenance hours worked was in black areas. White areas, which accounted for only 46 percent of the complaints, got 65 percent of the sewer maintenance work.

(5) School recreation facilities. Predominantly white schools had more than twice as much recreational equipment as the predominantly black schools.

Jackson.—Plaintiffs in the at-large election challenged against the City of Jackson conducted an in-depth study of city government and the provision of municipal services, and—based upon data and statistics provided by the city itself—presented evidence of extensive discrimination against the black community.[76]

(1) City appointments. Before 1969, no black citizens were appointed by the city council to any municipal boards and commissions. As of 1978, 21 of the 35 municipal boards and commissions were still all-white. Blacks were appointed by the city council to only 14 percent of the positions on municipal boards and commissions in a city which was 40 percent black.

(2) City employment. Statistics produced in discovery in three employment discrimination cases against the City of Jackson showed a citywide pattern and practice of racial discrimination against blacks in employment. No black person had been hired in the Jackson Fire Department until 1972, and from 1972 to 1973 of the 86 blacks who applied, only one was hired. No blacks had been hired by the Jackson Police Department until 1963, and from 1970 to 1973, of the 318 blacks who applied, only 14 were hired. No blacks had been promoted above the rank of patrolman, except for one black sergeant. In both departments, black applicants were discriminated against by the use of entrance tests which had a severe discriminatory impact and which had never been validated for job-relatedness. In other city departments, most of the city's black employees were concentrated in lower-paid laborer and unskilled labor positions. No blacks were employed as department heads. Of the 78 city employees who earned above $13,000 per year, only one was black.

(3) Street resurfacing. Although 73 percent of the city street surface in Jackson was in white neighborhoods, and 27 percent was in black neighborhoods, from 1973 to 1977 85 percent of the street resurfacing was done in white areas and only 15 percent in black areas. Although blacks tended to live in the older parts of the city. Thus, the black community received only a little more than half of its fair share of street resurfacing.

(4) Street lighting. A 1975 city survey showed that 90 percent of the streets in the black residential areas of Jackson had inadequate street lighting. When the city began improvements in street lighting based on this survey, underserved black areas identified in the survey were skipped over for affluent white areas of the city.

(5) Parks and recreation facilities. Analysis of a 1971 city park survey showed that although there were at least 1,500 acres of city parks in white neighborhoods, there were only 171 acres of city parks in black neighborhoods. Complaints of black citizens that in Grove Park, the largest park in a black neighborhood, none of the access roads, parking lots, or basketball courts were paved, the club house was too small and during heavy rains sewage backed up into it, the golf course was not properly maintained, and the fence around it was borken down went unresolved by city officials.

(6) City planning. After 1971 the city began a neighborhood planning program designed to identify the need for capital improvements in Jackson neighborhoods. In 1977 the Department of Housing and Urban Development found Jackson in violation of Federal nondiscrimination guarantees when the city terminated planning efforts in two high-priority black neighborhoods and substituted other, low-priority white neighborhoods instead.[77] HUD also found that Jackson had failed to take affirmative action to include blacks in the planning process.

---

[76] Testimony and exhibits admitted in evidence in *Kirksey* v. *City of Jackson,* Civil No. J77-0075(N), S.D. Miss.

[77] Letter from Charles E. Clark, Asst. Regional Adm'r, Fair Housing and Equal Opportunity, HUD, to Mayor Russell C. Davis, Apr. 22, 1977.

(7) Police protection. In 1977 the U.S. Commission on Civil Rights found that black citizens in Jackson "have the firm conviction that they have been victimized rather than served by their police department," and that the city had failed to take proper steps to investigate and take disciplinary action against police misconduct.[78]

(8) Fire protection. A 1973 report commissioned by the city identified serious water pressure and quantity deficiencies in water lines and hydrants in black neighborhoods which would have made it impossible to use the water system to fight fires, but no comparable deficiencies in white neighborhoods.[79]

Laurel.—Laurel adopted at-large voting with a commission form of government in 1912, and since then no black has been elected to the city council despite the fact that Laurel is 37 percent black. Laurel is a segregated community divided by railroad tracks, with blacks living on one side of the tracks, and whites on the other. Laurel has a municipal separate school district, the board members of which are appointed by the all-white city council, and up until 1978—24 years after the *Brown* v. *Board of Education* decision—five of the seven elementary schools remained racially segregated.[80]

In 1977 the Office of Revenue Sharing (ORS) found that the City of Laurel was discriminating against black residents in the provision of municipal services.[81] ORS found that while all the white residents of Laurel had city sewer service, sewer service was being denied to a segment of the black community; white neighborhoods had seven of the city's eight ballfields, and only one was situated in the black community; the city recreational center in the white community contained handball courts, miniature gold, sauna, and an exercise room which were not available at the city recreational center built in the black community; although all segments of the white community were accessible to fire trucks, a black subdivision which did not have a fire station was inaccessible to fire trucks when its two access streets were blocked by train traffic; blacks employed in the Water and Sewer Departments were discriminated against by being employed predominantly in lower-paying laborer positions; and the city utilized hiring criteria which had a discriminatory impact.

ORS found Laurel in violation of the nondiscrimination provisions of the Revenue Sharing Act and implementing regulations, and directed the city to take remedial action.

Appendix B: Racial Bloc Voting

We hope eventually we will reach the point where local governing bodies will be elected on an at-large basis, and people will vote for candidates based on their individual merit and not on the color of their skin. Unfortunately, we have not yet reached that state. *McMillan* v. *Escambia County, Fla.*[82]

Racial bloc voting is pervasive in Mississippi. In *Mississippi* v. *United States,* the District Court for the District of Columbia made the following finding of fact:

"Analysis of past election returns show that racial bloc voting has prevailed throughout the State of Mississippi. Those participating in the electoral process suggest that racial bloc voting continues to occur throughout the state today."[83]

A comparison of election results from 1971 through 1980 shows no fundamental change in the attitudes and voting behavior of white Mississipians—described by Dr. James W. Loewen as a "furious determination" to deny blacks participation in the political system.[84] The extreme significance of race insures that structures such as at-large elections and racially gerrymandered districts and requirements such as

---

[78] United States Commission on Civil Rights, Staff Report, Police/Community Relations in Jackson, Mississippi: An Overview (February 1977).

[79] Although the statistics presented in plaintiffs' testimony and exhibits were generally not disputed by defendants (the principal dispute related to identifying park acreage with the race of the persons served), the District Court found that plaintiffs had failed to prove racial discrimination in the provision of municipal services. 461 F. Supp. 1282, 1292-1310. Plaintiffs challenged the District Court's findings as clearly erroneous on appeal, but were deprived of appellate review of those findings when the Fifth Circuit vacated the District Court's decision and remanded it for reconsideration in light of *City of Mobile* v. *Bolden.* 625 F.2d 21 (5th Cir. 1980).

[80] *United States* v. *State of Mississippi (Laurel Mun. Sep. School Dist.),* 567 F.2d 1276 (5th Cir. 1978).

[81] Letter from Bernadine Denning, Director, Office of Revenue Sharing, to Mayor William L. Patrick, Aug. 31, 1977.

[82] 638 F.2d 1239, 1248 N. 18 (5th Cir. 1981).

[83] 490 F. Supp. 569, 575 (D.D.C. 1979), *aff'd,* 444 U.S. 1050 (1980).

[84] Trial Transcript, *Boykins* v. *City of Hattiesburg,* Civil No. H77-67(C) S.D. Miss., p. 51 (Sept. 8, 1980). Dr. Loewen is an expert on racial bloc voting and has analyzed approximately 150 different elections. The results of those analyses have been admitted in evidence in more than a dozen court cases.

majority vote and full slate voting discriminate against black voters while white voters are unfairly advantaged.

Racial bloc voting is not the same political behavior as, for example, members of a political party tending to vote for the party candidate. The severe racial bloc voting discussed here is the result from the history of state-enforced segregation common to the south—the "rigid patterns of segregation by law (which) affected nearly every facet of life."[85] The *Petersburg* Court noted that" (a)lthough state-imposed segregation has abated, its long continuance in the past caused a dramatic polarization of the races in Petersburg with respect to voting and this result has not been obliterated."[86]

An analysis of 1980 elections in Mississippi shows that race continues to be the most important single determinant in voting behavior. When compared with studies of 1971 through 1977 election returns, the findings remain consistent. When a black candidate runs for office or when a "black issue", e.g., single-member or ward representation vs. at-large voting, is the subject of a referendum, race is the most significant factor in the election results.[87]

A. February 22, 1977—Referendum to change to ward voting and mayor-council

On February 22, 1977, voters in Jackson, Mississippi participated in a referendum—the issue was whether to change from a commission form of government with at-large voting under which black citizens have never been elected to a mayor-council structure with ward voting under which it was likely that three blacks would be elected to the city council. Blacks comprise approximately 40 percent of the population. In that referendum, 72.4 percent of the white voters voted to retain the commission form of government, while 97.9 percent of black voters voted for the mayor-council form.

To argue that the commission form was preferred by white voters for some issue-related reason—"good government" results from the commission form—leaves unexplained that pro-commission arguments were convincing only to whites and not to blacks. It is also erroneous to assume that some other factor, such as income, is the cause of racial bloc voting. First, it has never been shown that income or any other factor correlates as highly as race with an election outcome. Second, if income, or some other factor correlates as highly as race with an election outcome, that factor would be so closely linked with race as to be a "racial characteristic".

The implication from the high degree of racial polarization that race itself was the reason why whites voted one way and blacks the other way is substantiated by the results of a random sample poll conducted by an expert in scientific polling, which shows that 61 percent of whites who voted to retain the commission form of government gave at least one racial reason for their vote, and 44 percent gave two or more racial reasons for their vote.[88]

B. Calculating racially polarized voting

There are three main ways to analyze elections to ascertain whether racially polarized voting has occurred: the correlation coefficient, overlapping percentages,[89] and ecological regression.[90] All three were used by Dr. James W. Loewen in analyzing the referendum vote.

The correlation coefficient, r, is the most commonly used and accepted statistic to measure the relationship between two variables. It can vary in size from 0 (no relationship at all between the independent variable, race of voter) to 1.0 (a perfect relationship, so that if we know the racial composition of a precinct, its voting pattern is predictable with no error whatsoever). Correlation coefficients of $r=.5$ to $r=.7$ are customarily considered statistically significant. A related statistic, r^2 tells the proportion of the variance or variation on the dependent variable (outcome) that

---

[85] *City of Petersburg, Virginia* v. *United States*, 354 F. Supp. 1021, 1025 (D.D.C. 1972), *aff'd* 410 U.S. 962, (1973).

[86] 354 F. Supp. at 1025.

[87] 345 F. Supp. at 1025.

[88] See pp. 40-41.

[89] Overlapping percentages analysis can be done only with individual units such as precincts that are overwhelmingly white. The analysis begins with a calculation of the maximum amount of racial crossover—the assumption that all blacks who voted did so for the white candidate and that all votes for the black candidate came from whites, then the minimum amount of white bloc voting that must have taken place is computed. In the referendum, the commission form of government substitutes for "white candidate"; the mayor-council form of government substitutes for "black candidate".

[90] Ecological regression analysis provides an actual percentage estimate of white bloc voting based on an entire district. Just as overlapping percentages analysis provides an accurate measure of the voting behavior of whites in one precinct, ecological regression combines this behavior over all precincts, yielding an overall calculation.

is associated with the independent variable (race). That is, if $r = .7$, then $r^2 = 49$, meaning that "race" explains 49 percent of all the variance in election returns. It is uncommon for a single variable to explain that much of the outcome variation in social science research.

In the Jackson referendum, the correlation coefficient, r, between percent white in the registered voters and percent of votes cast for the commission form, was .92. This is extremely high and indicates racial polarization in the election. Only about 16 percent of the variance is "left" for other variables to attempt to explain. The racial correlation is so high,in short, that race is the most important factor in the election.

The overlapping percentages analysis of two heavily white precincts confirms white bloc voting.[91] In Precinct 15, which is 100 percent white, exactly 70.1 percent of the white voters voted to retain the commission form of government. In Precinct 97, in which whites are 94.9 percent of the registered voters, the analysis shows that 88.1 percent is the proportion of whites at a minimum who voted to retain the commission form. The calculated maximum is 93.5 percent.

The result of the overlapping percentages analysis is for overwhelmingly white and overwhelmingly black precincts are shown in Table 1. They show that whites in these precincts voted for the commission form by about 65 to 70 percent, while blacks voted for the new form of government by about 20 to 1.

The ecological regression analysis of the entire city vote shows that 72.4 percent of the whites who voted cast their ballot to retain the commission form with at-large election. The result of this analysis is shown in Table 3.

C. June 1980—Democratic primaries, fourth congressional district

Four candidates sought the Democratic nomination for the U.S. House of Representatives in the Fourth Congressional District. Three candidates, Cagle, Pyron and Singletary, are white; one candidate, State Senator Henry J. Kirksey, is black. The correlation coefficients and r^2 for the two contests—Democratic primary and primary runoff—are presented in Table 4. In the primary, $r = .91$. In the runoff, $r = .94$. They are extremely high and indicate racially polarized voting. By better than ten to one, whites voted white and blacks voted black. Even greater polarization marked the runoff which Senator Kirksey lost.

Table 7 shows the total proportion of whites voting for Singletary and blacks for Kirksey as well as turnout data. In the primary, 85.1 percent of the whites voted for Singletary; while 99.3 percent of the blacks voted for Kirksey. In the runoff, 89.9 percent of the whites voted for Singletary and 99.9 percent of the blacks voted for Kirksey.

D. Elections during 1971-75

Table 8 shows the results of analyses of elections during 1971-75 in Mississippi ranging from the 1971 gubernatorial election, state senate Democratic primary in southwest Mississippi in 1975, county (Noxubee) sheriff election in east Mississippi, circuit clerk contest in central Mississippi in 1975, to Delta County elections—Sunflower and Bolviar. The analyses shows that in all these elections, $r = .9+$. The minimum percentage of whites voting for the white candidates ranges from a low of 94.2 to 99+. The table shows severe racial bloc voting throughout Mississippi with no significant change over the years.

[91] Table 1 at the end of this appendix. All tables subsequently referred to are presented at the end of this chapter.

Table 1. Two Precincts, 2/22/77 Referendum, Overlapping Percentages Analysis.*

Pct. #	% White, Registered Vtrs.	% Votes for Commission	Minimum % of Whites who had to have Voted Commission
15	100.0%	70.1%	70.1%
97	94.9%	88.7%	88.1%

*Precincts selected only for illustrative purposes.

Table 2. Overlapping Percentages Analysis, 2/22/77 Referendum.*

Precincts	% White among Registered Voters	% Votes for Commission	Minimum % of Whites who had to have Voted Commission
All 100% White Precincts (#15, 33, 34, 45, 74, 75, 77, 86, 89, 92, 93, and 95)	100.0%	70.0%	70.0%
All 99.9% or more White Precincts (#32, 36-8, 42, 44, 73, 76, and 79)	99.9+%	64.9%	64.8%
	% Black among Registered Voters	% Votes for Mayor/Cncl.	Minimum % of Blacks who had to have Voted Mayor-Council
All 99% or more Black Precincts (#2, 12, 13, 20, 30, 31, and 64)	99+%	94.9%	94.8%

*Because Jackson has so many precincts that are overwhelmingly segregated, I used a much higher cutoff point than the usual 90% uniracial point.

Table 3. Ecological Regression Analysis, 2/22/77 Referendum.

% of White Registered Voters Who Turned Out and Cast Referendum Ballots	% of White Voters Who Voted for the Commission Form	% of Black Registered Voters Who Turned Out and Cast Referendum Ballots	% of Black Voters Who Voted for the Mayor-Council Form
30.0%	72.4%	23.7%	97.9%

Table 4. Correlation Analysis, 6/3/80 and 6/24/80.

	Correlation between % White in Registered Voters and % of Votes for White Candidate(s), Fourth Congressional District	Percentage of Variance in Outcome which is Associated with Race of Voters
6/3/80	$r = .91$	$r^2 = 82.6\%$
6/24/80	$r = .94$	$r^2 = 88.0\%$

Table 5. Overlapping Percentages Analysis, 6/3/80 Primary.

Precincts	% White among Registered Voters	% Votes for Cagle, Pyron, and Singletary	Min. % of Wh. who had to have Voted for C, P, or S
All 100% White Precincts (#15, 33, 34, 45, 74, 75, 77, 86, 89, 92, 93, and 95)	100.0%	92.6%	92.6%
All 99.9% or more White Precincts (#32, 36-8, 42, 44, 73, 76, and 79)	99.9+%	92.8%	92.8%
	% Black among Registered Voters	% Votes for Kirksey	Min. % of Blacks who had to have Voted for Kirksey
All 99% or more Black Precincts (#2, 12, 13, 20, 30, 31, and 64)	99+%	95.6%	95.6%

Table 6. Overlapping Percentages Analysis, 6/24/80 Runoff.

Precincts	% White among Registered Voters	% Votes for Singletary	Min. % of Whites who had to have Voted for Singletary
All 100% White Precincts (#15, 33,34,45,74,75,77,86,89,92, 93, and 95)	100.0%	95.2%	95.2%
All 99.9% or more White Precincts (#32, 36-8, 42, 44, 73, 76, and 79)	99.9+%	94.2%	94.2%
Precincts	**% Black among Registered Voters**	**% Votes for Kirksey**	**Min. % of Blacks who had to have Voted for Kirksey**
All 99% or more Black Precincts (#2, 12, 13, 20, 30, 31, and 64)	99+%	99.0%	92.0%

Table 7. Ecological Regression Analysis, 6/3/80 and 6/24/80 Elections.

Date	% of Wh. Regist. Voters Who Turned Out and Voted for Congress	% of White Ballots Cast for Singletary (et al.)	% of Bl.Regist.Voters Who Turned Out and Voted for Cong.	% of Bl.Ballots Cast for Kirksey
6/3	7.4%	85.1%	15.3%	99.3%
6/24	17.8%	89.9%	30.9%	99.9%

Table 8. Sample of Elections 1971-1975 in which Black Candidates Ran for Office.

Election	Correlation Coefficient	% white voting for white candidate
1975: State Senate, Democratic Primary. Adams, Amite, Franklin, Jefferson and Wilkinson Counties	.97	99+
1975: State Representative Marshall County	.93	99+
1975: Tax Assessor Bolivar County	.90	99+
1975: Sheriff Noxubee County	.91	94
1975: Primary, County Attorney Sunflower County	.96	94.2
1975: Circuit Clerk Madison County	.94	96.1
1972: Election Commissioner Madison County	.99	94.4
1971: Supervisor District 3 Forrest County	.97	99.5
1971: Governor Statewide	.93	99+

Mr. EDWARDS. Our next witness is the Honorable Fred Banks, State Representative from Jackson, Miss. Mr. Banks, you may proceed.

TESTIMONY OF HON. FRED BANKS

Mr. BANKS. Thank you, Mr. Chairman.

I sincerely appreciate the opportunity that you have afforded me to express my very grave concerns about the 1965 Voting Rights Act. I am a native Mississippian and I have resided there all of my 38 years, except for the period when I pursued higher education at Howard University here in Washington, D.C. I returned to Mississippi immediately after completing law school in 1968 and I have been actively involved in politics since that time.

I have served in the Mississippi House of Representatives since 1976 and I currently chair the Mississippi Legislative Black Caucus. I have been president of the Jackson Branch NAACP since 1971 and I have served as general counsel to the Mississippi State Conference of NAACP Branches.

My primary concern, with respect to the extension of the 1965 Voting Rights Act, is section 5 or the preclearance provision. I am firmly convinced that any dilution of that provision would destroy any chance for black Mississippians to share significant political power in that State in the future.

I base my conviction on my reading of the history of our State and my personal observations over the past 13 years of intimate involvement with the political process there.

The bloody history of Mississippi's treatment of blacks seeking access to the franchise is unmatched by any other State in our Nation and is too recent to have faded from our memories.

Rev. George Washington Lee was shot down in Belzoni, Miss. in 1955 for the high crime of registering to vote. Goodman, Chaney, and Schwerner were brutally tortured and killed in 1964 for conducting a voter registration drive in Philadelphia, Miss. Even after the passage of the Voting Rights Act in early 1966, Vernon Dahmer was firebombed and burned to death in his home in the middle of the night because he had been paying poll taxes for poor blacks so that they could vote. Only in the case of Dahmer did State authorities prosecute anyone for the murder, or for anything else, for that matter.

There are countless other atrocities less famous, but less horrible only by degree. There have been innumerable beatings, maimings, and firings all for wanting to exercise that most basic right of citizenship in this country.

This kind of violence admittedly has diminished in recent years, but the attitude that prompted and condoned it remains all to prevalent today. The attitude simply stated is that it is not a nigger's place to make decisions that affect white folks.

It was this attitude that our present Governor recognized and catered to as recently as 1 year ago when he publicly stated during our State democratic convention process that the chairman of the party had to be a white male so that whites would continue to participate in the party. He was successful in assuring that a white male was elected chairman of the party.

This is despite the fact that every statewide and multicounty district official is a white male democrat. It is the height of hypocrisy for the same Governor, less than 1 year later, to state that Mississippi is now too sophisticated to need the Voting Rights Act. Only if he means that we have found sophisticated ways of nullifying black voting strength is Mississippi more sophisticated. Without the Voting Rights Act, I dare say that the political powers that be wouldn't bother to be as sophisticated.

A look at what comes out of our legislature and what doesn't come out also gives evidence to the need for a continuation of the Voting Rights Act and section 5.

In the first place, although it has always been the primary responsibility of the legislature to reapportion itself, it took 13 years after a lawsuit was filed, it originated with Governor Johnson and went through two or three Governors, and 13 years after the Voting Rights Act to get the Mississippi Legislature to reapportion in a manner that did not unconstitutionally dilute black voting strength. Only one black served in our legislature for 11 of those 13 years.

Today, after that struggle, only 17 blacks serve in our legislature of 174 members. That may seem like progress, and indeed it is, but when you consider that the census figures showed Mississippi as 42-percent black when the suit began and 35-percent black today, you can readily see what the delay cost and how far we still are from anything like an equitable sharing of decisionmaking power.

The open primary bill is also an example of the need for section 5 for three reasons. First, it has passed the Mississippi Legislature with the votes of all but a handful of white legislators, on five different occasions, despite the unanimous and vociferous opposition of the black community. This demonstrates vividly the proclivity of white elected officials to vote "white" on issues with racial overtones, especially those affecting voting rights, even when those whites have substantial or even majority black constituencies.

Second, the act itself is a direct response to increased black political participation. It seeks, in one fell swoop, to prevent the emerging two-party system in the State, thus limiting opportunities for coalition politics for blacks and to abolish the present system which permits independent candidates to win office with less than a majority of the vote. Blacks have, on a number of occasions, gained entry to elective office with less than a majority of the vote and then, having been given the opportunity to prove themselves, with reelection with a majority.

Third, the open primary act has been rejected by the Attorney General of the United States. Still, the State of Mississippi, through its legislature, is spending my tax dollars to pursue this heinous legislation through the District of Columbia Federal District Court.

Just as instructive about the legislative mentality in Mississippi is what it fails to pass. All efforts to make the registration process more accessible to the people have been killed in the committee. Registration in Mississippi is limited to one location in the county between the hours of 8:30 a.m. to 5 p.m., Monday through Friday. Postcard registration, door-to-door registration and even moving the registration book to the voting precincts have all been rejected

by the Mississippi Legislature, at-large elections are preserved religiously. And the list goes on.

Section 5 doesn't mandate legislative action in Mississippi without the aid of a court order, but it does have a very good deterrent effect. An example is the legislation passed this year revamping our justice court system. Forced to address the issue by a Federal appeals court order, the legislature initially sought an at-large system for the election of justices who are now elected by district in the counties. Only the recognition by legislative veterans that such a system would surely invoke section 5 objections allowed an amendment by a black legislator to create districts to prevail.

This story can be repeated many times referring to city hall and county courthouses. Even gubernatorial elections bring out the issue when they discuss State constitutional reform and shy away because of Federal involvement. What do you think they are afraid of?

Ladies and gentlemen, the Mississippi Legislative Black Caucus, made up of the 17 blacks representing counties from Tunica in the north to Harrison in the South, Noxubee and Lauderdale in the East, to Washington and Adams in the West, unanimously supports extension of the Voting Rights Act, especially section 5.

I have a telegram to that effect which I would like to be made a part of the record.

Mr. EDWARDS. Without objection, the mailgram will be made a part of the record.

[The mailgram follows:]

[Mailgram]

MISSISSIPPI LEGISLATIVE BLACK CAUCUS,
Jackson, Miss., May 22, 1981.

Hon. WILLIAM F. SMITH,
Attorney General,
Department of Justice, Washington, D.C.

DEAR SIR: Keep section 5 as it is. If you dilute or eliminate section 5 in any way you send a message to blacks in Mississippi and across the South that this administration does not care about black people. Section 5 in its present form is essential to protect the voting rights of black people in Mississippi. Everyone is watching what you will do.

CREDELL CALHOUN.

Mr. BANKS. The Mississippi State Conference of NAACP branches unanimously supports its extension. Charles Evers and every other black leader in Mississippi supports its extension. Surely, Fannie Lou Hammer would turn over in her grave at the prospect of a change.

The debate should not be over whether to extend but whether to make permanent. Permanent for how long? Permanent until blacks and whites together can come to this Congress unanimously and without opposition and seek its repeal as anachronistic.

Repeal at this stage would be an act closely akin to removing the troops in the 1870's and it would give a horrible ring of truth to President Reagan's words in Philadelphia, Miss., that we should return to State rights. State rights in Mississippi means simply State wrongs against blacks and we are quite frankly horrified at the prospect.

[The statement of Mr. Banks follows:]

PREPARED STATEMENT OF FRED L. BANKS, JR., CHAIRMAN OF THE MISSISSIPPI LEGISLATIVE BLACK CAUCUS

Good morning. I sincerely appreciate the opportunity that you have afforded me to express my very grave concerns about the 1965 Voting Rights Act. I am a native Mississippian and I have resided there all of my 38 years except for the period when I pursued higher education at Howard University here in Washington, D.C. I returned to Mississippi immediately after completing law school in 1968 and I have been actively involved in politics since that time. I have served in the Mississippi House of Representatives since 1976 and I currently Chair the Mississippi Legislative Black Caucus. I have been president of the Jackson branch NAACP since 1971 and I have served as general counsel to the Mississippi State Conference of NAACP branches.

My primary concern, with respect to the extension of the 1965 Voting Rights Act, is section 5 or the preclearance provision. I am firmly convinced that any dilution of that provision would destroy any change for black Mississippians to share significant political power in that State in the future.

I base by conviction on my reading of the history of our State and my personal observations over the past thirteen years of intimate involvement with the political process there.

The bloody history of Mississippi's treatment of blacks seeking access to the franchise is unmatched by any other State in our Nation and is too recent to have faded from our memories. Rev. George Washington Lee was shot down in Belzoni, Mississippi in 1955 for the high crime of registering to vote. Goodman, Chaney and Schwerner were brutally tortured and killed in 1964 for conducting a voter registration drive in Philadelphia, Mississippi. Even after the passage of the Voting Rights Act in early 1966, Vernon Dahmer was firebombed and burned to death in his home in the middle of the night because he had been paying poll taxes for poor blacks so that they could vote. Only in the case of Dahmer did State authorities prosecute anyone for the murder. There are countless other atrocities less infamous but less horrible only by degree. There have been innumerable beatings, mainings and firings all for wanting to exercise that most basic right of citizenship in this country.

This kind of violence admittedly has diminished in recent years, but the attitude that prompted and condoned it remains all too prevalent today. The attitude simply stated is that it is not a nigger's place to make decisions that affect white folks.

It was this attitude that our present Governor recognized and catered to as recently as one year ago when he publicly stated during our State Democratic Convention process that the chairman of the party had to be a white male so that whites would continue to participate in the party. This is despite the fact that every Statewide and multi-county district official is a white male democrat. It is the height of of hypocrisy for the same governor, less than one year later, to state that Mississippi is now to "sophisticated" to need the Voting Rights Act. Only if he means that we have found sophisticated ways of nullifying black voting strength is Mississippi more sophisticated. Without the Voting Rights Act I dare say that the political powers that be wouldn't bother to be as "sophisticated."

A look at what comes out of our legislature and what doesn't come out also gives evidence to the need for a continuation of Section 5.

In the first place, although it has always been the primary responsibility of the legislature to reapportion itself, it took 13 years after a lawsuit was filed and 13 years after the Voting Rights Act to get the Mississippi Legislature to reapportion in a manner that did not unconstitutionally dilute black voting strength. Only 1 black served in our legislature for 11 of those 13 years. Today, after that struggle, only 17 blacks serve in our legislature of 174 members. That may seem like progress and indeed it is, but when you consider that the census figures showed Mississippi as 42 percent black when the suit began and 35 percent black today, you can readily see what the delay cost and how far we still are from anything like an equitable sharing of decision making power.

The open primary bill is also an example of the need for section 5 for three reasons. First, it has passed the Mississippi Legislature with the votes of all but a handful of white legislators. On five different occasions, despite the unanimous and vociferous opposition of the black community. This demonstrates vividly the proclivity of white elected officials to vote "white" on issues with racial overtones, especially those affecting voting rights, even when those whites have substantial or even majority black constituencies.

Second, the act itself is a direct response to increased black political participation. It seeks, in one fell swoop, to prevent the emerging two party system in the state, thus limiting opportunities for coalition politics for blacks and to abolish the present system which permits independent candidate to win office with less than a

majority of the vote. Blacks have, on a number of occasions, gained entry to elective office with less than a majority of the vote and then, having been given the opportunity to prove themselves, won relection with a majority.

Third, the open primary act in our thrust has been rejected by the Attorney General of the United States. Still the State of Mississippi through its legislature is spending my tax dollars to pursue this heinous legislation through the District of Columbia Federal District Court.

Just as instructive about the legislative mentality in Mississippi is what it fails to pass. All efforts to make the registration process more accessible to the people have been killed in the committee. Registration in Mississippi is limited to one location in the county between the hours of 8:30 a.m.-5 p.m. Monday through Friday. Postcard registration, door to door registration and even moving the registration book to the voting precincts have all been rejected by the Mississippi Legislature. At-large elections are preserved religiously and the list goes on.

Section 5 doesn't mandate legislative action in Mississippi without the aid of a court order but it does have a very good deterrent effect. An example is the legislation passed this year revamping our justice court system. Forced to address the issue by a Federal appeals court order the legislature initially sought an at-large system for the election of justices who are now elected by district in the counties. Only the recognition by legislative veterans that such a system would surely invite section 5 objections allowed an amendment by a black legislator to create districts to prevail.

This story can be repeated many times referring to city hall and county court houses. Even gubernatorial elections bring out the issue when they discuss state constitutional reform and shy away because of "Federal involvement." What do you think they are afraid of?

Ladies and gentlemen, the Mississippi legislative black caucus made up of the 17 blacks representing counties from Tunica in the north to Harrison in the south, Noxubee and Lauderdale in the east to Washington and Adams in the west, unanimously supports extension of the Voting Rights Act, especially section 5. The Mississippi State Conference of NAACP Branches unanimously supports its extension. Charles Evers and every other black leader in Mississippi supports its extension. Surely, Fannie Lou Hammer would turn over in her grave at the prospect of a change.

The debate should not be over whether to extend but whether to make permanent. Permanent for how long? Permanent until blacks and whites together can come to this Congress unanimously and without opposition and seek its repeal as anachronistic.

Repeal at this stage would be an act closely akin to removing the troops in the 1870's and it would give a horrible ring of truth to president Reagan's words in Philadelphia, Mississippi that we should return to State rights. State rights in Mississippi means simply State wrongs against blacks and we are quite frankly horrified at the prospect.

Mr. EDWARDS. Thank you very much, Mr. Banks.

The final member of the panel to testify will be Mr. Bennie G. Thompson, supervisor of District 2, Hinds County, Miss.

Mr. Thompson.

TESTIMONY OF HON. BENNIE G. THOMPSON

Mr. THOMPSON. Thank you, Mr. Chairman I appreciate the opportunity to come before you and speak on behalf of the extension of the Voting Rights Act.

I am Bennie G. Thompson, the duly elected supervisor of District 2 in Hinds County, Miss. According to the 1980 census, my district has 51,091 people, making it the largest district represented by a black in the State of Mississippi.

Before my election in 1979 to this office, I served as mayor of Bolton, Miss., from 1973 to 1979. Prior to this position, I served on the Board of Alderman for the town of Bolton from 1969 to 1973.

Before the passage of the 1965 Voting Rights Act, there were no blacks registered to vote in Bolton. The first recorded municipal election was in 1969 when two other blacks, including myself, were elected to the city council. Prior to 1969, decisions of the town were

made by a handful of whites who controlled the economic purse strings of the community.

After 4 years of fruitless bickering and very little substantial improvements in the conditions of Bolton, the community decided to run myself and six other black persons for the elected positions in Bolton, we were successful despite several lawsuits on behalf of the losing white candidates who could not envision having a black controlled city government in a community that had always had white rule.

I have attached a chronology of events surrounding my election in 1973. After taking over the reign of government in Bolton, it was quite obvious that our community lacked many of the basic amenities of life that so many others took for granted.

When I was elected, our water and sewer system was inadequate, we had no fire protection, the garbage truck was repossessed by the county after my election, the lease on the garbage dump was revoked, the police department quit and the town clerk refused to provide any records of previous transactions dealing with city government.

Compounding the problems more was an unemployment rate of over 40 percent in this minority community and a housing stock that was 75 percent dilapidated or beyond repair.

I might point out here that we were some 6 months late taking office because of the several lawsuits coming out May 1973 elections.

Despite the difficulties surrounding these eight lawsuits, I and the other black elected officials took office under what we have described as very difficult conditions, with the help of some friends on the local and national scene, we were able to begin a programmatic plan to make the quality of life better in the small rural community.

New York City, with the help of the Vulcan Society, donated a fire truck for $1; the city of South Field, Mich. donated a garbage truck free; the National Council of Churches, through the Delta Ministries, provided a planner who developed its first city hall, fire station, housing counseling program, water and sewer improvements, neighborhood park, day care center, and above all, a way out of nowhere. In addition to these services, we were also able to bring 40 units of new housing to our community and rehab some 22 existing units.

To you gentlemen who are perhaps from large metropolitan areas, these figures might not seem much, but in a community of less than 1,000, it was a godsend. The real pleasure of being able to provide these basic amenities to the people can only be visualized in the words of a 94-year-old black woman who was filmed in a 1979 documentary on the rural South, who said, "Thank God for you, Bennie, and for other people like you."

More specifically, had it not been for the passage of the Voting Rights Act of 1965, I am certain that the people in Bolton, Miss., would still be living in the dark ages with a "massa" as mayor and many of those ills outlined earlier would still exist.

Having been born in Bolton and one who never left, but agreed to stay on and struggle within the system, I can say, without any hesitation, that my election would not have been possible had it

not been for the safeguards outlined in the Voting Rights Act of 1965.

A closer reading of the attachments to my testimony will attest to the fact that had we not the authority to remove certain legal actions to Federal court, then we would have been left to the mercy of racist white judges who very clearly let their feelings be known by issuing illegal injunctions during the course of our 1973 election.

If I might digress just a minute, sir. I remember in 1973, something like 6 o'clock in the evening, before we were set to go to trial, we had developed a strategy to remove it from the State to the Federal court. I can remember the judge's comment when Frank Parker presented the removal order, over which he had no jurisdiction. And he looked to the attorney for the other side and said, "Well, Bob they have taken it out of my hands. I can't do anything for you all now."

Furthermore, my position is a result of a lawsuit brought in 1971 by State Senator Henry J. Kirksey, who is now a candidate for mayor of Jackson, Miss. In the lawsuit, Senator Kirksey alleged that no black could ever be elected to the Hinds County Board of Supervisors under the present boundaries of the district. .

After successfully arguing and a favorable decision rendered on the case in 1979, the districts were redrawn consistent with the one-person one-vote theory. Had it not been for Senator Henry J. Kirksey's perseverance and the Lawyers Committee for Civil Rights Under Law, and the U.S. Department of Justice with authority under the Voting Rights Act, we would still have an all-white form of county government in a county that, according to the 1980 census, is 45.7 percent blacks.

Gentlemen, you cannot afford to turn your backs on black people in this country. We have made tremendous strides in the number of black elected officials because of the Voting Rights Act. If you will visit any city or county with black elected officials, you will find both compassion and sensitivity for all people, which did not exist in the past.

As a native son and one who stayed home to fight the battle, as one whose family still receives threatening phone calls, as one who was drafted six times in 2 months, as one who lost two teaching positions because of my dream to make a community better for all people, I challenge you to help me and other people like me to make this county live out the true meaning of life, liberty and the pursuit of happiness by extending the Voting Rights Act.

[The statement of Mr. Thompson and attachments follow:]

PREPARED STATEMENT OF BENNIE G. THOMPSON, SUPERVISOR, DISTRICT NO. 2, HINDS COUNTY, MISS.

I am Bennie G. Thompson, the duly elected Supervisor of District Two in Hinds County, Miss. According to the 1980 census, my district has 51,091 people, making it the largest district represented by a Black in the State of Mississippi.

Before my election in 1979 to this office, I served as Mayor of Bolton, Miss., from 1973 to 1979. Prior to this position, I served on the Board of Aldermen for the Town of Bolton from 1969 to 1973.

Before the passage of the 1965 Voting Rights Act, there were no Blacks registered to vote in Bolton. The first recorded Municipal election was in 1969 when two other Blacks including myself were elected to the City Council. Prior to 1969, officials of the Town were decided by a handful of whites who controlled the economic purse strings of the community.

After four years of fruitless bickering and very little substantial improvements in the conditions of Bolton, the community decided to run myself and six other black persons for the elected positions in Bolton, we were successful despite several lawsuits on behalf of the losing white candidates who could not envision having a black controlled City Government in a community that had always had white rule. I have attached a chronology of events surrounding my election in 1973. After taking over the reign of government in Bolton, it was quite obvious that our community lacked many of the basic amenities of life that so many others took for granted.

When I was elected, our water and sewer system was inadequate, we had no fire protection, the garbage truck was repossessed by the county after my election, the lease on the garbage dump was revoked, the police department quit, and the town clerk refused to provide any records of previous transactions dealing with city government.

Compounding the problems more was an unemployment rate of over 40 percent in this minority community and a housing stock that was 75 percent dilapidated or beyond repair. I might point out here that we were some six months late taking office because of the several lawsuits coming out of the May 1973 elections. Despite the difficulties surrounding these eight lawsuits; I and the other black elected officials took office under what we have described as very difficult conditions; with the help of some friends on the local and national scene we were able to begin a programmatic plan to make the quality of life better in the small rural community.

New York City, with the help of the Vulcan Society, donated a fire truck for $1; the city of South Field, Mich., donated a garbage truck free; the National Council of Churches through the Delta Ministries provided a planner who developed its first City Hall, Fire Station, Housing Counseling program, water and sewer improvements, neighborhood park, day care center and above all, a way out of nowhere. In addition to these services we were also able to bring 40 units of new housing to our community and rehabilitate some 22 existing units.

To you gentlemen who are perhaps from large metropolitan areas these figures might not seem much but, in a community of less than 1,000, it was a godsend. The real pleasure of being able to provide these basic amenities to the people can only be visualized in the words of a 94-year-old black woman who was filmed in a 1979 documentary on the rural South, who said, "Thank God for you, Bennie, and for other people like you."

More specifically, had it not been for the passage of the Voting Rights Act of 1965, I am certain that the people in Bolton, Miss. would still be living in the dark ages with a "massa" as mayor and many of those ills outlined earlier would still exist.

Having been born in Bolton and one who never left but agreed to stay on and struggle within the system, I can without any hesitation say that my election would not have been possible, had it not been for the safeguards outlined in the Voting Rights Act of 1965.

A closer reading of the attachments to my testimony will attest the fact that had we not the authority to remove certain legal actions to Federal Court, then we would have been left to the mercy of racist white judges who very clearly let their feeling be known by issuing illegal injunctions during the course of our 1973 election.

Furthermore, my position is a result of a lawsuit brought in 1971 by State Senator Henry J. Kirksey, who is now a candidate for mayor of Jackson, Miss. In the law suit, Senator Kirksey alleged that no black could ever be elected to the Hinds County Board of Supervisors under the present boundaries of the district. After successfully arguing and a favorable decision rendered on the case in 1979, the districts were redrawn consistent with the one person one vote theory. Had it not been for Senator Henry J. Kirksey's perseverance and the Lawyers Committee for Civil Rights Under Law, and the United States Department of Justice with authority under the Voting Rights Act, we would still have an all white form of County Government in a county that, according to the 1980 census that's 45.7 percent blacks.

Gentlemen you cannot afford to turn backs on Black people in this county. We have made tremendous strides in the number of Black Elected Officials because of the Voting Rights Act. If you will visit any city or county with Black Elected Officials, you will find both compassion and sensitivity for all people which did not exist in the past.

As a native son and one who stayed home to fight the battle, as one whose family still receives threatening phone calls, as one who was drafted six times in 2 months, as one who lost two teaching positions because of my dream to make a community better for all people, I challenge you to help me and other people like me to make this county live out the true meaning of life, liberty and the pursuit of happiness by extending the Voting Rights Act.

Appendix, Item # 1

MEMORANDUM

TO: The File

FROM: Frank R. Parker

SUBJECT: Bolton Election Contest Litigation

DATED: September 17, 1973

The following is a summary of the litigation arising out of the May 8 Bolton Municipal Democratic Primary Election and the June 5 Municipal General Election.

Bolton is a small (pop.787), predominantly black municipality in rural Hinds County, some 16 miles from Jackson. In the 1969 municipal elections, blacks gained a majority of three on the five-member board of aldermen, after successfully countering litigation designed to prevent them from taking office, Thompson v. Brown, 434 F.2d 1092 (5th Cir. 1970). However, because the Mayor (white) had a veto, and because the state attorney general has required that four votes is necessary to over-ride that veto, the white minority on the board continued to block progressive action by the board designed to serve the interests of the majority population. Hence, in the 1973 municipal elections, blacks ran for all municipal offices to break the reactionary stranglehold of the white minority.

In the May 5, 1973 municipal Democratic primary election, held under the auspices of the Bolton Municipal Democratic Executive Committee (composed of four whites and three blacks), seven black candidates for municipal offices (mayor, town clerk, and five aldermen) and seven black candidates for membership on the Bolton Municipal Democratic Executive Committee received a majority of the votes cast against their fourteen white opponents. The next day, May 9, the Democratic Executive Committee met as required by Mississippi law to receive and canvas the returns and announce the names of the Democratic nominees, ruled on challenged ballots, and declared the fourteen black candidates to be the winners of the primary.

The results, as tabulated by the Committee, were as follows:

Black Candidates		White Candidates	
	Mayor		
B. Thompson	217	D. Beard	199
	Town Clerk		
H. Harris	225	J. Condia	188

Appendix, Item # 1 Continued

Black Candidates		White Candidates	
	Alderman		
L. Leach	211	J. Milano	187
L. Butler	208	A. Payne	185
D. Davis	208	J. Giambrone	179
J. Hill	199	R. Mashburn	176
M. Green	198	J. Brewer	170
	Democratic Executive Committee		
E. Jones	203	J. Mashburn	186
E. Dixon	201	D. Mashburn	184
E. Heard	195	C. Lancaster	180
H. Hulitt	194	T. Cox	178
D. Robinson	193	W. Culipher	177
A. Campbell	193	R. Heard	176
M. Rollins	188	R. Boyd	174

Of the seven members of the Committee, all four whites were running for re-election, and were defeated, and two of the three blacks ran for re-election, and were re-elected.

Bolton whites made every effort, legal and illegal, to prevent the winning black candidates from taking office, which included (1) voiding the primary election to deprive the successful black candidates of their electoral victory, (2) secretly qualifying two independent white candidates by illegal means to run against the winning black candidates for Mayor and Town Clerk in the general election, and when that failed, (3) attempting to prevent the general election from being conducted at all.

Voiding the Primary

On May 24, 1973, all the losing white candidates, except the candidates for re-election to the Democratic Executive Committee, filed with the Chairman of the Committee petitions for contest of election challenging the results of the primary for all offices, municipal and party. The petitions alleged 19 separate irregularities, including voting by unqualified and unregistered voters, and by non-residents, that 23 voters were disqualified for failure to pay municipal taxes, non-compliance with technical requirements of state law regarding disposition of the ballot box and records required to be kept, improper marking of ballots, and initialing of the ballots on the front by the election managers, rather than on the back as required by state law. On May 31, after a two-day hearing, the old Committee (i.e., the Committee under whose direction the election had been conducted),

which included the four white members who themselves had been defeated in their bid for re-election in the primary, by a vote of three-to-two (three whites against two blacks present and voting, the white chairman not voting and one black member being absent) voided the May 8 primary and ordered (1) that the petitions for contest of the election be sustained, (2) that the May 9 certification of the Democratic nominees be vacated, and (3) that a "Special Democratic Primary Election" to supersede the May 8 primary be held at a time to be set by the Committee.

The Committee in its orders voiding the primary gave no reasons for its actions. In subsequent discovery proceedings the black candidates learned that the grounds for the Committee's decision were:

(1) That the initialing managers initialed the ballots on the front rather than on the back. However, one of the initialing managers testified that he was instructed to do this by the Chairman of the Committee himself, who had been designated "chief manager." The Chairman denied this in his deposition, but admitted that on election day he saw the ballots being initialed on the front and saw no reason at the time to instruct otherwise. The reason for the initialing rule is to prevent pre-voted ballots (ballots marked outside the polling place and cast inside the polling place, the voter being paid) from being cast, but the Chairman testified that he saw no evidence of pre-voted ballots being cast;

(2) That ballots were cast by voters whose names were not on the county rolls, and thus were disqualified because of Mississippi's dual registration (voter must be registered with the county and municipality to vote) requirement. Although the losing white candidates alleged that 11 voters were not registered with the county, the evidence presented to the Committee narrowed this down to two voters at the most--not enough to influence the results of the primary, except in the case of M. Rollins, candidate for the Democratic Executive Committee;

(3) That ballots had been cast by non-residents, who not living within the town limits, or having moved away, lost their eligibility to vote in town elections. However, the evidence presented indicated that contrary to the losing white candidates' allegations that at least 4 and probably 8 other voters were non-residents, only 1 voter possibly fitted into this category--again, not enough to influence the results in most instances;

(4) That eight persons voted who had not paid municipal taxes upon purchasing their automobile licenses. However, the Chairman admitted that he had received an opinion from the state attorney general that the state law disfranchising a voter who was delinquent in municipal taxes was unconstitutional and could no longer be enforced; and

(5) That there were a number of ballots with distinguishing marks on them, by which a voter's ballot could be identified, although in most cases these related to the manner in which the voter marked his ballot by the use of distinctive check marks or "x's", or a combination of both, which the Mississippi Supreme Court has held do not disqualify a voter's ballot.,

Mississippi law provides that fraud must be perpetrated to void or change the results of an election. Miss. Code Ann. § 3143 (1956 Recomp.). An entire box may not be thrown out unless "it is impossible to arrive at the will of the voters." Miss. Code Ann. § 3167 (1956 Recomp.). Irregularities committed by managers are not sufficient to void the box unless the irregularities were deliberately committed for the purpose of manipulating the election. Id. The Chairman of the Bolton Municipal Democratic Executive Committee, who presided at the hearing on the contests of the primary, admitted in his deposition that there were no instances of any fraud in the conduct of the primary or wilful irregularities which would change the result of the election. Further, he admitted that the Committee did not rule on the specific allegations of irregularities in several instances, and did not make specific determinations regarding the charges made, but rather that the decision of the Committee to void the primary "was based not so much on specifics . . . rather than a general thing . . . a feeling that there would be enough to warrant the calling of another election."

Subverting the General Election

A. The Two Municipal Election Commissions.

Mississippi law requires that the municipal general election, required to be held June 5, 1973, be conducted by a Municipal Election Commission, appointed by the "governing authorities" of the municipality. State law also requires that appointments of municipal officers must be made by the Board of Aldermen; the Mayor does not even have a veto over municipal appointments. Falsely announcing to the board at its regular May 1 meeting

that there was no opposition to the winning black candidates in the general election, Mayor Alex S. Payne (himself a losing candidate for Alderman in the primary) unilaterally and without a vote from the Board appointed a Municipal Election Commission composed of two whites and one black with bad eyesight to conduct the municipal general election.

More than two weeks later, at the bi-lateral examination of the primary ballots in preparation for the primary election contests, I overheard a conversation between J. Giambrone and the Town Clerk regarding two white independent candidates in the general election, and for the first time the black primary winners learned that two whites had qualified as independents with the Town Clerk for the Mayor and Town Clerk positions in the general election.

The winning black candidates had been lulled into a sense of complacency regarding their primary victory. Heretofore victory in the primary had been tantamount to election, and it was unlikely that the black candidates could muster as many votes for a general election contest as they had for their primary election. Many college students who had voted in the primary would be out of state working in summer jobs by June 5. Further, the manner in which the three election commissioners had been appointed suggested that the whites might attempt to steal the general election. Many of the blacks who had voted in the primary felt free to vote for the candidates of their choice, because managers had been selected to assist black illiterates who had the confidence of the black community. The three election commissioners named to conduct the general election did not have the confidence of the black community, and their presence in the polling place, or their manner in assisting illiterate blacks, would deter many blacks from voting, or from voting for the candidates of their choice.

The defect in this new effort to prevent blacks from winning the two most important municipal positions was the illegal manner in which the May 1st Municipal Election Commission had been appointed. On May 19 two of the black Aldermen called a special meeting of the Mayor and Board of Aldermen to cure this defect. The Mayor and two white Aldermen, although receiving legal notice of this meeting, did not attend, and a new Municipal Election Commission, composed of two blacks who had the confidence of the black community, and one white believed to be fair, was appointed by a quorum (three) of the Board of Aldermen.

The appointment of the May 19 election commission left Bolton with two Municipal Election Commissions, both claiming authority to conduct the June 5 general election. There was a substantial question as to how the May 19 commission would vindicate its authority. As officers and conservators of the peace under state law, they would have had the power to arrest the May 1 commissioners on election day. A mandamus action was contemplated in county circuit court to require the Mayor and Town Clerk to issue the May 19 commissioners commissions of office, which they had refused to do. The question was settled in a peaceful manner when the May 1 commission took the initiative, and sued the May 19 commission, resulting in Suit 1, discussed infra.

B. The Secret White Candidates.

Under Mississippi law, candidates may obtain a place on the general election ballot in one of two ways: by winning party nomination in a party primary election, or by qualifying as an independent candidate by nominating petition filed 40 days prior to the general election. Unknown to the black community, two whites had secretly filed qualifying petitions containing the required number of signatures with the Town Clerk on April 26 to gain a place on the general election ballot as independent candidates for the Mayor and Town Clerk positions. The strategy was simple. If the white primary candidates won in the May 8 primary, the two white independents could withdraw without any loss of face, knowing that white domination of city government was assured. If the blacks won, the winning blacks would be lulled into a sense of security, and would not know of the whites' candidacies until election day, when the whites would come out in force and carry the day. By then it would be too late for the black candidates to round up enough voters to overcome the advanced planning of the whites.

The Mayor and Town Clerk positions are the most important in city government--the Mayor has a veto over all ordinances, which can only be overcome by a 4/5ths vote, and the Town Clerk signs the checks. Up until May 17th, both the incumbent white Mayor and incumbent white Town Clerk had denied that there were any independent candidates in the general election, and thus were part of the conspiracy to maintain white supremacy in town government. When the existence of these two secret white candidates became known as the result of an overheard conversation, and black Alderman Bennie Thompson confronted the Town Clerk with this knowledge, the Town Clerk responded, "I don't have to tell you anything."

The surreptitious manner in which these two secret white candidates attempted to qualify was their undoing. Mississippi law requires that the qualifying petitions of independent candidates must be filed with the election commissioners (Miss. Code Ann. § 3260 (1956 Recomp.)), and in municipal elections this means the Municipal Election Commissioners, not the Town Clerk. On May 21, two days after their appointment, the May 19 Municipal Election Commission conducted a hearing at which the two white candidates were invited in writing to be present, with counsel, to inquire into their qualifications and right to a place on the ballot. The mayoral candidate appeared, with counsel, I represented the Municipal Election Commission (whose legitimacy, challenged by the two candidates, had not yet been established in a court of law) and all proceedings were taken under oath and transcribed by a court reporter. The candidate who appeared testified that he had filed his qualifying petition with the Town Clerk, rather than with any of the election commissioners, past or present. No one disputed that the white independent candidate for Town Clerk had qualified in the same manner. On the basis of the express statutory language, and judicial precedent, 1/ the election commissioners ruled, 2-0 (the white member abstaining), that the two secret white candidates had not met the requirements of state law in qualifying and thus were not entitled to a place on the general election ballot. In subsequent proceedings (Suit 1, Graham v. Daniel) the attorney for the white independent candidate who appeared admitted that the two had not properly qualified according to the requirements of the state statute.

The question on May 21 remained, however, who was going to run the June 5 general election? We learned that the May 1 Municipal Election Commission had already printed up ballots containing the names of these two white independents. The May 19 Municipal Election Commission was printing ballots without their names. The question of whose ballots were to be used was settled in Hinds County Chancery Court on May 31.

1/ In Adams v. Ponder, a 1967 Lawyers' Committee case, three black candidates for supervisor, constable, and justice of the peace attempted to qualify by filing their nominating petitions with the Circuit Clerk, rather than with the County Election Commissioners. On a motion for preliminary injunction to include their names on the ballots in the 1967 general election, Judge Cox ruled that their failure to file their petitions with the election commissioners was fatal to their candidacies. Adams v. Ponder, Civil No. 4216 (S.D. Miss. Opinion of Nov. 8, 1967).

Appendix, Item # 1 Continued

Suit 1: Graham v. Daniel, Docket No. 6514 (Hinds County Chancery Court)

On May 29, D.W. Graham, chairman of the May 1 election commission, filed suit in Hinds County Chancery Court and obtained from Chancellor J. C. Stennett an ex parte injunction, issued without notice or hearing, enjoining the May 19 election commission from conducting the June 5 general election. We immediately filed a motion to dissolve that temporary injunction on the grounds that it had been improperly issued and that the May 19 election commission had been lawfully appointed, while the May 1 commission had not. A hearing was held on the motion on May 31 before another Chancellor. Graham's attorney, William W. Ferguson, challenged the hearing and did not participate alleging that state law required five days' notice of hearing on a motion to dissolve an injunction, although he had obtained the injunction without notice or hearing, and five days' notice would have been too late to settle the matter before the June 5 general election. After the presentation of evidence on behalf of the May 19 election commission, Hinds County Chancellor, Melvin Bishop (now deceased) ruled that the May 19 Municipal Election Commission was the legal commission, that the injunction had been improvidently issued and that its maintenance "may do substantial irreparable injury to the rights of the defendants and to the public interest," and the temporary injunction was dissolved. Graham v. Daniel, Decree Dissolving Writ of Temporary Injunction, June 1, 1973.

At this hearing it came out that because of the voiding of the May 8 primary, the May 1 Municipal Election Commission had determined not to conduct the June 5 general election at all, allegedly for a lack of properly qualified candidates. On a cross-motion by the May 19 election commission on whether the May 1 election commission should be enjoined from interfering with their conduct of the general election, Ferguson admitted that because of the voiding of the May 8 primary, the May 1 commission had had no intention of conducting the statutory June 5 general election, and therefore the cross-motion of the May 19 commission was moot.

Suit 2: Thompson v. Bolton Municipal Democratic Executive Committee, Civil No. 73J-131(N) (S.D. Miss. filed June 8, 1973).

Apparently unable to withstand the pressure from the white community, the one white member of the May 19 election commission resigned. Unable to find any whites to take his place (the job was offered

to Graham, who had filed the suit, but he refused to serve), the Board of Alderman (again a quorum of the three blacks) appointed another black as a replacement, and an all-black Municipal Election Commission conducted the June 5 general election required by state statute. The seven black candidates received all the votes cast -- only one white voted, and he spoiled his ballot.

Throughout the litigation that followed, the losing white candidates continually challenged the decision of the Municipal Election Commission to hold the June 5 general election and to include on the ballots the names of the May 8 primary winners in the face of the decision of the Democratic Executive Committee to void the May 8 primary and vacate its certification of the results. The Municipal Election Commission had substantial justification for its action. The Election Commission had no choice but to conduct the general election. It was required by state statute, and there was even a provision of state law which put the municipal charter in jeopardy if the general election was not held. Since the election had to be held, there likewise had to be candidates. Although the Democratic Executive Committee voted to void the May 8 primary, no new primary was held to supersede it. Thus, until a new primary was held, the May 8 winners remained the Democratic nominees.

Finally, under state statutes the winning black candidates still had time to appeal the May 31 Committee decision by the time the general election was held, and thus the decision of the Committee was not yet a "final decision" and under state law the black candidates remained the Democratic nominees until a final decision was reached: "When no final decision has been made in time as hereinabove specified, the name of the nominee declared by the party executive committee shall be printed on the official ballots as the party nominee . . ." Miss. Code Ann. § 3187 (1956 Recomp.).

In addition, there was a substantial question whether the old Democratic Executive Committee, the white majority of which had been defeated in their primary bids for re-election, had jurisdiction to rule on the validity of the election in which they had just been defeated. Mississippi law provides that the members of the municipal party executive committees "shall be elected in the primary elections held for the nomination of candidates for municipal offices" (Miss. Code Ann. § 3152). Hence, the winning black candidates maintained, it was the new Committee which was elected in the primary which should have ruled on the contests, instead of the old Committee.

However, the impediment of the May 31 decision of the Democratic Executive Committee voiding the May 8 primary remained, and on June 8 the fourteen black primary candidates filed suit in Federal District Court asking that the May 31 decision be vacated. For jurisdiction, we alleged that the May 31 decision was without legal authority and racially discriminatory and thus denied the plaintiffs and Bolton black voters of the right to have their votes counted and included in the appropriate totals of votes cast for candidates in violation of the Voting Rights Act of 1965 and 42 U.S.C. § 1971(a)(1). We also alleged that we had no adequate remedy in state courts, the state procedures for challenging such decisions in county circuit court amended and reenacted in 1968 not having been cleared as required by Section 5 of the Voting Rights Act of 1965, the precise point on which we won Thompson v. Brown, 434 F.2d 1092 (5th Cir. 1970).

Suit 3: Mashburn v. Daniel, Docket No. 6518 (Hinds County Chancery Court, filed June 13, 1973)

After two of them had been served with process in Thompson v. Bolton Mun. Dem. Exec. Comm., the three whites who constituted the voting majority of the Democratic Executive Committee in its decision to void the primary filed a "bill of complaint for injunction and other relief" in Hinds County Chancery Court. Alleging that the Committee had voided the May 8 Democratic primary, and that therefore there were no Democratic nominees for municipal office in the June 5 general election, and that therefore the June 5 general election was void, the plaintiffs sought injunctive relief against the winning black candidates in the June 5 election, against the Governor and Secretary of State, and against the Municipal Election Commission (1) enjoining the Commission from certifying the results of the general election and from issuing certificates of election to the winners, (2) enjoining the Governor and Secretary of State from issuing commissions of office to the winners, (3) enjoining the winners of the general election from taking office, and (4) declaring the general election null and void. This bill of complaint was filed on June 13, and on June 14 the defendants were served with a "Citation" ordering them to show cause why an injunction should not be issued granting all the relief requested at a hearing to be held at 9:00 A.M. on June 15, before Chancellor J. C. Stennett. I first learned of the filing of this action at 5:00 P.M. on the afternoon of the 14th, when "as a courtesy" the attorney for the complainants, Ferguson again, called me and told me of the 9:00 A.M. hearing set for the next morning. We had no time to study the pleadings, subpoena witnesses, or prepare a defense.

Appendix, Item # 1 Continued

Suit 4: Mashburn v. Daniel, Civil No. 73J-138(R)
(S.D. Miss., filed June 15, 1973, 8:30 A.M.)

After staying up half the night, at 8:30 A.M. the next morning we filed in Federal District Court a verified petition for removal, with certified copies of the state court pleadings attached as required, removing this bill of complaint to Federal District Court pursuant to 28 U.S.C. §§ 1441 (Federal question removal) and 1443 (civil rights removal). We alleged, as in Thompson, that the May 31 decision of the Committee voiding the primary violated the rights of the winning black candidates secured by the Federal voting rights statutes, and that therefore the state court action designed to effectuate that decision "denied . . . a right under any law providing for the equal civil rights of citizens of the United States," under § 1443(1), and that the Federal District Court had original jurisdiction of these proceedings, pursuant to our prior Thompson complaint, entitling us to removal under § 1441(a).

There is no doubt that we were headed for an ambush in state court. The losing white candidates and the Secretary of State were there, and it was apparent that Chancellor Stennett was prepared to grant Ferguson's injunction. The Assistant Attorney General, P. L. Douglas, representing the state officials, was adamant that the general election was invalid. The removal ousted the state court of any further jurisdiction to hold a hearing on the injunction request, and after we had so informed the Chancellor, he turned to counsel for the complainants, and said, "Well, I'm sorry I can't do anything for you further, Bill."

Despite the fact that the removal deprived the state court of jurisdiction to issue the requested injunction, and that no court order had issued preventing the Governor and Secretary of State from issuing the winning black candidates their commissions of office, the state officials took the position that they could not disturb the status quo, and unilaterally held up the commissions of office from July 5, when they should have been issued, to August 21, when they were finally ordered to release them, thus preventing the winning black candidates from taking office for almost two months.

Suit 5: Mashburn v. Thompson, Docket No. 3683 (Hinds County Circuit Court, filed June 14, 1973)

On June 14 the three white members of the Democratic Executive Committee who voted to void the primary filed their second action, this time a "petition for contest of election" in Hinds County Circuit Court. They recited the same allegations made in Mashburn v. Daniel, that because the primary had been voided

there were no Democratic nominees to be placed on the ballot for the general election, and therefore the general election was void. For relief, they requested a judgment that the municipal general election and its results were void and that the winning black candidates should be barred from taking office. A court summons was issued the same day setting the action for a hearing on June 25, at 9:00 A.M. at the second Hinds County Courthouse in Raymond.

Suit 6: Mashburn v. Thompson, Civil No. 73J-141(R) (S.D. Miss., filed June 20, 1973)

Six days later we removed the second Mashburn suit to Federal District Court on essentially the same allegations as the first. The verified petition alleged that prior to the passage of the Voting Rights Act, no qualified blacks in Bolton were registered to vote, and blacks were able to participate in the primary and general election only because of the passage of the Voting Rights Act. Petitioners further alleged that the May 31 decision of the Committee was without lawful authority and racially discriminatory in violation of rights secured by Federal voting rights statutes, and that there was no evidence of fraud or substantial irregularities which justified setting aside the primary. Petitioners urged the court to consider the Thompson suit in Federal court (Suit 2) as in effect an appeal from the decision of the Democratic Executive Committee, and since no final decision on the primary contest had been rendered by the time of the general election, the Municipal Election Commission was justified in placing on the ballot the names of the Democratic nominees last certified by the Committee pursuant to Miss. Code Ann. § 3187.

Suit 7: Beard v. Daniel, Docket No. 3682 (Hinds County Circuit Court, filed June 13, 1973)

Also on June 13, the losing white candidates for Mayor, Town Clerk, and Alderman filed a "declaration" in Hinds County Circuit Court against the members of the Municipal Election Commission seeking $37,500 in damages for conducting the municipal general election and including on the ballots the names of the winners of the May 8 primary. These actions were alleged to be tortious, and that they "were, and continue to be arbitrary, intentional, designed to prejudice the rights of Plaintiffs in their pursuit of elective offices and are intended to cause Plaintiffs much worry, inconvenience and monetary loss."

Suit 8: Beard v. Daniel, Civil No. 73J-149(N)
(S.D. Miss., filed July 13, 1973)

Although it was doubtful that the Beard suit even stated a cause of action under state law, it was removed to Federal District Court on July 13 on the same grounds that the two Mashburn actions had been removed to protect the rights of the members of the Municipal Election Commission and the black candidates and voters under Federal voting rights statutes.

The Hearing and Decision

Since the Governor and Secretary of State continued unilaterally to hold up the commissions of office of the winning black candidates, we filed in Mashburn v. Daniel a motion to permit these commissions to be released pending a final decision. This motion, and the respondents' motions to remand in Mashburn v. Daniel and Mashburn v. Thompson came on for a consolidated hearing before District Judge Dan M. Russell, Jr., on July 23 in Judge Russell's hearing room in Gulfport. About 20 black voters drove down from Bolton to attend, but because the hearing room sat only about 10 persons, including the judge, court personnel, and the attorneys, they were unable to sit in on the proceedings. We called Bennie Thompson, the black mayoral candidate, George W. Daniel, the black chairman of the Municipal Election Commission, and Esther Dixon and Mrs. Clara Bell Davis, the black members of the Democratic Executive Committee who voted against voiding the primary. We also put in evidence the deposition of the chairman of the Democratic Executive Committee, which showed that there were no substantial grounds for voiding the primary. The respondents presented no witnesses or proof.

After the hearing we filed a detailed 27-page brief explaining civil rights removal, showing how the facts established that the May 31 decision was based on racial discrimination, and demonstrating that there were no substantial grounds for voiding the primary. While there was no direct evidence showing racial prejudice on the part of the white members of the Democratic Executive Committee, we were able to establish that all the white candidates in the primary, including the white committee members, ran as a slate, distributed a joint sample ballot, and that one white member of the Committee had urged voters to vote against Bennie Thompson. The respondents filed a very short 3-page memorandum. After submission of the legal memos, we were

on edge because a civil rights removal case had never before been won before any of the Federal judges in the Southern District.

With unusual speed, Judge Russell handed down his decision on August 17 ruling for us on every point, including points that were not directly involved in these cases, but which were directly applicable to the Thompson case (Suit 2). On the basis of our 1970 Fifth Circuit decision in Thompson v. Brown, Judge Russell held that these two cases were properly removed to Federal court and denied the motions to remand. He held that the Democratic Executive Committee lacked the authority to set aside the May 8 primary, and that the contests should have been heard by the new Committee which had been "elected" in the primary. He held that the winning black candidates were properly in Federal court because the state statutes permitting an appeal from the Committee decision, amended and reenacted in 1968, were unenforceable for failure to submit under Section 5 of the Voting Rights Act of 1965. He also held that the Governor and Secretary of State should be ordered to issue to the winning black candidates their commissions of office. He found that there had been "no significant irregularies" in the conduct of the primary election, and that there was no evidence of fraud which justified the Committee's decision. The principal justification for the decision, that the ballots had been initialed on the front rather than on the back, was not sufficient to void the election. Judge Russell further held that the Municipal Election Commission was justified in holding the general election and including on the ballots the names of the Democratic nominees declared on May 9.

In his Final Order and Judgment, filed September 13, Judge Russell ordered the two state court actions (Suits 3 and 5) dismissed, and enjoined the state court plaintiffs from further prosecuting those actions. The Lawyers' Committee got back $1,000 posted for cost bonds, and costs of court.

The Conclusion

In a last ditch stand, the attorney for the respondents, Ferguson, filed a motion to stay issuance of the commissions of office pending appeal, but since the commissions already had been issued when the motion was filed, the motion was denied as moot.

On the basis of Judge Russell's decision, we filed a motion for summary judgment in Thomoson v. Bolton Municipal Democratic

Executive Committee arguing that Judge Russell's findings in the two removal cases were conclusive of all the claims in Thompson, and that under the doctrine of collateral estoppel the plaintiffs were entitled to judgment. At this point, the attorney for the losing white candidates caved in, and consent orders were entered in both Thompson (Suit 2) and Beard v. Daniel (Suit 8) granting all the relief which we requested, ordering the Democratic Executive Committee to vacate its May 31 decision, and dismissing the state court damages action.

On September 1 Mayor Bennie G. Thompson and the all-black town government of Bolton were sworn in with a parade, speeches before a crowd of about 400, and the town's first inaugural ball.

FRP:ljh
cc: Dave Tatel
Tex Wilson

Mr. EDWARDS. Thank you very much, Mr. Thompson. It is very moving testimony. All of the witnesses presented most persuasive testimony.

We are going to have to wind this up at 10 minutes to 12, so we will have to move along.

I just have one question. Mr. Thompson, what was the black population in Bolton prior to 1969?

Mr. THOMPSON. Sixty-six percent.

Mr. EDWARDS. Do you think that life is different in Bolton now, after blacks were elected to public office?

Mr. THOMPSON. Yes, sir. We are able to put out fires now when they start, because we have a fire truck. We can pick up the garbage. Our water and sewer system meets all air and water pollution standards. We now have running water on our side of the tracks. And we have a fair form of justice.

In Mississippi, the mayor is also the judge for municipalities under 10,000. While I was mayor, justice, I would like to think, was administered fair and equitably. Before that, I can't say that it was.

Mr. EDWARDS. Representative Banks, would all of your black colleagues in the legislature agree with the thrust of your testimony?

Mr. BANKS. Yes, sir; absolutely.

Mr. EDWARDS. Ms. Davis?

Ms. DAVIS. Thank you, Mr. Chairman.

Mr. Banks, the committee may be considering whether to amend the bailout provision of the act. I wonder if you might indicate what factors should be looked to other than the statistics of number of registered voters, and number of black elected officials. Is there something we should do to pierce behind those statistics in assessing whether there is a continued need for the Voting Rights Act?

Mr. BANKS. I think you have to look at the statistics, of course, and consider those statistics in light of what is possible with regard to black elected officials in the State.

You also have to consider the demonstrations of State attitude toward black political involvement and toward the free process. When Mississippi is measured by that criteria, it could never be bailed out, I don't believe. I think those are among the facts which you have to consider.

Ms. DAVIS. We had testimony last week regarding the State of Virginia. Virginia, as I guess is true of Mississippi, has a significant rural concentration.

There was some suggestion that the hardships on black folks in terms of registration, when the place of registration is open from 8 to 5, is the same as it is for white folks who live in rural areas. Prof. James Lowen testified before the subcommittee that socio-economic factors have an effect on voting rights in Mississippi and elsewhere.

I wonder if you might explain to us why it is that having a polling place, operating from 8 to 5, has a greater negative effect on blacks than whites?

Mr. BANKS. If black people work in Mississippi, generally they work for white people. White people also work for white people. A

white employer is much more lenient in allowing whites to go and vote and register to vote than they are allowing blacks to vote or register to vote.

Can you imagine a black mother who has to leave home at 6 o'clock in the morning to get to the white lady's house at 7 o'clock in the morning and take care of the white lady's children until 7 o'clock at night, and tell me how she is going to go to register to vote.

The white lady can go register to vote because she is working downtown, if she is working, or she can take time off of shopping to register. But the black lady is there taking care of the white lady's kids. It is difficult to register under those circumstances or vote.

It is also difficult if you have to go a long way to register, and the cost of gasoline is much more of a detriment to those who are poor than to those who are affluent.

Mr. BOYD. No questions, Mr. Chairman.

Mr. EDWARDS. Thank you all very much for your excellent testimony.

Mr. BANKS. Thank you.

Mr. EDWARDS. Thank you.

[Whereupon, at 11:50, the subcommittee adjourned, to reconvene subject to the call of the Chair.]

EXTENSION OF THE VOTING RIGHTS ACT

WEDNESDAY, JUNE 3, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommitte met, pursuant to call, at 9:30 a.m., in room B-352, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Members present: Representatives Edwards, Hyde, and Sensenbrenner.

Staff present: Ivy L. Davis and Helen C. Gonzales, assistant counsel, and Thomas M. Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order. Today's hearing will focus on the voting rights problems of blacks in Georgia, Alabama, and South Carolina.

The testimony presented today will show that there are continuing impediments to blacks wishing to cast their ballots and a widespread pattern of efforts to dilute black voting strength as demonstrated by Justice Department objections to voting changes under section 5, and litigation claiming violations under the act and the Constitution.

We will now hear from two panels regarding voting rights problems in the State of Georgia. Joining us on our first panel is Dr. Brian Sherman, of Atlanta, Mr. J. F. Smith of Henry County, Ga., and Mr. Herman Lodge of Burke County, Ga.

Who will be first?

Mr. SHERMAN. I will be going first. Then Mr. Smith will go and then Mr. Lodge will go.

Mr. EDWARDS. Very good. Dr. Sherman, you may proceed and without objection, all of the statements will be made a part of the record in full.

TESTIMONY OF BRIAN SHERMAN, PROFESSOR OF SOCIOLOGY, OGLETHORPE UNIVERSITY, ATLANTA GA.; J. F. SMITH, SCHOOL BOARD MEMBER, HENRY COUNTY, GA.; AND HERMAN LODGE, BURKE COUNTY, GA.

Mr. SHERMAN. I will be reading a prepared statement.

Mr. EDWARDS. You may proceed.

Mr. SHERMAN. Thank you.

My name is Brian Sherman. I am a sociology professor at Oglethorpe University in Atlanta, Ga. I have a Ph. D. in sociology from Harvard University.

I have conducted a survey of the voting practices in the counties of Georgia and how they affect the participation of blacks in the

political process. The results of the survey document show the disproportionately low percentage of the election of blacks to countywide positions, many of the various aspects of the voting process which prevent the election of blacks to such positions, and some of the consequences, such as diminished services for blacks, as a result of low or no representation in county government.

The data was collected through a comprehensive 171-item questionnaire. Questionnaires were returned from 66 counties. Twelve were not used because of a low proportion of black residents. The remaining 54 in the study are a representative sample of the counties in Georgia in terms of both proportion of blacks in the county population and geographic spread throughout the State. The median county in the study is 33 percent black. Eight are black belt counties with 48 percent or more blacks.

If race were not a factor in elections, simple probability theory predicts that the proportion of blacks elected to countywide positions would not be significantly different from their one-third proportion of the population. Such is not the case. Of the 239 members of the county governing bodies in the 54 counties, only 5 [2 percent] are black. In only 7 of the 54 [13 percent] has any black served in this capacity since the passage of the Voting Rights Act of 1965.

In 39 counties in which the chair of the school board is elected, only four blacks [10 percent] have been elected to this post.

Blacks serve on the elections commission in only 6 [12 percent] of the 49 counties for which we have information.

Of the 47 counties for which we have information, only 1 [2 percent] reports the election of a black judge to superior court since the passage of the Voting Rights Act.

In only 9 [18 percent] of the 51 counties for which we have information have blacks been elected to any countywide position since the passage of the Voting Rights Act.

Finally, in none of the 47 counties for which we have information, is the highest police official [usually the sheriff] black.

The questionnaire contained many items about specific practices which would prevent, inhibit, or discourage black participation in the political process. At least some of these practices were reported to occur in every county in the study. Because some are informal [for example, improper ballot counting], surreptitious [for example, not publicizing a special election], or private [for example, using the names of the dead on absentee ballots], many counties report only "possibly," "don't know" or "I wouldn't doubt it" when asked if they occur.

Such responses are not used in the tabulations given here. It can be hypothesized, however, that the number of times these practices have come to public attention is an indication that they are much more widespread than can be detected without regular and systematic monitoring.

Of the nine counties with each district electing a single member to the county governing body, four [44 percent] report malapportionment which either dilutes or overly concentrates the black vote. In 21 [70 percent] of the 30 counties reporting, actions of the agency or officials who supervise elections work to the disadvantage of blacks. In 12 [40 percent] of the 30 counties such actions occur frequently.

The list of practices named includes excessive purging of black voters from registration lists, voting in a privately owned building whose owner is both the poll watcher and prejudiced against blacks, intimidation of blacks while voting, refusal to secure black poll watchers, registration of blacks in different locations for county and municipal elections et cetera.

Eleven counties report that the registration office is not open sufficiently long enough to accommodate blacks who work and must travel a distance to it.

Nine counties report that registration sites are more accessible to whites than blacks.

Fourteen counties report that blacks are intimidated, inhibited or discouraged from registering. This includes the attitude of those who work in the registration office, refusal to give blacks information about registration and threat of job loss for blacks who register.

In 21 [66 percent] of 32 counties reporting, there were not enough black poll watchers to protect the interest of the black voters.

In eight [25 percent] blacks are systematically excluded from being poll watchers.

In nine [28 percent] of the counties white poll watchers intimidate black voters.

Twenty counties report that some abuses in the use of absentee ballots have occurred since the passage of the Voting Rights Act. Nine of these counties report that these abuses occur regularly. The most frequently cited abuses include whites bringing absentee ballots to blacks to be filled out [10 counties]; whites collecting absentee ballots from blacks who have filled them out [9 counties]; whites receiving absentee ballots after they have moved out of the county [9 counties], and election officials making it easier for whites than blacks to obtain them [7 counties].

Ten counties report an awareness that disqualified whites have voted in county elections. Of these, four report that lists of the dead were used to vote for white candidates running against blacks.

Three counties report that voting booths are less convenient to blacks than to whites. Six counties report that voting hours are such that blacks have less opportunity to get to the polls than whites.

Of 44 counties reporting, 17 [39 percent] indicate that blacks limit their participation in the political process because they fear reprisals such as job loss [especially teachers], eviction or loss of credit at retail stores.

Other reprisals which have occurred since 1965 include loss of liquor licenses, harassment of children, and anonymous threatening phone calls. There are other factors which are indicative of a political atmosphere hostile and intimidating to blacks. Twenty-one counties report instances of whites telling blacks how to vote with implied threats of job loss, eviction, loss of pension, et cetera. Thirty counties report that a significant amount of political activity takes place at white-only clubs and businesses.

Although it was not asked as a specific item in a fixed choice question, over 70 percent of the counties, reported in one way or another that "whites will vote only for whites." This racial-bloc

voting in combination with at-large [countywide] elections was the most frequently cited reason why blacks are not elected to county governing bodies. Thirty-eight of the counties have a system of at-large voting. This includes nine which have at-large voting for single member districts. In only 3 [8 percent] of the 39 have blacks been elected to the county governing body.

In contrast to the racial bloc voting of whites, blacks will vote for a white candidate. There was one item in the questionnaire which asked about unusually high black voter turnouts. Of the explanation given for 20 such turnouts, 6, or 30 percent indicate black support of one white candidate in preference to another.

Numerous other abuses not covered by fixed choice items are mentioned in answer to open ended questions. Examples include a probate judge counting the ballots when he was a candidate for reelection, a white candidate who was running against a black being allowed to enter the polls seven times. Whites entering voting booths with blacks, whites buying votes of blacks, tampering with voting lists, and blacks living and working on large plantation-like estates being unable to leave to vote.

The lack of effective participation in the political process means blacks receive fewer services from county government agencies and fail to secure a proportionate share of employment in county government.

Of 44 counties, 38, or 86 percent report frequent discrimination against blacks in the area of hiring, firing, and promotion of county employees by the county governing body. All of the counties which are more than 15 black report that blacks have less than their proportionate share of county jobs and/or can get only secretarial and maintenance positions. Four of these counties deny blacks any positions at all, including janitorial jobs. In 34 counties there is no black who is either a department head or who has some other supervisory capacity.

Blacks are significantly underrepresented in 40 of the county police forces. Seven have no black police at all. Twenty-six report systematic discrimination against blacks in the hiring of school principals. There are no elected black judges in any of the counties in the study. Blacks do not work in 43, or 18 percent, of the 53 offices at the superior court judges.

The actions of the county governing body work to the systematic disadvantage of blacks in a number of areas. These include the general allocation of funds in 86 percent of the counties, the type and location of capital projects in 74 percent of the counties, and public safety—fire and police services—in 69 percent of the counties. Blacks feel intimidated or otherwise are prevented from getting full service in the superior court clerk's office in 23—49 percent—of the 47 counties reporting.

Thirty-one counties report discriminatory treatment of blacks in the school system. This includes tracking into slower and noncollege oriented classes, overutilization of special education classes for blacks, and quicker suspension of black students than of white students for similar offenses.

Reports are given for 39 counties in which blacks are denied equal access to municipal services due to location or lack of mainte-

nance. In 25 counties blacks lack equal access to sports and recreation facilities: Swimming pools, gyms, tennis courts, et cetera.

In 22 counties blacks are denied equal access to health and safety related services: Hospitals, paved roads, sewers, fire hydrants, et cetera.

In 17 counties blacks derive less than equal benefit from the use of funds for cultural facilities: Libraries, museums, landscaping of public buildings, remodeling courthouses, refurbishing monuments, et cetera.

In 24 counties, blacks are either denied a fair share of existing public housing or county officials have been inactive in securing a fare share of public housing for blacks, especially the aged.

Finally, seven counties reported that undesirable facilities such as garbage dumps and dog pounds have recently been unnecessarily placed too close to black residential areas.

That is the end of my prepared written statement.

Mr. EDWARDS. Thank you, Dr. Sherman.

PREPARED STATEMENT OF DR. BRIAN SHERMAN

My name is Brian Sherman. I am a sociology professor at Oglethorpe University in Atlanta, Georgia. I have a Ph. D. in Sociology from Harvard University.

I have conducted a survey of the voting practices in the counties of Georgia and how they affect the participation of Blacks in the political process. The results of the survey document show the disproportionately low percentage of the election of Blacks to county-wide positions, many of the various aspects of the voting process which prevent the election of Blacks to such positions, and some of the consequences such as diminished services for Blacks as a result of low or no representation in county government.

The data was collected through a comprehensive 171-item questionnaire. Questionnaires were returned from sixty-six counties. Twelve were not used because of a low proportion of Black residents. The remaining 54 in the study are a representative sample of the counties in Georgia in terms of both proportion of Blacks in the county population and geographic spread throughout the state. The median county in the study is 33.3 percent Black. Eight are "Black Belt" counties with 48 percent or more Blacks.

If race were not a factor in elections, simple probability theory predicts that the proportion of Blacks elected to county-wide positions would not be significantly different from their one-third proportion of the population. Such is not the case. Of the 239 members of the county governing bodies in the 54 counties, only 5 (2 percent) are Black. In only 7 of the 54 (13 percent) has any Black served in this capacity since the passage of the Voting Rights Act in 1965. In the 39 counties in which the chair of the school board is elected, only 4 Blacks (10 percent) have been elected to this post. Blacks serve on the Elections Commission in only 6 (12 percent) of the 49 counties for which we have information. Of the 47 counties for which we have information, only one (2 percent) reports the election of a Black judge to Superior Court since the passage of the Voting Rights Act. In only 9 (18 percent) of the 51 counties for which we have information have Blacks been elected to any county-wide position since the passage of the Voting Rights Act. Finally, in none (0 percent) of the forty-seven counties for which we have information, is the highest police official (usually sheriff) Black.

The questionnaire contained many items about specific practices which would prevent, inhibit, or discourage Black participation in the political process. At least some of these practices were reported to occur in every county in the study. Because some are informal (e.g., improper ballot-counting), surreptitious (e.g., not publicizing a special election), or private (e.g., using the names of the dead on absentee ballots), many counties can report only "possibly," "don't know" or "I wouldn't doubt it" when asked if they occur. Such responses are not used in the tabulations given here. It can be hypothesized however that the number of times these practices have come to public attention is an indication that they are much more widespread than can be detected without regular and systematic monitoring.

Of the nine counties with each district electing a single member to the county governing body, 4 (44 percent) report malapportionment which either dilutes or overly concentrates the Black vote. In 21 (70 percent) of the 30 counties reporting, actions of the agency or official who supervises elections work to the disadvantage of Blacks. In 12 (40 percent) of the 30 counties such actions occur frequently. The list of practices named includes excessive purging of Black voters from registration lists, voting in a privately-owned building whose owner is both the pollwatcher and prejudiced against Blacks, intimidation of Blacks while voting, refusal to secure Black pollwatchers, registration of Blacks in different locations for county and municipal elections, etc.

Eleven counties report that the registration office is not open sufficiently long enough to accommodate Blacks who work and must travel a distance to it. Nine counties report that registration sites are more accessible to Whites than to Blacks. Fourteen counties report that Blacks are intimidated, inhibited or discouraged from registering. This includes the attitude of those who work in the registration office, refusal to give Blacks information about registration and threat of job loss for Blacks who register.

In 21 (66 percent) of 32 counties reporting, there are not enough Black pollwatchers to protect the interests of Black voters. In 8 (25 percent) Blacks are systematically excluded from being pollwatchers. In 9 (28 percent) of the counties White pollwatchers intimidate Black voters.

Twenty counties report that some abuses in the use of absentee ballots have occurred since the passage of the Voting Rights Act. Nine of these counties report that these abuses occur regularly. The most frequently cited abuses include Whites bringing absentee ballots to Blacks to be filled out (10 counties), Whites collecting absentee ballots from Blacks who have filled them out (9 counties), Whites receiving absentee ballots after they've moved out of the county (9 counties), and election officials making it easier for Whites than Blacks to obtain them (7 counties).

Ten counties report an awareness that unqualified Whites have voted in county elections. Of these, four report that lists of the dead were used to vote for White candidates running against Blacks.

Three counties report that voting booths are less convenient to Blacks than to Whites. Six counties report that voting hours are such Blacks have less opportunity to get to the polls than Whites.

Four counties report rule change since 1965 which make it more difficult for Blacks to get on the ballot. These include reduced filing fes for Whites and more documentation required of Blacks.

Of forty-four counties reporting, seventeen (39 percent) indicate that Blacks limit their participation in the political process because they fear reprisals such as job loss (especially teachers), eviction, or loss of credit at retail stores. Other reprisals which have occurred since 1965 include loss of liquor licenses, harassment of children, and anonymous threatening phone calls. There are other factors which are indicative of a political atmosphere hostile and intimidating to Blacks. Twenty-one counties report instances of Whites telling Blacks how to vote with implied threats of job loss, eviction, loss of pension, etc. Thirty counties report that a significant amount of political activity takes place at White-only clubs and businesses.

Although it was not asked as a specific item in a fixed-choice question, over 70 percent of the counties, reported in one way or another that "Whites will vote only for Whites." This racial block voting in combination with at-large (county-wide) elections was the most frequently cited reason why Blacks are not elected to county governing bodies. Thirty-eight of the counties have a system of at-large voting. This includes nine which have at-large voting for single member districts. In only 3 (8 percent) of the 39 have Blacks been elected to the county governing body.

In contrast to the racial block voting of Whites, Blacks will vote for a White candidate. There was one item in the questionaire which asked about unusually high Black voter turnouts. Of the explanations given for 20 such turnouts, six (30 percent) indicate Black support of one White candidate in preference to another.

Numerous other abuses not covered by fixed-choice items are mentioned in answer to open-ended questions. Examples include a probate judge counting the ballots when he was a candidate for reelection, a White candidate who was running against a Black being allowed to enter the polls seven times. Whites entering voting booths with Blacks, Whites buying votes of Blacks, tampering with voting lists, and Blacks living and working on large plantation-like estates being unable to leave to vote.

The lack of effective participation in the political process means Blacks receive fewer services from county government agencies and fail to secure a proportionate share of employment in county government.

Thirty-eight (86 percent) of 44 counties report frequent discrimination against Blacks in the area of hiring, firing, and promotion of county employees by the county governing body. All of the counties which are more than 15 percent Black report that Blacks have less than their proportionate share of county jobs and/or can get only secretarial and maintenance positions. Four of these counties deny Blacks any positions at all, including janitorial jobs. In thirty-four counties there is no Black who is either a department head or who has some other supervisory capacity. Blacks are significantly underrepresented in forty of the county police forces. Seven have no Black police at all. Twenty-six report systematic discrimination against Blacks in the hiring of schol principals. There are no elected Black judges in any of the counties in the study. Blacks do not work in 43 (18 percent) of the 53 offices of the superior court judges.

The actions of the county governing body work to the systematic disadvantage of Blacks in a number of areas. These include the general allocation of funds in 86 percent of the counties, the type and location of capital projects in 74 percent of the counties, and public safety (fire and police services) in 69 percent of the counties. Blacks feel intimidated or otherwise are prevented from getting full service in the superior court clerk's office in 23 (49 percent) of the 47 (49 percent) counties reporting.

Thirty-one counties report discriminatory treatment of Blacks in the school system. This includes tracking into slower and non-college oriented classes, overutilization of special ed. classes for Blacks, and quicker suspension of Black students than of White students for similar offenses.

Reports are given for 39 counties in which Blacks are denied equal access to municipal services due to location or lack of maintenance. In 25 counties blacks lack equal access to sports and recreation facilities (swimming pools, gyms, tennis courts, etc.). In 22 counties Blacks are denied equal access to health and safety related services (hospitals, paved roads, sewers, fire hydrants, etc.). In 17 counties Blacks derive less than equal benefit from the use of funds for cultural facilities (libraries, museums, landscaping of public buildings, remodeling courthouses, refurbishing monuments, etc.). In 24 counties, Blacks are either denied a fair share of existing public housing or county officials have been inactive in securing a fair share of public housing for Blacks, especially the aged.

Finally, seven counties reported that undesirable facilities such as garbage dumps and dog pounds have recently been unnecessarily placed too close to Black residential areas.

Mr. EDWARDS. Although we will have questions after all three members of the panel have testified, I might comment that that is a very disturbing report that you have provided us. We thank you very much.

Mr. SHERMAN. Thank you.

Mr. EDWARDS. It is very important.

Mr. Smith.

STATEMENT OF FREDERICK SMITH

Mr. SMITH. I am Joseph Frederick Smith of McDonough, Henry County, Ga. I am a retired school administrator with 33 years in the Henry County School System. In 1980 I was elected to the county school board, becoming the first black ever to hold a county elective office, thanks to section 5. I will explain later.

Henry County was totally segregated until the 1960's. The courthouse and city offices in all four towns were occupied only by whites. The eating places, bathroom facilities, drinking fountains, and all public meetings places were segregated. School integration was done in 1970 by pairing white and black students in certain grades and sending them to the same schools.

As in many other places, two large all white private schools immediately sprang up in Henry County. They siphoned off about 1,000 students from the public schools, and cost the system $1,000 per year per child. At the same time, parents of the private school children had to pay about $1,000 a year.

The black citizens began to organize in the 1960's to improve the quality of life for blacks in the county. There was and continues to be, great disparity in municipal services in the white and black communities; there were no black elected or appointed officials, no blacks on the county police force, and no blacks employed in meaningful positions in government or private businesses.

We were given promises that these problems would be looked into. Some appointments were made, but the central problem as we perceive it was that we did not have any black elected officials. By 1972, one black had run for county commission, and in 1976 another black and I ran for the school board. Neither of us were successful because we just could not win under the at-large election system. Racially polarized voting prevented a black from ever getting enough votes to win any seat.

In 1978, we sought legal assistance, and our attorneys discovered that the county commission and school board had both changed to the at-large system in the late 1960's without submitting the legislation to the Attorney General for preclearance under section 5. Actually, no legislation had been submitted from the county since the Voting Rights Act had been passed.

We negotiated with both groups for almost a year without success, even though the Justice Department had entered objections under section 5 to both at-large changes. The school board refused to talk to us or our attorneys, and the county commission set up a committee that proposed several redistricting plans that all continued to dilute minority voting strength. None of the plans we submitted were even given serious consideration by this group. The State legislature delegation introduced one of these plans which was their plan, even though we strongly opposed it. The bill passed, the Governor signed it, and the Justice Department objected again.

To the surprise of both boards, we sued under section 5 of the Voting Rights Act in November 1979. Our attorneys did not have an easy time of it, as the negotiating process was long and the defendants did not want to concede that they had violated the law. At one point, there was even a denial that the county was a jurisdiction covered by the Voting Rights Act. We spent days actually counting people all over the county, but even our figures were refuted. Every jurisdiction plan that we drew was attacked as invalid.

In June 1980, a judgment was entered ordering that the county be redistricted in five single-member districts, one of which was majority black, and assessing $14,000 in attorneys' fees against the county. The county's refusal to comply with the law and cooperate during the litigation resulted in a tremendous waste of time and tax money.

As a result of the new redistricting plan, which was accepted eventually, I won my seat on the board of education. Incidentally, my opponent was an 8-year incumbent, who was mayor of one of the principal towns in Henry County. The registered voters were 49 percent black and 51 percent white. I received 56 percent of the votes. Many white citizens have expressed to me that they were glad to have an opportunity to improve the quality of life in Henry County in terms of having black representation in our county government.

The black candidate for the county commission lost in a runoff by 95 votes. Our struggle is still continuing. We recently sued the county seat for discrimination in the provision of municipal services, and right at this moment there is an effort to spend $70,000 to improve the water services in our community because of our protection under section 5.

It is apparent to me that without section 5 of the Voting Rights Act, which allowed us to attack the at-large system, no black would ever have been elected to the Henry County School Board and County Commission. No matter how much we spoke out, blacks were passed over for appointments to the school board when vacancies occurred.

No clear explanation has been given to us why no voting changes had been submitted under section 5 for 15 years. It is hard to believe that none of the county attorneys knew it had to be done. During that time, blacks were illegally denied access to public office. We now have some clout in the county, which is directly attributable to the Voting Rights Act.

The situations I described still exist in many places in Georgia. The Voting Rights Act must be extended in its present form to protect the gains we have already made, because we are famous in the South for regaining what we have lost in some contests. Reconstruction is a word being used in the South at this time. We are already being threatened that as soon as the new census reports are in, Henry County is going to straighten things out.

I am submitting for the record copies of the complaints and judgments in both of the Henry County cases. In addition, to what I have prepared here, I would like to indicate that not only has section 5 been a deterrent to voting discrimination in my county, but it has also assisted the public officials in correcting some of the actions they would not have otherwise felt obliged to do. They feel somewhat protected from the voters, and this was brought out by the fact that even though all five commissioners were elected in 1980, not a one used the court suit as an issue. No issue was made because of the changes.

For example, in my county, they have done what they should only because the Justice Department told them it was the law, and this is what they told their voters, their constituents. And they could go back to their white clientele and say they had no choice. Because of the Justice Department objection, the county changed to the district voting and felt comfortable doing this because the Justice Department objection gave them a good excuse for their clientele. I am repeating this for emphasis.

Unfortunately, the redistricting plan which they drew up was not acceptable to us because it diluted the black vote. But they did not do anything when the black community objected until we went back to the Justice Department, which agreed with us that the county's plan was discriminatory, and again the Justice Department objected under section 5.

Finally because of the Voting Rights Act, the county accepted our redistricting plan, and as a result, I was elected from my district, and I am a prime example of what can happen when things are straightened out with section 5.

As a member of the board of education, I am performing my duties very well. I am receiving many compliments for my contributions, and I am the first black ever to be elected to any public office in Henry County, thanks to section 5.

Thank you.

Mr. EDWARDS. Thank you very much, Mr. Smith.

It occurs to me that you could have used a lot more assistance from the Justice Department, even though section 5 existed and you were able to take advantage of it. And it is just an outrage that you had to go through all that expense and heartache and hard work for all these years that we have had the Voting Rights Act to make these modest improvements in the situation. You are to be congratulated.

Mr. SMITH. Thank you.

Mr. EDWARDS. And certainly your testimony is strong evidence that the Voting Rights Act must be extended.

Mr. Lodge.

STATEMENT OF HERMAN LODGE

Mr. LODGE. Yes, sir. I am Herman Lodge, a lifelong resident of Waynesboro, Burke County, Ga. During my lifetime I have only left Burke County to serve in the military during the Korean war and to attend college. Burke County is geographically the second largest county in Georgia, but most important, it is among the poorest in the State. It also has one of the highest black populations in the State, the worst housing stock, and formally had the highest infant mortality rate in Georgia.

For many years as a community leader, I petitioned, without success, county and city government to address the problems of the black community. Only since the passage of the Voting Rights Act of 1965, have people begun to register, but blacks still have no influence in county government. Every single gain we have made has either been the result of litigation or nonviolent protests such as boycotts and marches. The power of our ballots is only now beginning to be felt in city elections.

The Fifth Circuit Court of Appeals wrote on March 20, 1981, that:

> The county commissioners, acting in their official capacity, have demonstrated such insensitivity to the legitimate rights of the county's black residents that it can only be explained as a conscious and willful effort on their part to maintain the invidious vestiges of discrimination.

After reviewing evidence on street paving, the fifth circuit observed:

> Our review of the evidence in this case leads us to the conclusion that these patent examples of discriminatory treatment by Burke County's Commission typify the treatment received by blacks in Burke County in every interaction they have with the white controlled bureaucracy.

Before the passage of the Voting Rights Act, black registration was virtually nonexistent. Now it is 38 percent.

The reality is that everything and nothing has changed in Burke County. In a desperate attempt to defend a law suit, roads have been paved, employment opportunities increased, black social workers hired, infant and maternal care programs created with a dramatic drop in the infant mortality rate. All this and much more

has changed and will remain changed only so long as the law mandates the change. For this reason the fifth circuit held that:

> The vestiges of racism encompass the totality of life in Burke County. The discriminatory acts of public officials enjoy a symbiotic relationship with those of the private sector. The situation is not susceptible to isolated remedy. While this Court is aware of its inability to alter private conduct, we are equally aware of our duty to prevent public officials from manipulating that conduct within the context of public elections.

The black citizens of Burke County ask the Congress and this committee to do no more than what the fifth circuit has done in standing with us for continued progress. Unless the Voting Rights Act is extended and strengthened, things will regress to a point at or near where they were in 1965.

I have brought with me a wish to tender to the committee the final orders in *Sapp* v. *Rowland*, the law suit which so recently put blacks on Burke County's juries; the final order in *Sullivan* v. *DeLoach*, the section 5 law suit which put two blacks on the Waynesboro City Council, and the district court order, transcript and fifth circuit opinion in *Lodge* v. *Buxton*, the case I have so extensively quoted from. The *Lodge* case is currently on appeal to the U.S. Supreme Court.

The attitude of the whites in Burke County was well described by one nonresident white witness, who testified in the *Lodge* trial, Ms. Frances Pauley. Ms. Pauley visited Burke County and many other counties in Georgia and throughout the South in her capacity as a civil rights enforcement officer for HEW during school desegregation periods.

She also visited the county in her capacity as a member of the Georgia Human Relations Council, an organization set up by blacks and whites to facilitate desegregation. She described the attitude of whites as follows:

> It seems to me quite considerable feeling on the part of whites that they didn't want to meet with the blacks because they felt like they—the whites—would just be in tremendous horror of blacks coming into power there. That is their fear. The blacks had a terrific fear of actually being hurt.

She also noted the attitude of some whites, that they "felt that black people were less than human."

In comparing the attitudes of Burke County's whites to her experiences in other Georgia, Mississippi, and Alabama counties, Ms. Pauley testified: "I never went to a community in Mississippi, even in the Delta area, where I felt there was any greater discrimination, and particularly deep-seated fears, as I felt in Burke County, Ga."

This is only a fraction of all the testimony which provided a basis for the judge's ultimate conclusions about Burke County. Witness after witness testified to the continuing absolute separation of the races, the continuing discrimination and the continuing resistance of whites to black progress in Burke County.

Finally, the county commission claimed that the exclusion of blacks from the political process is somehow a mere historical accident, and not an obvious and direct product of past and continuing discrimination and purposeful exclusion from the political process. The evidence is to the contrary. Until very recently, voter registration in the 800 square mile Burke County was allowed only

at the county courthouse. That practice was changed only after the *Lodge* case was filed, and only at the insistance of Judge Alaimo.

The county courthouse, of course, was the very symbol of white supremacy in Burke County, and it largely retains that character today. It is no wonder that blacks would not often and easily register to vote there, regardless of any other more formal barriers. As defendant Marchman testified, the Burke County courthouse was the scene of at least one lynching.

Another witness with vast experience throughout the black community in Burke County testified that fear, a product of past public and private white supremacy, remained an active force in deterring blacks from registering today.

I testified at length that the reason blacks failed to register was largely fear. This is certainly not surprising in light of the Ku Klux Klan activity in the county, as explained by Ms. Lattimore. I also testified about bomb threats, threatening phone calls, and a shooting incident. All of these incidents arose out of my civil rights activity, and they came well after the enactment of the Voting Rights Act of 1965. Indeed, I was threatened for the very reason that I filed this lawsuit.

This fear, plus the socio-economic factors that derive from past purposeful discrimination and the array of other discriminatory factors testified to at length in the case, provide a much different explanation for low black voter registration than the "mere accident of history" explanation urged by the defendants.

If we are to continue to make progress, we must have the Voting Rights Act.

I urge you to read the transcript and the orders in the *Lodge* case, especially because they demonstrate, beyond any doubt, that in Burke County things have not yet really changed. Our progress is dependent on the act. Therefore, I urge you to extend and strengthen it.

I would like to mention in addition to what is in my written statement, how section 5 has acted as a deterrent to discriminatory voting changes, even when the Justice Department has not filed an objection.

Last year, in 1980, the City Council of Waynesboro, Ga., wanted to change a voter registration site which was located in a predominantly black ward. They wanted to change it back to the city hall because of the fact that so many blacks were registered to vote at the site in the black ward. At the registration site, which is in a recreation center adjacent to a housing project, people in approximately 52 blocks were registered in a 5-hour period.

One of the council members of the city council said—at a council meeting just before the next election—that they should change the registration back to the city hall. One of the black council members who was present at the council meeting told us that the council was planning to change the site back to the city hall, which was over a mile away and was where the police department was located.

Several of us from the black community attended the next city council meeting. We showed a copy of the Voting Rights Act, section 5, to the city attorney, who read it to the city council. I told him that they could not make this change unless they submitted it

to the Department of Justice, and we would object. We would make our objection known to Justice. Well, they didn't even bring it up after that.

Thank you very much. (See p. 2172 for prepared statement.)

Mr. EDWARDS. It occurs to me, Mr. Lodge, that somebody should have gotten in touch with the Department of Justice. Did you ask them to file a suit, instead of you having to go through all of the expense?

Mr. LODGE. No, sir.

Mr. EDWARDS. Well, did they come down there?

Mr. LODGE. Well, the only time that Justice would come would be during some of the elections. I think they came once to monitor an election.

Mr. EDWARDS. Dr. Sherman, what is going to happen in Georgia if the Voting Rights Act is not extended?

Mr. SHERMAN. I predict that if the Voting Rights Act is not extended, that counties are even now just waiting, hoping that the extension will not take place and will reinstitute practices which will make it more difficult for blacks to register and vote and to run for office and campaign for office.

Mr. EDWARDS. And register?

Mr. SHERMAN. Yes, sorry, register also.

Mr. EDWARDS. Do you agree, Mr. Smith?

Mr. SMITH. I agree wholeheartedly, and as I stated, we are famous for reconstruction in the South.

Mr. EDWARDS. Mr. Lodge, what is going to happen in Burke County if the Voting Rights Act is not extended?

Mr. LODGE. Well, we would probably go back to 1965. Before the Voting Rights Act was passed in 1965 there were approximately 427 blacks registered to vote out of eligibles of about 7,000. After the Voting Rights Act of 1965, there were approximately 2,700 blacks registered. So it is really difficult to register at the courthouse. The courthouse is still a symbol of injustice.

Another thing is that Burke County is 882 square miles. It is about a third the size of Rhode Island. It is a really large county. The voter registration places are far apart. The county seat, the city of Waynesboro, sits approximately in the center of Burke County, and to the east of Burke County, it is 25 miles to the county line. To the south, it is 20 miles, to the north it is 10, to the west it is 15.

So if we revert to only this one voter registration site, it would be really difficult to maintain the level of registration we have today. Even though the voter registration went from 427 to 2,700 in 1968, believe it or not, the voter registration is still approximately the same today, about 38 percent, about 2,700.

The tactic that is used there is purging the lists. This is the way they get blacks off of the voter registration lists. So I am pretty sure if the Voting Rights Act is not extended that we will revert to what we had in 1965, approximately 472.

Mr. EDWARDS. Mr. Smith, the Voting Rights Act was first enacted in 1965, and we have testimony to the effect that people, the white people of the covered jurisdictions have changed their attitude, have realized that it is only constitutionally fair and decent for our country to allow all Americans to vote and register and

participate in the political process, and that there is no longer a need for the Voting Rights Act because of this experience of the last 16 or so years. How do you respond to that?

Mr. SMITH. I think there are only about 10 percent convinced of that fact. Still a majority would not be for it.

Mr. EDWARDS. Dr. Sherman, do you agree?

Mr. SHERMAN. Yes, sir, I do agree. I think the testimony we have heard, and I will present further documentation of that, is that the majority of the whites and the majority of counties in the State of Georgia are still using tactics designed to prevent the participation of blacks and the election of blacks in the political process.

And I think without the Voting Rights Act, the widespread use of such tactics, such as moving registration and polling places out of the accessability of blacks and various other practices involving absentee ballots, purging of the voting lists and a myriad of changes we couldn't even anticipate because some of them haven't even been tried yet, will take place.

There has been some change in the State of Georgia in the attitude of people. But I would still say the majority of whites would like to inhibit and even turn back the participation of blacks in the electoral process.

Mr. EDWARDS. Thank you.

Counsel?

Ms. DAVIS. Thank you, Mr. Chairman.

Mr. Smith and Mr. Lodge, both of your statements are full of examples where changes were not submitted to the Justice Department for preclearance. We may hear recommendations during the course of these hearings that instead of using section 5 as it presently operates—that is, all changes be precleared by the Justice Department—that instead the jurisdictions should give notice of the changes and if the community leaders or citizens of those communities decided those changes might be discriminatory, they should contact the Justice Department. At that point, the preclearance provisions would apply.

What is your response to that? Would that protect the voting rights of blacks in the communities?

Mr. SMITH. I think so. I think they will be more aggressive in reporting to the Justice Department because we almost found out by accident that this was the law, because we had used many other measures before this and we found this out. It was exactly what we needed.

Ms. DAVIS. How did you find out that the changes had been made?

Mr. SMITH. There was some searching of the record because we really didn't know whether they had done it or not. But we had the records searched and found out that they had not cleared it.

Ms. DAVIS. If, as your testimony suggests, the jurisdiction doesn't—the officials in those jurisdictions don't play fairly—why are you convinced that if there is a written requirement, as there presently is, that they ought to submit their changes to the Justice Department, that they give public notice of those changes, why are you convinced that they will give public notice as required by the law?

Mr. SMITH. You mean if the law does not remain? They will not. They will not give notice. They will make these changes, it is my opinion.

Ms. DAVIS. So it is your view that the jurisdictions should be required to submit all changes to the Justice Department?

Mr. SMITH. Yes.

Ms. DAVIS. And that it would not be a protection of black's voting rights if those jurisdictions only submitted changes when community groups said that they were discriminatory?

Mr. SMITH. Yes.

Ms. DAVIS. Would you agree with that, Mr. Lodge?

Mr. LODGE. Yes; I would like to add, too, that what you have is that you don't have enough people in the Justice Department to monitor all this. Like there was an incident that they wanted to change the voting site in Burke County. The site was just across the street. Somebody from Justice called, you know, and it would have been nice if they could have sent somebody down to see for themselves. Of course, we objected to it. Of course, immediately after we objected to it, the county commissioners dropped the preclearance.

So what I am saying, too, is that one of the things that has to be done is make an attempt to educate the community. One of the things we did is try to get copies of the Voting Rights Act, trying to educate people in the community, as many as we could. We received 200 copies. We tried to put them in everybody's hands so that anything that comes up, somebody will call somebody.

I think there has to be, along with the act, some provision in there to try to educate the public as to what is in that act. It is all right to have an act, but nobody knows about it but a few attorneys and a few community leaders. Like I said before, I don't think Justice Department has enough people, every time somebody files a preclearance, come storming down to Georgia, come storming to Burke County. We would have to have a full-time person down there all the time.

Ms. DAVIS. Your study, Dr. Sherman, has information about both counties and municipalities?

Mr. SHERMAN. Yes; we asked the respondents in our study to indicate any information they had about municipalities, any incorporated places within each of the counties. In my document—I will submit a much more lengthy document to the committee. I will complete it myself before the end of July, submit a complete report of the information that I have. I will document not only everything I have about counties, but also will give a lot of information about municipalities.

Ms. DAVIS. Your conclusion would be no different for the municipalities than it is for the counties?

Mr. SHERMAN. In fact, yes. The general conclusions would be the same. There will eventually be more anecdotes, more information. My final report will have among other things, besides the statistics that I have indicated here, will have a lot of specific quotes about some of the things that have happened in various localities, various towns and counties throughout the State of Georgia.

Ms. DAVIS. Thank you.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman.

Mr. Smith, how close is the nearest U.S. attorney's office to your jurisdiction?

Mr. SMITH. Atlanta.

Mr. BOYD. How far is that?

Mr. SMITH. About 25 miles.

Mr. BOYD. Twenty-five miles?

Mr. Lodge, about how far is it from you?

Mr. LODGE. Thirty.

Mr. BOYD. The intimidation that you have described is, of course, illegal under federal law now, under section 11 of the Voting Rights Act. And it is punishable by a $5,000 fine and/or imprisonment for up to 5 years. Have you or do you know of any complaints which have been made to the local U.S. attorney's office in Atlanta? And if so, what has been their response?

Mr. LODGE. I haven't. It is really difficult to file complaints when you don't have concrete evidence, like telephone threats that I used to get. I would get telephone threats. I went to the phone company and said, "Hey, you know, I am getting these." Well, they tell me to get a private number. A community leader really doesn't need a private number you know. But I don't have any way of proving that somebody called me and said there is a bomb. The only thing I would do is report it to the sheriff's department or city police. They would come out and look around the house, you know, then go. But there is no concrete evidence there was a bomb there. And I can't prove that somebody called me. So you know, it would probably look pretty bad if I filed a complaint with no proof.

Mr. BOYD. Dr. Sherman's statement suggests more is involved than just telephone intimidation.

Mr. LODGE. Yes; well, in my county there was a shooting incident where a young lady desegregated the high school. One night someone shot the—because they had to know where she slept. The bullet went across the bed in the bedroom in which she slept, and passed through a lamp. It was approximately a foot, maybe 18 inches above the bed. You report it. Report it to the local police. The sheriff's department followed the bus in which the young lady was riding. She was riding in an integrated bus. They would pick the bus up. She was put on the bus in the morning, and the sheriff's department would follow the bus in the afternoon until she would get back from school.

Of course, then you have to do some of the things yourself. What we would do, we would spend the night with her. People in the community would spend the night with her. Those are some of the things we did.

Mr. BOYD. Mr. Smith, do you have anything?

Mr. SMITH. In my particular community, about all we have to do right now is call to their attention that section 5 is operable. For example, the city of McDonough has just presented to the assembly, and it passed, a new city charter. Upon being told, well, you know this has to be presented to the Justice Department, the mayor said "Oh, yes, and we are going to ask them to draw it up." So they are very cognizant of the fact now that we will quickly appeal to the Justice Department. And so many times we won't really have to do it, because you know, just a matter of policy. So, I

think we have and are very conscious of the fact that we do have protection in the Voting Rights Act, in particular, section 5.

Mr. BOYD. But you are aware, though, that you can go to the U.S. attorney's office?

Mr. SMITH. Oh, yes.

Mr. BOYD. Is the grand jury in your county integrated?

Mr. SMITH. Yes; we have had it for about 10 years now. Of course, there had to be a revolution to get that done. But there were two black members appointed to the jury commission. So they see to it that at least the grand jury is pretty well straight. It is not as desegregated, I believe, as it should be. We have made some progress.

Mr. BOYD. Thank you.

Would it be fair—I think you both indicated that the overwhelming majority of the people in Georgia in your judgment would go back to the pre-1965 conduct if the provisions of section 5 expire?

Mr. SMITH. I am sure of that. As I said, hints have already been made. "As soon as the county is out for the census, we are going to get this redistricting thing straightened out."

Mr. BOYD. But do you think there are some jurisdictions and some pockets which try to do the right thing, or is it so widespread in your judgment that——

Mr. SMITH. It is so widespread I doubt whether voluntarily, not enough of them would think fairly to do that. I think the public officials are still quite concerned about the views of their clientele. They are not going to get out too far. That is why no mention has been made, very little publicity was given to what is happening in any county in the local media by the public officials. They have said very little about it because they want to keep it quiet.

Mr. BOYD. Mr. Lodge, you wanted to say something?

Mr. LODGE. Yes, I think one of the reasons is that when you have political power, you have got it all, you know. You are just about second to God when you have political power. Because you control everything. Burke County is what they call a plantation county. At one time in Burke County—this is not 100 years ago, we are talking about 25, 30 years, where large landowners owned huge amounts of land. And they would have at least 40 to 50 families because of the fact that there were no tractors, you know, that they had horses and mules to farm with. Now with mechanization, you got rid of most of these large number of families.

But you still have these people who own these large tracts of land who wield the power, try to keep the tax base down. You know, they control the board of education. The board of education in Burke County has one black member. The board is appointed by the grand jury which says what amount tax revenues levy is going to be. So they keep the tax mileages as low as they possibly can, because the school system is 80 percent black and 20 percent white, you know. The other whites have gone to the private academy. So it is to their advantage to maintain that political power.

Mr. BOYD. Thank you.

Thank you, Mr. Chairman.

Mr. EDWARDS. Well, our thanks to all three witnesses for very helpful testimony. Thank you. We will receive the additional information.

Mr. SHERMAN. Thank you very much.

Mr. EDWARDS. Our second Georgia panel will be composed of Laughlin McDonald, director of the southern regional office of the American Civil Liberties Union, and Mr. Ed Brown, who is district coordinator for the NAACP in Camilla and Mitchell Counties, Ga.

TESTIMONY OF LAUGHLIN McDONALD, DIRECTOR, SOUTHERN REGIONAL OFFICE—ACLU, ATLANTA, GA. AND ED BROWN, DISTRICT COORDINATOR, NAACP, CAMILLA AND MITCHELL COUNTIES, GA.

Mr. McDONALD. Good morning, Mr. Chairman.

Mr. EDWARDS. Without objection, all of the statements will be made a part of the record.

Mr. McDonald, are you going to testify first?

Mr. McDONALD. Yes, I am.

Mr. EDWARDS. We welcome your colleague.

Mr. McDONALD. Good morning, Mr. Chairman, counsel for the subcommittee. I am Laughlin McDonald from Atlanta, Ga., the director of the southern regional office of the ACLU, and I deeply appreciate, as does the ACLU, the opportunity to appear before the subcommittee and to express our support for H.R. 3112, the Rodino bill, which would extend for 10 years the preclearance provisions of section 5, amend section 2 by allowing discrimination to be shown by proof of adverse results, and finally would continue voting assistance in language—other than English for 7 years so that all section 5 provisions would expire simultaneously.

The southern regional office was opened in 1965 to assist with the struggle for civil rights in the South. Our program has been almost exclusively litigation. As you might suspect, our litigation emphasis has not always been the same. In the early years we concentrated on more affirmative jury desegregation and prison desegregation litigation. *Lee* v. *Washington,* for example, was one of our cases which desegregated all of the penal facilities in the State of Alabama, in 1968. We also did some voting rights suits and were involved, for example, in the remedy phase of *Reynolds* v. *Sims,* which applied the one-person, one-vote principle to State legislative reapportionment.

But beginning in the early 1970's our litigation emphasis clearly centered on voting rights. That was so not because of any preconceived plan that we had at that time to do voting rights litigation, but quite simply because discrimination in voting was the predominant complaint that we received from blacks in the South. In a sense we should not have been surprised about that. The emphasis of the civil rights movement, that is, the movement led by Dr. Martin Luther King, Jr., as far as voting was concerned, was to remove the discriminatory registration procedures and make sure that jurisdictions did not enact new procedures to take their place. Those goals were achieved with the enactment of the Voting Rights Act of 1965. Literacy tests were banned and section 5 was enacted.

Despite the ban and section 5 the experience after the Voting Rights Act was that blacks still did not participate on the basis of equality with whites. That is true, I think, for a number of reasons which are apparent to us now. One is that many jurisdictions simply ignored section 5 and adopted new procedures that blunted

the increased black voter registration. In no State is that more apparent than in Georgia. It is quite extraordinary, the record which jurisdictions in that State have of making changes without preclearing them and implementing changes which have been specifically objected to by the Department of Justice.

In Sumter County, for example, in our former President's very backyard, the board of education received an objection to its at-large method of elections in 1973. We had to file a suit last year to enforce that objection. The suit is still dragging on. The Department of Justice recently intervened.

Mr. EDWARDS. Why did Justice not file a suit?

Mr. MCDONALD. Well, I cannot answer that, Congressman. They certainly should have followed up on their objection. In that case the facts are somewhat more aggravated even than I suggested because the jurisdiction wrote to the Department of Justice after they got the objection and said, "We simply do not believe that the objection is proper,"—put them on notice that they were going to disobey it. I think one has to ask the Department of Justice why there is no followup procedure at least as far as the objections are concerned.

Clearly the problem of trying to ferret out changes irrespective of objections is also a problem with the present procedures of the Department of Justice. Incidentally, I have good things to say about the Department of Justice, too. I am not here to put the knock on them.

A second reason why blacks did not participate equally in politics is because many jurisdictions used voting procedures that predated the effective date of section 5, such as at-large elections which existed prior to November 1, 1964. The clear result of those procedures to perpetuate the present effects of what was past intentional discrimination.

Third, the heritage of separate but equal was far more debilitating than perhaps people thought it would be. Certainly there was an understanding of how severe the burdens of race were, but few could have anticipated the extent to which blacks have been devastated all across the South by racial bloc-voting. It is a chronic problem everywhere you look. Black voter registration remains disproportionately low. Blacks are simply inexperienced in the elective process, and the black community still suffers a distinct socioeconomic status which makes it difficult and sometimes impossible to establish coalitions with majority white voters.

The Rotary Club is still segregated. Churches by and large are still racially segregated. That is where voting coalitions are formed for the most part. It has been our experience that there are really no such things as issue campaigns in many Southern cities and jurisdictions. People run on a very abstract platform of good government.

Some elected officials concede that they run on their personalities. People vote based on the contacts they have built up over the years. In jurisdictions in the South that means contacts that have been segregated. As a result, blacks have found it extremely difficult to form coalitions with whites and get elected, especially in those jurisdictions where blacks are in a minority.

Finally the tactics of manipulation and outright intimidation were not put on the scrap heap merely by passage of legislation in Washington.

I know that this subcommittee is familiar with the statistics that are available showing the percentage of black elected officials in the South. I will not repeat all those. But in Georgia only 3.7 percent of the total elected officials are black, and the State is in excess of 26 percent black. The figures are similar anywhere in the South that you look.

Those statistics aside, the question is still asked whether or not there is a continuing need for protection of minority voting rights. I was born and raised and have lived in the South virtually all of my life, with the exception of college and the Army. It gives me no pride and no pleasure to say that in my region there is a continuing pattern of resistance to equal voting. There is a failure to comply with remedial legislation such as section 5. There is a considerable use of election procedures that perpetuate the effects of past intentional discrimination.

We have prepared a report of the last 10 years of voting rights litigation and administrative proceedings that our office has undertaken. I would like to submit that report as part of the record of these hearings when it is printed.

I would like to use the remainder of my time to give you some of the highlights of that report. On May 14, 1981, not 10 years ago, May 14, 1981, a district court judge in the middle district of Georgia ruled that at-large elections for the mayor and commission of Eatonton, the Putnam County Commission and the board of education were racially discriminatory and diluted black voting strength. I have a copy of that opinion. With your permission I would like to submit it for the record.

Mr. EDWARDS. Without objection it will be received. (The information follows at p. 609.)

Mr. MCDONALD. I will not discuss *Lodge* v. *Buxton* or Waynesboro because those have been mentioned, but I would like to footnote Mr. Lodge's testimony about Burke County and Waynesboro. This vignette reveals part of the problem which people not in the South have in determining whether or not there are still racial problems in the South. As a nation we want to believe that we have solved the racial problem. People outside the South want so much to believe the representations they hear from white public officials that race is no longer a problem. But it is a problem.

Let me give you this example. As we know, Waynesboro received an objection from the Department of Justice when it tried to implement a majority vote requirement in 1972. The city attorney asked for a reconsideration. "I believe that you will find," he wrote to the Department of Justice on January 14, 1972, "that the white and Negro relations in Waynesboro are not strained and that you will find a degree of harmony among the races."

Yet in 1981 the Court of Appeals for the Fifth Circuit said that the vestiges of racism encompass the totality of life in Burke County. As an attorney I have never read language quite that strong.

Outside of Georgia, if I might give another example, on April 7, 1981, a referendum calling for a new apportionment for the city council of Columbia, S.C., incorporating single-member districts,

was soundly defeated by a racially polarized white voting majority. The local media reported that "racial scare tactics and demagoguery took over. * * * [T]he white establishment of Columbians for Good Government helped whip up the 'politics of fear,' with leaflets distributed to thousands of white homes in the closing days of the election."

In one of the newspaper clips I read, a white council member was reported as saying he opposed district voting because it would allow any Tom, Dick, or Harry to get elected to the city council.

On April 20, 1981, the Attorney General was given permission to intervene in our lawsuit against the board of education of Sumter County. One of the problems there is chronic racial bloc voting. It is easy to see that by looking at the election returns.

There is also a phenomenon called queueing which takes place in the South, that is much more difficult to prove; that is, whites getting behind a consensus candidate prior to the election. An incredible instance of that occurred in Thomson, Ga., in 1974, in the mayor's race. At that time the city had a plurality system which it tried to change by adopting a majority vote requirement. The change, however, was objected to by the Department of Justice in 1974, just before the election in September. Well, in that election for mayor were three candidates, two whites and a black assistant school superintendent. Immediately prior to the election the two white candidates got together and appointed a dozen each of leading white citizens to meet in city hall and hold a minielection prior to the real election to determine which of the candidates would run against the black candidate and which would drop out. They held the election and the candidate who lost got out of the race so that the black candidate could not be elected by a plurality of votes in that jurisdiction. In point of fact that is just what happened in the regular election the black candidate was easily defeated.

There has been prior testimony I believe about the change from plurality to majority vote in the city of Moultrie. One of the tragedies of that change was that it was used to bar a black from office, John Cross, the owner of a cab company in Moultrie. Cross ran in 1973 and got a plurality of votes. But because of the unlawful implementation of the majority vote requirement he was forced into a runoff and was defeated. The majority vote requirement was in response to blacks first offering for office in the city of Moultrie.

Let me give you Harris County, as another example. The first blacks to serve on the Harris County Board of Education were appointed in 1974 after the juries in that county had been desegregated. District court proceedings had been brought and the jury was finally desegregated to include a representative number of blacks. That same year after the two blacks were appointed county officials secured passage of a law requiring the board to be elected at large. No black, however, in the history of Harris County since reconstruction had ever been elected to a county office. As far as I know, that is still the case at the present time.

The Attorney General objected to that change, whereupon the attorney for the board asked for reconsideration. In his letter of reconsideration he represented that the two black members "were in favor of the bill." In fact they were not. Reconsideration was denied.

Americus, Ga., has had egregious Voting Rights Act violations. In 1968 the method of holding elections for the mayor and council was changed from plurality to majority vote. No preclearance was sought. The majority vote requirement was subsequently used on two occasions in 1972 and in 1977 to exclude blacks from office.

In the city of Americus, voting was segregated by race until 1965, when it was abandoned. Following a series of lawsuits, *Bell* v. *Southwell,* for example, in which elections were set aside for "gross and spectacular racial discrimination," to quote from the fifth circuit opinion. Subsequently, the city adopted a plan of segregation by sex in voting. Our clients in Americus are convinced that the reason that was done was to spare white women the embarrassment, if you will, of standing in line with black men.

During a deposition, the election manager said that the reason for the segregated voting was that it was a quicker way to have people vote. Quite frankly I was never able to figure that out. The Department of Justice at any rate, at our request, wrote to the city and said it appears that this is an unclear change and they could not implement it without preclearance. Insofar as I know that practice was abandoned without any attempt to get it precleared.

Let me finish with one last example. Prior to November 1, 1964 the following eight counties in Georgia among others, had district elections for their county government: Calhoun, Clay, Dooly, Early, Miller, Morgan, Newton, and Seminole. There were no black elected officials on any of the eight county governments.

The Voting Rights Act of 1965 promised to change that by creating black registered-voter majorities in some of the single-member districts. But by 1971 each county, with the exception of Seminole, adopted at-large voting plans, and not a single one complied with section 5. Between 1976 and 1980, we sued six of these jurisdictions—Calhoun, Clay, Dooly, Early, Miller, and Morgan—and the Federal courts ordered them to obtain preclearance or return to district elections. All now have district voting plans.

Newton County made a voluntary submission prior to the filing of a lawsuit in 1975. There was an objection, and the county now uses districts for election of the local government.

Seminole County is a unique case. By 1980, the district encompassing the county seat, which contained 40 percent of the county's population and its largest concentration of blacks, had over 2,200 voters. By contrast, the Rock Pond district, which also elected one member to the county government, had only 170 registered voters. Following a lawsuit in April 1980, the county was reapportioned. At the next election, Donald Moore, a black schoolteacher, was elected to the county government.

These examples are not exhaustive of continuing discrimination in the elective process of the South. Without extension of the Voting Rights Act and amendment of section 2 of the act it is my belief, based upon my experience, that we will see a halt in black registration and officeholding, and more than that, we will actually see a deep erosion in minority political participation.

All of us, whites and blacks, clearly have a stake in equal voting rights. When minorities are excluded from effective political decisionmaking, they are forced to take their complaints to the Federal courts or to an administrative enforcement agency of the Federal

Government and we all pay the price for the failure of local governments to solve their own problems. That price unfortunately is not calculated merely in terms of dollars and cents, but of social unrest. I cannot tell you the level of frustration blacks feel as a consequence of their exclusion from government. Exclusion from government breeds contempt for government.

The Voting Rights Act of 1965 should be extended. It is cheap, it is efficient, and it is achieving significant gains for racial minorities. But the promise of equal voting rights contained in the Constitution is far from realized.

[The statement of Laughlin McDonald follows:]

TESTIMONY OF

LAUGHLIN McDONALD

Director, Southern Regional Office,
American Civil Liberties Union Foundation, Inc.

Good morning, Mr. Chairman, and members of the subcommittee. I am Laughlin McDonald, from Atlanta, Georgia, Director of the Southern Regional Office of the American Civil Liberties Union Foundation, Inc. I deeply appreciate, as does the ACLU, the opportunity to appear before you today to discuss extension of the Voting Rights Act of 1965, and the need generally to continue protection of minority voting rights.

The ACLU is a nationwide, non-profit membership organization whose purpose is protection of the Bill of Rights. We support H.R. 3112, the Rodino Bill, which would extend for 10 years the preclearance provisions of §5 of the Act; amend §2 by allowing discrimination to be shown by proof of adverse results; and continue the requirement of voting assistance in languages other than English for seven years.

The Southern Regional Office of the ACLU was opened in 1965 to assist in the struggle for equal civil rights in the South. Our program, then and now, consists primarily of litigation. Over the years, the emphasis of that litigation has shifted. In the beginning, we concentrated on jury and prison desegregation, and handled such cases as Whitus v. Georgia, 385 U.S. 545 (1967), invalidating discriminatory jury selection procedures in Georgia, and Lee v. Washington, 390 U.S. 333 (1968), declaring racial segregation unconstitutional in prisons and jails in Alabama. We did some voting rights cases as well, including Reynolds v. Sims, 377 U.S. 533 (1964), which applied the one person, one vote principle to state legislative reapportionment.

Beginning in the early 1970's, however, our litigation emphasis clearly centered on voting rights. That was so, not because of any pre-conceived plan we had to concentrate on that kind of litigation, but for the simple reason that the predominant complaint we began to receive from members of the black community was continuing discrimination in the elective process.

The emphasis of the civil rights movement, as far as voting rights were concerned, was removal of discriminatory registration requirements and a ban on enactment of new procedures to take their place. It was largely assumed, or rather hoped, that once the formal barriers to voter registration were removed, blacks would participate in politics on a basis of equality with whites. But that didn't happen despite the ban on literacy tests in the Voting Rights Act of 1965 and enactment of §5.

First, many jurisdictions ignored §5 and adopted new procedures to blunt increased black voter registration.

Second, many jurisdictions used voting procedures, such as at-large elections, enacted before November 1, 1964, the operative date for pre-clearance under §5, which perpetuated the effects of past discrimination.

Third, the heritage of separate-but-equal was far more debilitating than had been supposed--indeed if that were possible. Black candidates for office were devastated by racial bloc voting by whites; chronically low black voter registration; sheer inexperience in the political process; and, a depressed, distinctive socio-economic status which made it difficult, if not impossible, to form political coalitions with whites or participate effectively in the electorate.

Finally, the tactics of political intimidation and manipulation

were not placed on the scrap heap merely by passage of legislation in Washington.

In Georgia, for example, in 1980, the 249 black elected officials were only 3.7% of the total of elected officials, yet the state is 26.2% black. In Alabama, the 238 black elected officials were 5.7% of the total. The state, however, is 24.5% black. In South Carolina, blacks were 7.4% of the elected officials, but 31% of the population.[1] In none of the Southern states covered by §5 are blacks elected to office in numbers approaching their presence in the population.

Voter registration also remains lower for blacks than whites. According to the Census, which collected registration data in 1976 in states covered by the Voting Rights Act, 75.4% of whites but only 58.1% of blacks were registered in Alabama. In Georgia, 73.2% of whites but only 56.3% of blacks were registered. In South Carolina, 64.1% of whites and 60.6% of blacks were registered. For the other covered states, the figures are similar.[2] More recent figures for South Carolina show 56.5% of whites and 50.9% of blacks registered to vote.[3]

Those statistics aside, the question is still asked whether there is in fact a need for continuing protection of minority voting rights. The answer, quite simply, is yes. As one born and raised in the South, it gives me no pride or pleasure

---

1. Source: Joint Center for Political Studies, National Roster of Black Elected Officials, Vol. 10, 1981.

2. U.S. Dept. of Commerce, Bureau of the Census, Registration and Voting in November, 1976--Jurisdictions Covered by the Voting Rights Act Amendments of 1975, Series P-23, No. 74, 1978, Tables 1 and 2.

3. U.S. Department of Commerce, Bureau of the Census, Projections of the Population of Voting Age for States: November, 1980, Series P-25, No. 879, 1980, Table 1.

to say that there is a continuing pattern in my part of the country of resistance to equal voting; failure to comply with §5; and, the use of election procedures which perpetuate the effects of past intentional discrimination.

Our office has prepared a report of its voting rights litigation and administrative actions under §5 for the past ten years, which I believe supports my contention. With your permission, I'd like to submit the report for the record when it is printed. Let me give you now some of the highlights of the report.

1. On May 14, 1981, a district court judge in the Middle District of Georgia ruled that at-large elections for the mayor and commission of Eatonton, the Putnam County Commission and the Board of Education were racially discriminatory and diluted black voting strength. Bailey v. Vining, Civ. No. 76-199-MAC. (M.D.Ga.).

2. On March 20, 1981, the Court of Appeals for the Fifth Circuit held that "[t]he vestiges of racism encompass the totality of life in Burke County," Georgia, and affirmed a lower court decision declaring unconstitutional the system of at-large elections for the County Commission. Lodge v. Buxton, 629 F.2d 1358, 1381 (5th Cir. 1981).

3. The district court ruled earlier in September, 1977, that at-large elections for the city of Waynesboro, the county seat of Burke County, violated the Constitution, including the Thirteenth Amendment which prohibits the imposition of badges or

83-679 O - 82 - 39 (pt.1)

indicia of slavery, the first such ruling in a voting rights case of which I am aware. Sullivan v. DeLoach, Civ. No. 176-238 (S.D. Ga.).

Waynesboro also received an objection from the Department of Justice when it attempted to implement a majority vote requirement in 1972. The city attorney asked for reconsideration. "I believe that you will find," he wrote to the Department of Justice on January 14, 1972, "that the White and Negro relations in Waynesboro are not strained and that you will find a degree of harmony among the races." These representations, making every allowance for point of view, can scarcely be credited in light of the finding in 1981 by the Court of Appeals in Lodge v. Buxton, that "[t]he vestiges of racism encompass the totality of life in Burke County."

4. On April 7, 1981, a referendum calling for a new apportionment for the City Council of Columbia, South Carolina, incorporating single member districts was soundly defeated by a racially polarized white voting marjoity. The local media reported that "racial scare tactics and demagogory took over. . . [T]he white establishment of Columbians for Good Government helped whip up the 'politics of fear,' with leaflets distributed to thousands of white homes in the closing days of the election."

5. On April 20, 1981, the Attorney General was given permission to intervene in our lawsuit against the Board of Education of Sumter County, Georgia, one of whose members was former president, Jimmy Carter, which has refused to honor a §5

objection to implementation of an at-large voting plan adopted in 1973. Edge v. Sumter County School District, Civ. No. 80-20-AMER. (N.D.Ga.).

6. In April, 1980, the district court in South Carolina reached "the inevitable conclusion" that the at-large method of electing the Edgefield County Council was racially discriminatory. McCain v. Lybrand, Civ. No. 74-281 (D.S.C.). This decision, pre-City of Mobile, was subsequently withdrawn and the case is scheduled for retrial on the Constitutional issue. Also in Edgefield, a state statute implementing at-large voting for the County Council in 1966 was never pre-cleared under §5. A subsequent implementation of at-large voting in 1976 was submitted to the Department of Justice and found objectionable. In spite of that objection, the county has stated its intention of continuing to hold all elections at-large.

7. On September 3, 1974, the Attorney General objected to several voting changes submitted by Thomson, Georgia, including a majority vote requirement for election of the mayor. 1974 was an election year and two whites and one black were in the race for mayor. Immediately prior to the election, 21 whites, chosen by the two white candidates, met at City Hall and held a "mini-election" to select the white candidate to oppose the black. At the subsequent election, the lone white beat his black opponent handily. Four years later, a federal district court entered an order in a vote dilution suit brought by local blacks, reapportion-

ing the mayor and council of Thomson for the stated purpose of providing black access to the political process. In the same lawsuit, the Court also reapportioned, and for the same reasons, the McDuffie County Board of Commissioners and the County Board of Education.

8. In 1965, the City of Moultrie, Georgia, adopted a majority vote requirement for election of its city council. It was not submitted for pre-clearance. In 1973, John Cross, the black owner of a local cab company, ran for the council and received a plurality of votes. He was forced into a run-off and was soundly beaten. The change was not submitted until 1977, after the city had been sued by Cross and others for failure to comply with §5. The Attorney General objected to the change on June 26, 1977.

9. In January, 1981, South Carolina, in response to a federal lawsuit brought by a black resident of Aiken, repealed its statute enacted in 1895 disqualifying persons from voting upon conviction of certain offenses. The old statute had been passed expressly to deny the franchise to blacks, by including only those offenses which blacks were thought most likely to commit--e.g., the more furtive crimes of taking, such as petit larceny, and wife beating. More robust crimes such as kidnapping, and murder, which blacks were thought less capable of committing, were excluded.

10. The first blacks to serve on the Harris County, Georgia, Board of Education were appointed in 1974 by a recently desegregated grand jury. That same year, county officials secured passage of a law requiring the Board to be elected at-large. No black in Harris County, however, has ever been elected to any position at-large. The Attorney General objected to the change, whereupon the Board asked for reconsideration, representing that the two black members "were in favor of the bill." In fact, they were not. Reconsideration was denied.

11. In 1968, the method of holding elections for the mayor and council of Americus, Georgia, was changed from plurality to majority vote. No pre-clearance was sought. The majority vote requirement was subsequently used on two occasions, October, 1972, and October, 1977, to exclude blacks from office. Another uncleared change was from race segregated voting lines in 1965 to sex segregated voting. Sex segregated voting was not abandoned until after a formal inquiry by the Deaprtment of Justice on December 7, 1979, prompted by complaints from local blacks that the procedure was designed to spare white women the indignity of standing in line with black males.

Subsequently, on April 7, 1980, the district court ruled that Americus' system of at-large elections for the mayor and council unconstitutionally diluted black voting strength. Also on the same date the court ruled unconstitutional at-large elections for the Board of Commissioners of Sumter County, of which Americus is the county seat.

12. In January, 1980, the DeKalb County, Georgia, Board of Registration adopted a policy that it would no longer approve community groups' requests to conduct voter registration drives. DeKalb County is in the five-county metropolitan Atlanta area. At that time, only 24% of black eligible voters were registered, as opposed to 81% of whites. After a contested lawsuit, the county was required to submit the change in registration policy. On September 11, 1980, the Attorney General noted an objection.

13. In 1976, following a successful challenge by Tobe Harris, a black man, to an election for the Greenville, Georgia, City Council, three of the challenger's witnesses--all black--were criminally charged with voter fraud. Although evidence of voter confusion--black and white--was widespread as a result of the use of a county voter registration list at the city elections, only blacks were charged with election law violations. One of the defendants was charged with "improperly" assisting his illiterate parents in voting. The cases were called repeatedly for trial, only to be continued, over the objections of the defendants, and at the request of the prosecutor. All charges were nol prossed a year later, following the filing of motions to dismiss on the grounds of racially biased prosecutions.

14. The Board of Education of Thomaston, Georgia, is self-perpetuating, its line of succession having begun with the Board of Trustees of a private, racially segregated academy known

as the R. E. Lee Institute, established in 1906. No black ever served on the Board of Education until it was sued in May, 1979, by local black citizens. At that time, the Board appointed one of the plaintiffs to its membership.

15. Prior to November 1, 1964, the following 8 counties in Georgia, among others, had district elections for their county government: Calhoun (63% black), Clay (61% black), Dooly (50% black), Early (45% black), Miller (28% black), Morgan (45% black), Newton (31% black), and Seminole (35% black). There were no black elected officials on any of the eight county governments. The Voting Rights Act of 1965 promised to change that by creating black registered voter majorities in some of the single member districts. But by 1971, each county with the exception of Seminole, adopted at-large voting plans and not a single one complied with §5. Between 1976 and 1980, we sued six of these jurisdictions--Calhoun, Clay, Dooly, Early, Miller and Morgan--and the Federal courts ordered them to obtain pre-clearance or return to district elections. All now have district voting plans.

Newton County made a "voluntary" submission prior to the filing of a lawsuit in 1975. There was an objection and the county now uses districts for elections of the local government.

Seminole County used voting districts drawn in 1933. By 1980, the district encompassing the county seat of Donalsonville, which contained 40% of the county's population and its largest concentration of blacks, had over 2,200 voters. By contrast, the

Rock Pond district, which also elected one member to the county government, had only 170 registered voters. Following a lawsuit in April, 1980, the County was reapportioned. At the next election, Donald Moore, a black school teacher, was elected to the county government from the town of Donalsonville.

16. In July, 1978, the Terrell County Board of Education was enjoined by the Federal Court from using an uncleared 1965 law providing for the election of Board members at-large.

17. in February, 1979, the Federal Court ruled that the at-large system for election of the City Council of Dawson, Georgia, the county seat of Terrell County, was unconstitutional on the grounds of dilution of minority voting strength.

18. In October, 1979, pursuant to a settlement agreement, the Court reapportioned the Board of Commissioners of Terrell County into single member districts.

19. In November, 1979, the district court ruled that the at-large system for electing the Peach County, Georgia, Board of Commissioners was unconstitutional on the grounds of racial dilution.

20. In October, 1977, pursuant to a settlement agreement, district election plans were ordered for the County Commission and Board of Education for Coffee County, Georgia, and the Douglas City Council, the County seat.

21. In 1970, the Pike County, Georgia, Board of Education was elected by districts. After two blacks ran for office, however, and before the next elections, a statute was enacted providing for elections at-large. In March, 1979, at the insistence of the Attorney General, the change was submitted and found objectionable. No corrective action was taken, however, until suit was filed in February, 1980, to enforce the §5 objection.

22. On June 23, 1975, the Court of Appeals for the Fifth Circuit held that officials of the Democratic Party of Sumter County, Alabama, must comply with §5 in adopting a new procedure allowing candidates to qualify through the Secretary (a white) rather than through the Chairman (a newly elected black), as had been the practice in the past. Sumter County Democratic Executive Committee v. Dearman, 514 F.2d 1168 (5th Cir. 1975).

23. A black school teacher, Emmet Gray, was convicted in Talladega County, Alabama, for soliciting votes and passing out facsimile ballots at the June, 1974, Democratic primary. Gray opposed the candidacy of the local sheriff who had the reputation for being anti-black. The conviction was set aside a year later by the Court of Criminal Appeals of Alabama, not because it found the statute unconstitutional, but because there was no evidence of the crime.

These examples are not exhaustive, either of our report or of continuing discrimination in the elective process in the South. Without extension of the Voting Rights Act, and amendment of §2, it is my belief that the modern gains in black registration and office holding will come to a halt, and we will actually see a deep erosion in minority political participation.

All of us have a stake in equal voting rights. When minorities are excluded from effective political decision-making, they must take their complaints to federal court or to an administrative enforcement agency in Washington, and we all pay the price for the failure of local governments to solve their own problems. That price, unfortunately, is not calculated merely in dollars and cents and increased federal regulation, as a society we also pay a price in social unrest. Exclusion from government breeds despair and contempt for government.

The Voting Rights Act of 1965 should be extended and §2 amended. The Act's regulatory scheme is efficient, inexpensive, and has achieved significant gains for racial and language minorities. But the promise of equal voting rights contained in our Constitution is far from realized.

The enactment of the Voting Rights Act in July, 1965 meant that every state and local official in the covered jurisdictions, including those in Georgia, were faced with the possibility that absolute white control of the political process might come to an end. In many of Georgia's cities and counties, black populations constituted either an substantial minority or, in some cases, a majority of the total population. Suspension of literacy tests and the use of federal registrars and election observors, as provided by the Act, meant that for the first time since Reconstruction these large concentrations of black population would register to vote in significant numbers. Moreover, the federal pre-clearance requirements of Section 5 of the Act prohibited local and state officials from enforcing changes in voting procedures, which could be used to minimize the impact of increased black voter registration, unless the change first received federal pre-clearance.

In many areas of Georgia, the response on the part of officials to the Voting Rights Act's challenge to white supremacy was two-fold: (1) the enforcement of racially discriminatory changes in voting procedures in violation of the pre-clearance requirements of the Act; and (2) continued enforcement of racially discriminatory voting practices which were in place before enactment of the Act in violation of Fourteenth and Fifteenth Amendment guarantees. By following this pattern of illegality, many jurisdictions in Georgia since 1965 have been able to avoid

the election of any black persons to local governing bodies, or to minmize the number of black elected officials, notwithstanding the fact that a significant increase in black voter registration has occurred during the 1965 to 1981 period.

AT-LARGE VOTING

The most effective way of diluting the impact of increased black voter participation is the use of at-large elections. In such elections, the white majority of voters is able to control the election of not only the majority of seats on a local governing body, but the election of all of its members. In a number of Georgia cities and counties, district voting was being used for local elections at the time of the passage of the Voting Rights Act. If that manner of voting had continued in such local elections after 1965, then black candidates would have in all likelihood begun to achieve success within voting districts where blacks constituted a voting majority.

An excellent example of where at-large elections were instituted in violation of the pre-clearance requirements of the Voting Rights Act and to the detriment of black citizens is Terrell County, Georgia. Since at least the 1950's, this majority black rural county located in the southwest portion of the State and which was referred to as "Terrible Terrell" by civil rights activists, as literally been a battleground for the civil rights movement. For example, the Civil Rights Act of 1957 (42 U.S.C. §1971) empowered the Justice Department to file suit against state and local officials alleging racial discrimination in voting.

After passage of the 1957 Act, Terrell County was literally one of the first local jurisdictions in the nation in which the Justice Department filed suit. See United States v. Raines, 172 F.Supp. 552 (M.D.Ga. 1959), rev'd, 362 U.S. 17 (1960), on remand, 189 F.Supp. 121 (M.D.Ga. 1960) and 203 F.Supp. 147 (M.D.Ga. 1961). The result of the Raines suit was a permanent injunction directing that a number of black persons be registered to vote and enjoining any further racial discrimination in the registration process.

By the early 1960's, local civil rights activists and members of the Student Non-Violent Coordinating Committee were active in voter registration work in the county. These voter registration activities led to the fire bombing of two black churches located in Terrell County which had been used as organizing headquarters for the registration efforts. By 1962, the Justice Department had filed another suit in the county alleging that various local officials were by threats of violence attempting to intimidate person involved in the black voter registration efforts. See United States v. Matthews, Civ. No. 516 (M.D.Ga. 1964)(where by consent order, local officials agreed to refrain acts or threats of violence against civil rights workers).

Before 1966, no black had ever served on either Terrell County's grand or traverse juries. In that year, an affirmative jury suit was filed, Pullum v. Green, Civ. No. 625 (M.D.Ga.), rev'd, 396 F.2d 251 (5th Cir. 1968) and it resulted in an affirmative

order from the Fifth Circuit Court of Appeals to desegregate both the county's grand and traverse juries. Under the Georgia Constitution, the Terrell County grand jury appointed the members of the county's board of education. Therefore, in light of the 1968 injunction against racial discrimination in jury selection and the large number of blacks living in the county,[1] black representation on the grand jury would have begun to play a significant role in the grand jury's appointment of school board members. However, a violation of the pre-clearance requirements of the Act for over a decade denied this opportunity.

For in 1965, the Georgia General Assembly enacted a local constitutional amendment, Georgia Laws 1965, p. 746, which changed the method of selecting the board of education from grand jury appointment to elections at-large. Though this change in election procedures was covered by Section 5 of the Act and therefore legally unenforceable without the federal pre-clearance, neither state nor local officials in Terrell County ever sought federal pre-clearance and began holding at-large elections for the board of education beginning in the 1968 elections. Between 1968-78,

---

1. According to the 1970 Census of Population, there are 11,416 persons residing there, of which 6,793 (59.5%) are black persons and 4,616 (40.4%) are white persons.

no black person was elected under this at-large voting, even though by 1978, the student body of Terrell County schools was 91% black. Of the seven white board members and the superintendent, who was appointed by the board, serving in 1978, none had their children in the public schools and several board members and the superintendent had their children in the private all-white Terrell Academy.

In 1976, the Southern Regional Office of the American Civil Liberties Union filed voting rights suits against the Terrell County Board of Education and Board of Commissioners, Holloway v. Faust, Civ. No. 76-28 (M.D.Ga.) and against Dawson, the seat of Terrell County, Holloway v. Raines, Civ. No. 77-27 (M.D.Ga.). The suits were filed on behalf of Lucius Holloway, a black insurance salesman who had been a witness in the 1959 suit against the county registrars and a plaintiff in a 1966 suit which desegregated Terrell County's juries.

Both Mr. Holloway and his wife, Emma Kay, had run for public office in Terrell County, but at-large voting for the Board of Commissioners, the Board of Education, and the Dawson City Council had denied them and all other black persons a real opportunity to be elected. Thus, by 1978, there were no black elected officials in this majority black county.

The suit against the Board of Education claimed that at-large voting procedures in the 1965 enactment were legally unenforceable without federal pre-clearance under the Voting Rights Act. The suits against the Terrell County Commissioners and the Dawson City Council alleged that at-large voting was being maintained with a racially discriminatory purpose in violation of the Fourteenth Amendment.

The suit against the Board of Education caused local officials to submit the 1965 enactment to the Attorney General

for federal pre-clearance in 1977. Subsequently the Attorney General objected to the at-large feature of the 1965 enactment, and in July, 1978 the court enjoined the further use of the 1965 law and directed that selection of the school board members return to appointment by the grand jury as provided in the Georgia Constitution. Thereafter, a grand jury in Terrell County, upon which blacks were in the majority, appointed five new members to the board, two of whom were black persons.

The suit against the City of Dawson resulted in a final judgment and decree by the district court in February, 1979 which provided for the election of six council members from single member districts. In the first elections under this reapportionment plan in 1979, three blacks were elected to council from majority black voting districts. Not surprisingly, one of these council members was Lucius Holloway. The suit against the Board of Commissioners was settled by way of a reapportionment plan which increased the members of the Commission from three to five and provided that four members would be elected from single member districts and for the chairman to be elected at-large. In the first elections under this plan in August, 1980, one black person was elected to the county commission from a majority black voting district. Thus, within the matter of a year, the membership on formerly all white local government in Terrell County had been desegregated.

In many jurisdictions, local officials attempt to explain the absence of black elected officials by claiming that blacks who run for office are "not qualified." White officials in Peach County, Georgia never offered that explanation for the absence of blacks on the county commission in that majority black jurisdiction, because Peach County is the home of predominantly black Fort Valley State College and many of the black candidates for county office were professors at the college and holders of doctorate degrees. For example, Dr. Houston Salworth, a black professor of agriculture at the college, was defeated by white opponents in elections in 1970 and 1976, though a white person who did not have a high school degree was elected to the county commission in 1974. In 1972, Dr. Robert Threatt, another professor at Fort Valley State College and the present president of predominantly black Morris Brown College in Atlanta, ran for the superintendent of Peach County schools. He was defeated by the white incumbent superintendent, but a federal court was later to find that the white victor had terminated the employment of some of the black teachers of the public school system because they had supported Dr. Threatt in the 1972 election. Walker v. Peach County Board of Education, Civ. No. 74-7 (M.D.Ga.).

Like Terrell, Peach County had required extensive federal litigation efforts to enforce the civil rights of black citizens. See Berry v. Cooper, Civ. No. 76-87 (M.D.Ga.)

rev'd 577 F.2d 322 (5th Cir. 1978) (finding of racial discrimination in the selection of grand and travers juries in Peach County); Edwards v. Sammons, 437 F.2d 1240 (5th Cir. 1971), portion of Fort Valley City Charter, which prohibited people from voting who had not paid city taxes and which had resulted in the defeat of a black candidate, held unconstitutional; and Dixon v. Avera, Civ. No. 27-41 (M.D. Ga.) and United States v. Gilchrist, Civ. No. 28-72 (M.D. Ga.) (consent decrees concerning racial discrimination in the administration of absentee ballots).

In 1976, the ACLU filed suit against the Peach County Board of Commissioners and alleged that the at-large method of electing its commissioners, which was initiated in 1960, was enacted and was being presently maintained for racially discriminatory purposes and that the use of staggered terms for the commission, which were initiated in 1968, was being enforced in violation of the pre-clearance requirements of the Voting Rights Act. Berry v. Doles, Civ. No. 76-139 (M.D. Ga.). The plaintiffs in the case were four professors from Fort Valley State. At the time the law suit was filed, no black had ever served in an elective position in Peach County, though blacks, according to the 1970 Census, constituted 57 per cent of the general population of the county. After the filing of the suit, one of the white members of the Commission resigned, and the vacancy on the Commission was filled with the appointment of the first black to serve on the board.

The issue concerning the staggering of terms for the county commissioners was eventually decided by the U.S. Supreme Court, Berry v. Doles, 438 U.S. 190 (1978). Therein, the Court

reversed the ruling of the District Court and held that local officials in Peach County were to be given thirty days to obtain federal pre-clearance for this change in voting procedures, and that if such pre-clearance was not forthcoming, that the District Court was to order further relief.

In November 1979, a final judgment and decree was entered in the Berry case which increased the membership on the Board of Commissioners from three to five, provided that four of the commissioners are to be elected from single-member districts, and that the chairman is to be elected at large. In the first elections under the new plan in August, 1980, two black persons were elected from majority black voting districts.

In Coffee County, Georgia, blacks, according to the 1970 Census, constitute 29 per cent of the county population, but no black had ever been elected to the County Commission, the Board of Education, or the Douglas City Council. At-large elections were used for all three governing bodies, and this method of voting had been instituted in the early 1960s for both the Board of Commissioners and Board of Education. In 1977 , the ACLU filed suit against all three governing bodies and claimed that at-large voting was enacted and was being presently maintained with a racially discriminatory purpose. NAACP of Coffee County v. Moore, Civ. No. 577-25 (S.D. Ga.). The suit was settled between the parties in October 1977, and the reapportionment plans provided for five single-member districts for the County Commission and Board of Education and three two-member districts for the Douglas City Council. In the first elections under the plan, a black person was elected to both the School

Board and the County Commission from majority black districts, and two blacks were elected to Douglas City Council from majority black voting districts.

At the time of the enactment of the Voting Rights Act of 1965, a number of Georgia counties used district voting for their local governments. However, in many of these jurisdictions and by way of enactments by the Georgia General Assembly, local officials began enforcing at-large voting in the years immediately after 1965 without first obtaining federal pre-clearance. Until the 1960s, district voting was used for the election of county commissions in Dooly (50%)[1], Miller (28%), Calhoun (63%), Clay (61%), Early (45%), and Morgan (40%), Georgia. However, between 1964 and 1970, the Georgia General Assembly enacted at-large voting plans for all of these counties. None of the counties complied with the pre-clearance requirement of the Voting Rights Act. Between 1976 and 1980, the ACLU has sued all of these jurisdictions and was able to obtain reapportionment orders from federal courts which provided for single-member district elections. See McKenzie v. Giles, Civ. No. 79-43 (M.D. Ga.) (district voting plan for Dooly County Commissioners and Board of Education); Thompson v. Mock, Civ. No. 80-13 (M.D. Ga.) (district voting plan for the Miller County Commissioners and Board of Education); Jones v. Cowart, Civ. No. 79-79

1. The percentages after each county indicate the black percentage of general population.

(M.D. Ga.) (district voting plan for the Calhoun County Commissioners and Board of Education); Davenport v. Isler, Civ. No. 80-42 (M.D. Ga.) (district voting plan for the Clay County Commissioners); Brown v. Scarbrough, Civ. No. 80-27 (M.D. Ga.) (district voting plan for the Early County Commissioners); and Butler v. Underwood, Civ. No. 76-53 (M.D. Ga.) (district voting plan for the Morgan County Commissioners and the Madison City Council).

The political results of these suits have been mixed. In the first elections held under the court-ordered plans, no blacks were elected to the Dooly, Miller, Calhoun, Clay, Early, or Morgan County Commissions. One black was elected to the Calhoun County Board of Education, and one black to the Madison City Council[1], both from majority black voting districts. The first elections for the Dooly and Miller County Boards of Education under the court-ordered plan are scheduled for the fall of 1981.

In determining the importance of the pre-clearance requirement of the Voting Rights Act to blacks residing in jurisdictions such as those enumerated above, a couple of factors must be remembered. First, the holding of at-large elections during the 1960's and 1970's in the above-mentioned counties in violation of Sec. 5 was one of the major factors in the continuation of all white government.

---

1. Madison is the county seat of Morgan County. The District Court plan for the city was obtained in that litigation by way of a settlement of plaintiff's claim against at-large voting under the Fourteenth Amendment, as opposed to Sec. 5 of the Voting Rights Act, because atl-large voting had been in effect for city elections since November 1, 1964. Before the suit, no blacks served on the Madison City Council.

Second, even after illegal elections are enjoined by the Federal courts under the Voting Rights Act, as was done in these counties, the effects of those violations continue to directly contribute to the maintenance of all white government. For example, in most all of the above counties in which district voting was used in 1980 but in which no blacks were elected, the defeat of black candidates was the result of both a depressed level of black voter registration and participation, the lack of black political organizations at the local level, and the lack of political experience on the part of black candidates. If these jurisdictions had complied with the Voting Rights Act and sought Federal pre-clearance before implementation of at-large voting, it is likely that such pre-clearance would not have been given, and that district voting would have continued uninterrupted in these counties during the 1960;s and 1970's. If such had occurred, it would have been more likely that blacks would have run for elective positions on local government, and that these candidates would have increased black participation at the polls and would have provided valuable experience for black political organizations and candidates. During the period during which at-large voting was used, however, this type of activity did not occur to the same extent that it would have occurred within the context of district voting, because it was obvious to black candidates and their supporters that they had little chance of success in at-large voting. Thus, in 1980 when district elections were held for the first time in over a decade in Early, Clay, Calhoun, and Miller Counties, blacks were disadvantaged because of this decade-long illegality on the part of local officials. Quite simply, blacks in these counties were until 1980 essentially denied the protection

of Sec. 5 of the Act, because state and local officals would not voluntarily comply with federal law.

Pike County, Georgia, is a good example of this blatant illegality by state and local officials and how a violation of Sec. 5 of the Act has as yet been unremedied. In Pike County the Board of Education was appointed by the Grand Jury until 1967. In that year, an enactment of the Georgia General Assembly changed the method of electing Board members to district voting. In 1970, the first two black candidates in the history of the county offered for positions from two of the voting districts for the Pike County Board of Education. The black candidates were not successful, but both ran well against their white opponents and one made a run-off election. Before the next elections in 1972, the Georgia General Assembly amended the local enactment pertaining to the Pike County Board of Education and provided for at-large voting. This change was not submitted for federal pre-clearance, and illegal at-large elections were held for the Board in 1972, 1974, and 1976.

In February, 1978, the Justice Department wrote the Pike County Superintendent of Schools and inquired about the 1972 enactment within the context of Sec. 5 requirements. Local Pike County officials did not reply in writing to this inquiry until October, 1978, and in the interim, local officials held another set of at-large elections. In March, 1979, the Attorney General interposed objection to the 1972 enactment which provided for at-large voting.

Notwithstanding this objection in 1979 and that the voting districts used prior to 1972 were malapportioned as to population in 1980, the Georgia General Assembly failed to take corrective action during its 1980 session. Thus the ACLU filed suit against

Pike County officials in February, 1980. Healy v. Adams, Civ. No. C80-20N (N.D. Ga.). After a three-judge court convened under the Voting Rights Act enjoined the further use of at-large voting, attorneys for the Board of Education attempted to convince the court that it should allow the two incumbent school board members elected by the at-large voting in 1978 to continue in office until 1982 and that district elections should be held only for three districts in 1980. Not surprisingly, the two voting districts which defendants did not desire open for election in 1980 were the two with the greatest concentrations of black population.

The District Court refused that request and ordered all five voting districts open for election in 1980. The District Court, however, ruled that before it would consider the use of a district voting plan which would intentionally increase the chances of a majority black voting district, plaintiffs in the suit would not only have to prove that at-large elections were in force between 1972 and 1978 in violation of the Voting Rights Act, but also have to satisfy the purposeful discrimination requirement of The City of Mobile v. Bolden. The District Court then found that the plaintiffs had not proven purposeful discrimination in the enactment or maintenance of the 1972 change to at-large voting and adopted defendant's voting plan.

Two blacks ran in the 1980 elections for the Pike County Board of Education, but both were defeated. The ruling of the District Court is presently on appeal to the Fifth Circuit Court of Appeals.

RACIALLY GERRYMANDERED DISTRICT VOTING

In all known Georgia jurisdictions which had district voting at the time of the enactment of the Voting Rights Act, the Georgia

General Assembly has attempted since 1965 to change to at-large voting with the exception of one county. That jurisdiction, Seminole County (35%), is a good example of where racially gerrymandered districts were resulting in all white county government and where the Georgia General Assembly did not enact at-large voting.

The five members of the Seminole County Commission had been elected from the same voting district since 1933. As of 1980, one of the voting districts which encompassed the county seat, the city of Donaldsonville, and which contained 40% of the county's population and its largest concentration of blacks, had over 2,200 voters. On the other hand, the Rock Pond voting district had only 160 registered voters. It would seem that such grossly malapportioned districts would have been corrected by enactments by the Georgia General Assembly, but no such legislative action was forthcoming. Consequently, the ACLU filed suit in April, 1980. Williams v. Timmons, Div. No. 80-26 (M.D. Ga.).

In the Williams litigation, plaintiffs not only allege violation of the one-person, one-vote rule of the Fourteenth Amendment, but they further claim that members of the Seminole County delegation to the Georgia General Assembly had failed to reapportion because the legislators knew that proper reapportionment would create two voting districts within the city of Donaldsonville and that one of these districts would be majority black.

This lawsuit was settled on the basis of a consent order which reapportioned the county into five new voting districts, and in the first election thereunder in 1980, Donald Moore, a black junior high teacher, was elected from the majority black district in Donaldsonville.

Pickens County, Alabama: Corder v. Kirksey, 639 F.2d 1191 (5th Cir. 1981); 625 F.2d 520 (5th Cir. 1980); 585 F.2d 708 (5th Cir. 1978).

In 1965, before the adoption of the 1965 Voting Rights Act, 10% of Pickens County black voters were registered to vote. White voters registered at a rate of 89%. In 1949, Pickens County had adopted single-member districts for its board of education. Even though the districts later varied in size to the extent that the largest had more than twice the population of the smallest, no redistricting took place. But within a year of the adoption of the Voting Rights Act, 65% of the eligible black citizens registered to vote in this 42% black county. The county's response in 1966 was to adopt at-large elections, with numbered posts and residential districts, for the school board. The county did not submit this law for pre-clearance.

A 1923 law set up single-member districts for the Pickens County Commission. In 1935, another statute was enacted retaining the single-member districts for primaries, but directing the general election to be at-large with staggered terms. There was no redistricting for over 40 years. The scheme of having district nominating primaries and at-large general elections was not an unusual structure, for Democratic Party primaries in Alabama determined the election results, and these primaries were restricted to white voters until the late 1940's.

The Pickens County Democratic Executive Committee was also elected at the primaries utilizing the malapportioned

commission districts. A majority of the 22 member committee could be elected by 15.5% of the people.

James Corder and Harry Western, black residents of the county, filed suit on November 15, 1973. As to all three bodies, they contended that the districts used were malapportioned on the basis of population. As to the county commission and school board, they contended that at-large elections diluted their voting strength, and that the 1966 school board law had been implemented without pre-clearance. No black had ever been elected to public office in Pickens County.

The district court ruled for the plaintiffs on January 23, 1975, on the one person-one vote claim, and permitted the two boards time to enact reapportionment plans. The plan for the Board of Commissioners contained new, properly apportioned districts lines for primary elections, but retained at-large voting for the general elections. The plan was submitted to the Department of Justice, was approved by the Attorney General, and subsequently approved by the Court.

The plan for the Board of Education utilized at-large voting, but was objected to by the Attorney General because it was a change from the 1949 law which utilized single-member districts. Accordingly, the court, because of an inpending deadline for candidate qualification adopted as its own a plan drafted by the school board. That plan called for a five-member board, four of whom were elected from single-member districts, and one

at-large.[1]

The Democratic Executive Committee agreed to adopt the districting plan of the Board of Commissioners which had received pre-clearance, apportioning 8 committee members to each of the county commission districts, and to be elected only by the members of each district.

The plaintiffs appealed the use of at-large voting for the Board of Commissioners (the single-member districts adopted applied, as in the past, only to primaries) as well as the fifth member of the Board of Education. The reapportionment of the Executive Committee was not objectionable.

The plaintiffs' evidence of dilution from the use of at-large voting included bloc voting, public and private employment discrimination, higher poverty rates in the black community, and black appointments to boards only where required by federal grants or contracts. As for the one at-large school board seat, plaintiffs contended there was no evidence of exigent circumstances which the Supreme Court requires before a court-ordered plan may fail to impose all single-member districts.

Nonetheless, after two remands for more fact-finding,[2] the Court of Appeals finally found on March 16, 1981,

---

1. Corder v. Kirksey, 585 F.2d 708, 713 (5th Cir. 1980).

2. Corder v. Kirksey, 585 F.2d 708 (5th Cir. 1978), and Corder v. Kirksey, 625 F.2d 520 (5th Cir. 1980).

almost 8 years after the complaint was first filed, that the use of at-large elections in the general elections for the Board of Commissioners, as well as the at-large election of the fifth member of the Board of Education, was constitutional.[1]

1. Ibid., slip opinion, March 16, 1981.

Talladega County, Alabama: Emmet Gray v. State of Alabama, 315 So.2d 612 (1975).

During the June, 1974 Democratic election in Talladega County, Alabama, Emmet Gray, a black school teacher, campaigned against the incumbent sheriff, who had a reputation for being "anti-black." According to a report issued by the United States Commission on Civil Rights. the sheriff "is said to have deputized black police officers who then struck, shoved, and handcuffed blacks at the polls who were known to favor the sheriff's opponent."[1]

A common campaign practice in Alabama has always been to distribute handbills or facsimile ballots (of different size than actual ballots), with particular candidate's names marked. Gray had such handbills in his possession when he was arrested by local police on the June, 1974 primary election day. He was charged with violating Title 17, §285, Ala. Code, which made it a crime to do any number of constitutionally protected activities on election day, including soliciting votes and "passing our [sic] sample ballots that were marked for certain candidates."[2] The racial impact, if not the purpose, of such bans on electioneering is apparent. Moreover, eight years earlier in 1966, the Supreme Court had reversed the

1. "The Voting Rights Act: Ten Years After," Report of the United States Commission on Civil Rights, Washington, D.C., 1975, p. 190.

2. Gray v. State, 315 So.2d 612, 613 (1975).

conviction of an Alabama newspaper editor under the same law for publishing an editorial on election day. "[N]o test of reasonableness can save a state law from invalidation as a violation of the First Amendment when that law makes it a crime for a newspaper editor to do no more than urge people to vote one way or another in a publicly held election."[1] Gray nonetheless was convicted by a local jury, fined $500, sentenced to two months hard labor, plus 167 days for payment of the fine and 40 days for the costs.

On appeal he asserted the unconstitutionality of the state statute. The Supreme Court of Alabama, however, avoided that issue, finding that the proof (that he possessed the handbills, talked to black voters) was insufficient to convict.[2]

The statute has since been repealed.

---

1. Mills v. Alabama, 384 U.S. 214, 220 (1966).

2. Gray v. State, supra, 315 So.2d at 614.

Tuscaloosa, Alabama; Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60 (1978).

Alabama law grants municipalities a police jurisdiction zone, either a one-and-a-half or three-mile band outside the city limits in which the city may enforce its municipal ordinances, including various tax and inspection laws.[1] Residents living outside the City of Tuscaloosa filed a law suit in 1973, challenging the right of the city to exercise extra-territorial powers over them because they had no voice in selecting city officials. They did not seek to vote in city elections, only that they not be governed by officials whom they had no power to elect.

The lawsuit was originally dismissed by the District Court on the grounds that there was no set of facts which if proved would entitle plaintiffs to the relief they sought. The decision was reversed by the Court of Appeals on December 31, 1975, requiring the convening of a three-judge court to hear the complaint.[2] The three-judge court was eventually convened and on June 7, 1977, dismissed the plaintiffs' complaint:

> "[Plaintiffs seek] a declaration that extra-territorial regulation is unconstitutional per se. Equal protection has not been extended to cover such contention."

Plaintiffs appealed to the Supreme Court of the United States and

---

1. Ala. Code §11-40-10 (1975).

2. Holt Civic Club v. City of Tuscaloosa, 525 F.2d 653 (5th Cir. 1975).

probable jurisdiction was noted.

The Supreme Court upheld the constitutionality of Alabama's police jurisdiction law. It first decided that this was not a voting rights case, and that therefore the statute would not need to be justified by a compelling state interest. The court then found the statute rational, holding that it was a permissible state experiment in local governance.

> Alabama's police jurisdiction statute, enacted in 1907, was a rational legislative response to the problems faced by the state's burgeoning cities.[1]

---

1. 439 U.S. at 75.

Tuscaloosa County, Alabama: League of Women Voters of Alabama v. Renfro, 290 So.2d 167 (1974).

In 1971, the State of Alabama enacted a local law applying to Tuscaloosa County, Alabama, which required, among other things that the Board of Registrars "shall" meet on one Saturday per month during October through January "for the purpose of registering voters."[1] The Act also provided that registration could be accomplished either "at the courthouse or at any other location designated by the board of registrars."[2] The Board, however, refused to conduct any Saturday registration.

The League of Women Voters, concerned about the restrictions on opportunities for voter registration, particularly of blacks and daily wage earners in Tuscaloosa County, brought suit against the Board to require it to conduct registration on Saturdays. Since the suit sought to enforce a state law, the complaint was filed in the state court. The state courts, however, turned a deaf ear to the plaintiffs, consistent with the traditional lack of sensitivity by local courts to the problems of minority voters.

---

1. Act No. 1428, Acts of Alabama 1971, Vol. III, p. 2454.

2. Ibid.

The trial court held that the Board was not required by law to remain open on Saturdays.[1] The plaintiffs appealed.

The Supreme Court of Alabama affirmed, announcing as a general proposition that: "In ascertaining the legislative intent it is necessary to be mindful that a thing may be within the letter of a statute, but not within the meaning; or within the meaning, but not within the letter."[2] Warming to its task, the court concluded that registration was not required to be held on Saturdays because another local act applying only to Tuscaloosa, and enacted in 1959, allowed the county governing authority to close the courthouse one day each week (aside from Sundays). The county had obviously decided to close the courthouse on Saturday. Finding that to conduct registration outside the courthouse "would be expensive and require additional personnel," the Supreme Court of Alabama ruled that the general statute enacted twelve years earlier superceded the 1971 statute that specifically called for registration to be conducted on Saturdays.[3] It therefore affirmed the dismissal of the complaint.

---

1. League of Women Voters v. Renfro, 290 So.2d 167, 168 (1974).
2. Ibid., p. 169.
3. Ibid., p. 170.

Alabama Democratic and Republican Parties: MacGuire v. Amos, 343 F.Supp. 119 (M.D.Ala. 1972)(three-judge court) and Vance v. United States (D.D.C. Nov. 30, 1972, No. 1529-72)(three-judge court).

The Democratic and Republican parties of Alabama implemented new rules for the conduct of the May 2, 1972 elections of delegates to their national conventions. The rules involved the constriction of geographical voting districts from which candidates ran for convention seats.

Since the boundaries of districts can be gerrymandered along racial lines, black residents of the state requested both parties to submit the new rules for pre-clearance under §5 to insure that they did not have the purpose or effect of discriminating on the basis of race. The parties refused, contending that they were political parties, bot state or political subdivisions, and thus were not covered by §5.

The plaintiffs filed suit in April, 1972, requesting a declaratory judgment that §5 is applicable to rules promulgated by political parties. On May 13, 1972, the court granted the relief sought in the first such ruling by a court in the Fifth Circuit: "if a state could escape the requisites of section 5 by channeling to political parties its authority to regulate primary elections, the force of the Voting Rights Act in the context of primaries would be entirely abrograted."[1]

---

1. MacGuire v. Amos, 343 F.Supp. 119, 121 (M.D.Ala. 1972).

The changes were required to be pre-cleared.[1]

Plaintiffs had also asked that the May 2nd elections be enjoined, or set aside. The court declined to grant that relief, giving its decision prospective application only. The Democratic Party thereafter filed suit in the District of Columbia under Section 5 seeking pre-clearance of the new rules from that court.[2] This was the first Section 5 lawsuit ever filed by a covered jurisdiction in the District of Columbia. The Attorney General, who is required to defend such suits brought against the United States under the Voting Rights Act, 42 U.S.C. §19731, did not oppose the Democratic Party's motion for judgment on the pleadings. Some of the plaintiffs in the prior suit sought to intervene to challenge the districting plan. However, intervention was denied and judgment was entered for the Democratic Party.

---

1. Consistent with the scope of inquiry in proceedings to enforce §5, the court expressed no opinion whether the changes were actually objectional. Perkins v. Matthews, 400 U.S. 379 (1971).

2. Vance v. United States, No. 1529-72 (D.D.C. November 30, 1972).

Prattville, Alabama: Medders v. Autauga County, Civ. No. 3805-N (M.D. Ala. 1973).

White residents of Prattville, Alabama, brought a private suit challenging the residency districts used in at-large elections for the county commission and school board. The city districts had far more population than the other districts, the effect of which was to insure rural dominance of both bodies. The Court held the plans unconstitutional.[1]

At the remedy stage, a black resident, Sallie Hadnott, represented by ACLU attorneys, was granted permission to appear as amicus curiae to evaluate the plaintiffs' and defendants' proposed plans for racial or other bias, and to submit a plan of her own.

Even though blacks constituted in excess of 25 per cent of the county population, it would not have been possible to construct any districts with majority black population because of population spread. Amicus did submit single-member district plans for both bodies and objected to housing estimates contained in defendants' plans, believing that black citizens were undercounted. Amicus objected to the county commission districts which sliced up the only city. The city, with a majority of the county population, was so divided that its voters could control but one of the single-member districts.

---

1. The decision was rendered prior to Dallas County v. Reese, 421 U.S. 478 (1975), which rejected similar constitutional claims based solely on malapportioned residency districts.

Amicus also objected to the school board plan which used two multi-member districts. The court, however, adopted the defendants' plans. While those plans did not, in amicus' judgment, maximize the opportunity for black participation in the electorate, their use of district voting was a clear improvement over the prior all at-large systems.

Later, defendants sought direction from the court as to whether persons elected to fill the shortened terms were to hold office for two years or four. Amicus took the position that the court should not permanently alter the terms of elected officials and the court agreed, holding that some incumbents had been elected for four years and some for two years.

Fairfield, Alabama; Nevitt v. Sides, 533 F.2d 1361 (5th Cir. 1976), 571 F.2d 209 (5th Cir., 1978), cert. denied, ____U.S.____, 100 S.Ct. 2916 (1980).

In 1968 the population of Fairfield, Alabama was majority black. No black, however, had ever been elected to city office, a consequence in part of the past racial discrimination in voter registration. In that year, however, as a consequence of the Voting Rights Act of 1965, six blacks were elected to the eight-member city council.

In 1970, the population of the city had shifted so that only 48% of the population was black. In the 1972 election, whites won all eight of the city council offices.[1]

Three black residents of Fairfield brought suit on May 30, 1973, alleging that the at-large system of elections, in conjunction with severe racial bloc voting, diluted minority voting strength. The District Court agreed, and in 1975, ruled the election procedures unconstitutional. Some of the court's findings included:

(1) A "very very high" level of racial bloc voting;

(2) "disparities in employment of blacks within the City of Fairfield";

(3) "lack of responsiveness to the needs of the black

---

1. Nevitt v. Sides, 533 F.2d 1361, 1366-72 (5th Cir. 1976).

community";

(4) a history of discrimination;

(5) traditional exclusion of blacks from office-holding and "the decision-making process of the city";

(6) a tenuous state policy in favor of at-large districts.[1]

The court concluded that the at-large election system diluted the minority voting strength, and accepted the plaintiffs' eight single-member district plan, adding one at-large seat.

The City appealed, and the Court of Appeals reversed. It did not question the facts as found by the District Court, but held that the consideration of the so-called Zimmer criteria was inadequate.[2] It remanded to the District Court for further hearings.

The District Court, without taking any additional evidence, promptly reconsidered its findings and reversing its earlier conclusion, held that there was no dilution of the black vote.[3] A second appeal was taken.

The case was heard with three other vote dilution lawsuits, one of which was Bolden v. City of Mobile[4]. The Court of Appeals affirmed the District Court's ruling and, more importantly, held that the plaintiffs were required to prove intent to discrim-

---

1. Ibid.

2. Ibid, at 1365.

3. Nevitt v. Sides, 571 F.2d 209, 215 (5th Cir. 1978).

4. 571 F.2d 238 (5th Cir. 1978), rev. sub nom. City of Mobile v. Bolden, ___U.S.___, 99 S.Ct. 1490 (1980).

inate in dilution cases. Plaintiffs petitioned the Supreme Court for review and the petition remained in the Supreme Court until shortly after the rendition of the Bolden decision, when certiorari was then denied.[1]

1. Ibid, 100 S.Ct. 2916 (1980).

Tuscaloosa County, Alabama: Phillips v. Andress, 634 F.2d 947 (5th Cir. 1981).

Walker County, Alabama: Creel v. Freeman, 531 F.2d 286 (5th Cir. 1976), cert. den., 429 U.S. 1066 (1977).

In these two cases county residents challenged the right of city residents to vote in county school board elections. Their position was that because the cities had separate school districts, the city residents had no legal interest in the affairs of the county school board, and the electorate was therefore overinclusive, resulting in dilution of the county residents' votes. There was no issue of race discrimination in either case.

Creel involved Walker County, Alabama. The claim there was defeated upon findings by the district court and approved by the court of appeals that the residents of Jasper and Carbon Hill did have a substantial interest in the county schools. Evidence the court found to support this conclusion included shared tax revenues, student cross-overs between the systems, and shared physical facilities.

Four years later, the Fifth Circuit decided Phillips involved Tuscaloosa County, Alabama. In a two to one decision, the court reversed an adverse finding of the district court and upheld the challenge. After carefully examining the facts, it found little evidence that the funds, programs or facilities of the county and city schools were intermingled, and concluded that the statute "impermissibly dilutes the voting strength of

the county electors and that the City of Tuscaloosa electors do not have a substantial interest in the election of the county board members that warrants their right to participate."[1]

Phillips was decided after City of Mobile v. Bolden, 446 U.S. 55, 99 S.Ct. 1490 (1980), which required proof of discriminatory purpose in vote dilution cases. Nonetheless, without making any finding that invidious purpose existed, or even suggesting that it was necessary, the court invalidated the voting plan because of its adverse impact upon the voting strength of county residents.

---

1. Phillips v. Andress, 634 F.2d 947, 952 (5th Cir. 1981).

Alabama: Reynolds v. Sims, 377 U.S. 533 (1964); Sims v. Amos, 336 F.Supp. 924 (M.D.Ala. 1972), 365 F.Supp. 215 (M.D.Ala. 1973) (three-judge court).

Sims v. Amos was the implementation stage of Reynolds v. Sims in which the Supreme Court applied the one person-one vote principle to state legislative apportionment. Alabama, despite a state constitutional provision requiring dicennial reapportionment, had failed to act for seventy years, resulting in rural domination of the legislature. Following the Supreme Court decision, Alabama adopted redistrciting for both houses of the legislature. The district court approved the senate plan, despite use of at-large elections in the three largest cities, but held the house plan unconstitutional because of unjustified size deviation and because majority black counties were lumped together with white counties creating at-large seats when single-member districts could have been used. The court found such districts unexplainable by geometry, geography, or equality bases. Reciting the history of racial discrimination, it found the conclusion inescapable that some counties "were combined needlessly for the sole purpose of preventing the election of a Negro House member."[1] The court ordered its own plan for the House into effect and these two plans were to be utilized until the state legislature had the opportunity to redistrict after the 1970 dicennial census. Two blacks were elected to the Alabama legislature.

After the census, the Alabama legislature met and

---

1. Sims v. Baggett, 247 F.Supp. 96, 109 (M.D.Ala. 1965)(three-judge court).

adjourned without redistricting. The court set hearings and special session of the legislature was convened (as was another later). The legislature never adopted a plan.

The plaintiff urged the court to adopt all single-member districts for both houses of the legislature, arguing that the at-large elections in the cities diluted minority voting strength.

State officials drew up no less than four plans, the most balanced of which had a deviation. 24.28%.[1] The court rejected all four plans:

> In sum, all four of the defendants' plans are unacceptable since, in conjunction with their idscriminatory effect, they fall considerably short of guaranteeing to each citizen of Alabama that his vote "is approximately equal in weight to that of any other citizen in the State."[2]

The court adopted plaintiffs' computer drawn plan, which used all single-member districts, minimized crossing county lines, and was to be utilized by the 1974 elections. It provided for the division of the state into 105 one-member house districts and 35 one-member senate districts (each made up of three house districts), and ignoring county lines where necessary.[3] The defendants appealed to the Supreme Court and the decision was summarily affirmed.[4] Enforcement of the reapportionment plan went

---

1. Sims v. Amos, 336 F.Supp. 924, 934 (M.D.Ala. 1972).
2. Id., 936.
3. 336 F.Supp. 924 (M.D.Ala. 1972).
4. Amos v. Sims, 409 U.S. 942 (1972).

forward while appeal was pending.

After Mahan v. Howell,[1] the district court said it would consider a reapportionment plan duly enacted by the state legislature. Such a plan was enacted by the state and after extensive discovery and analysis by plaintiffs, the court rejected the plan for, among other reasons, failure to prove the plan "racially nondiscriminatory."[2] The Supreme Court affirmed the district court.[3] Enforcement of the apportionment is continuing. The implementation of single-member districts has resulted in a state legislative delegation with approximately 25 black members.

---

1. 410 U.S. 315 (1973).

2. 365 F.Supp. 215, 223 (M.D.Ala. 1973).

3. Wallace v. Sims, 415 U.S. 902 (1974).

Sumter County, Alabama: Sumter County Democratic Executive Committee v. Dearman, 514 F.2d 1168 (5th Cir. 1975).

In Alabama, persons seeking nomination by political primary file their qualification papers with party officials who in turn file them with the judge of probate (who is the superintendent of elections). In Sumter County, Alabama, qualifications were always filed with the chairperson of the county Democratic Party. But in 1974, blacks were elected to the executive committee of the party and for the very first time a black was selected as chairperson.

At the next election that year, white candidates chose to file their qualification papers with the party secretary, a white, who then filed them directly with the judge of probate. Black candidates filed with the county chairperson.

The Sumter County Democratic Executive Committee, at the insistence of its black members and five black candidates for office, then filed suit against the judge of probate alleging that the change in qualification procedures, by going through the secretary, was a change in procedures covered by Section 5 of the Voting Rights Act. The plaintiffs asked that the change be enjoined and that the improperly qualified candidates be removed from the ballot.

The district court denied relief, holding that the change was "merely a ministerial act" not covered by Section 5.[1]

---

1. Sumter County Democratic Executive Committee v. Dearman, 514 F.2d 1168 (5th Cir. 1975).

The Court ofAppeals reversed. "It is true that the change, if any, represented by a shift from certification by the committee chairman to certification by the committee secretary is small indeed. But in Allen, the Supreme Court expressly rejected the argument that §5 had no application to the qualification of candidates. . . and required that 'all changes, no matter how small, be subjected to §5 scrutiny.'"[1] The court held that a three-judge court must be convened to hear the plaintiffs' §5 claim.

Three years later a properly convened three-judge court dismissed the complaint as moot because the political powers had again shifted in Sumter County; the chairperson was now white and the executive committee vowed it would no longer allow qualifications to be handled through the secretary. The district court accordingly dismissed the complaint as moot.[2]

---

1. Ibid., 1170.

2. A request for attorneys' fees was denied and later affirmed on appeal. Ward v. Dearman, 626 F.2d 489 (5th Cir. 1980). The court concluded that "a then plaintiff's decision [i.e., a decision by the executive committee] not to readopt the resolution" allowing certification through the secretary would not support an award of fees against the defendants."

Wilcox County, Alabama: Threadgill v. Bonner, No. 7475-72-P (S.D.Ala. 1972).

When black voters went to the pools in Wilcox County, Alabama, to vote in the general election in 1972, some of them met with practices that were old and familiar. Many precincts were located at private establishments, such as retail stores. The right to cast a secret ballot was unknown in Wilcox County. Voters were required to cast their ballots, if at all, after marking them out in the open on feed sacks, store counters, etc. White poll officials looked at the marked ballots before placing them in the ballot box. Some black voters were denied a ballot altogether because they refused to address poll officials as "sir."[1]

Such were some of the overt methods of intimidating black voters that day. But county election officials could be more sophisticated.

On August 18, 1965, the Attorney General sent federal voter registrars into Wilcox County, because of the persistent problems of blacks in registering.[2] But those who were so registered and subsequently moved within the county, were told they could not vote at their new precincts because local

---

1. Complaint, Paragraph 31.

2. U.S. Department of Justice, "Counties Designated as Examiner Counties," November 4, 1974. In two years, the number of blacks registered went from zero to a majority in Wilcox County.

officials were prohibited from changing their registration or altering the list as prepared by the federal registrars.[1] Moreover, voters not on the list were not allowed to cast challenged ballots as allowed by state law. Requests for absentee ballots were held until the last possible day, so that they would have to be mailed back immediately or they would arrive too late to be counted.

The National Democratic Party of Alabama, a predominantly black political party, had nominated persons in 1972 for each of 21 constable positions up for election in Wilcox County. The job of constable, not one of overwhelming importance, had been overlooked by the Democratic and Republican parties, neither making any nominations for those positions. When the National Democratic Party filed its list of nominations, it was too late under state law for the other parties to add to their nominations. But this did not deter the county Democratic Party. They placed on the ballot the names of various people for the position of constable. Not only was this in violation of state election law, but many persons whose names were placed on the ballot had no knowledge that this was being done and were not allowed to have their names removed from the ballot. The result was that many of the black party candidates lost the election.

Subsequently, six black residents of Wilcox County filed suit in federal court under, among other laws, Section 2 of the Voting Rights Act of 1965. They alleged the packing of

1. This was a continuation of Wilcox County official
(Footnote continued on next page)

the ballot by the Democratic Party, illegal voting by whites no longer eligible, failure to allow blacks to vote because of ommissions from the registrar's list, and failure to allow these persons to cast challenged ballots, improper handling of absentee ballots, failure to appoint blacks as election officials, improper electioneering at the polls, and denying blacks ballots for failure to address poll workers as "sir." Though the defendants denied the allegations, on November 7, 1973, a consent order was entered which enjoined all of the practices complained of. The defendants promised to promptly and properly process absentee applications and ballots, explain and right and allow the casting of challenged ballots, not place anyone's name on a ballot within that person's consent, not discriminate in the selection of poll officials, make all feasible efforts to locate polling places on public premises, provide privacy in balloting and specifically instruct poll officials not to open or view ballots prior to official counting, provide written instructions to all poll officials, not discriminate in any manner against black voters and candidates and make appropriate changes on the voters list to reflect new precincts of those who moved within the county.

(Footnote continued from preceding page)
opposition to federal registrars. State courts enjoined local officials from accepting federal registration lists. Reynolds v. Katzenbach, 248 F.Supp. 593 (S.D.Ala. 1965)(three-judge court).

Choctaw County, Alabama: Williams v. Ezell, 531 F.2d 1261 (5th Cir. 1976).

On March 14, 1974, two black citizens of Choctaw County, Alabama, Lonnie Williams and Thelma Craig, brought a suit challenging the at-large method of elections for the Board of Education and seeking an order requiring the defendants to certify Williams as a school board candidate. Twelve days later, and before an answer was filed by the defendants, the Court held a hearing. Two days later, the judge denied all relief and dismissed the complaint.

The plaintiffs were able subsequently to convince the judge that he could not properly dismiss the complaint, and the case was reopened.

Several months later the plaintiffs decided to dismiss their complaint voluntarily without prejudice under Rule 41(a)(1), F.R.Civ.P. The Court, however, refused to allow them to do so, and reinstated its previous order dismissing the case with prejudice. After application by the defendants, the Court on October 9, 1974, awarded $2,500 in attorneys' fees to the school board, payable by the plaintiffs. The plaintiffs appealed.

The plaintiffs contended that they had an absolute right to dismiss their lawsuit, and that allowing the award to stand would deter minority access to the courts to vindicate constitutional rights.

The Court of Appeals reversed the award:

The Court had no power or discretion to deny plaintiffs' right to dismiss or to attach any condition or burden to that right. That was the end of the case and the attempt to deny relief on the merits and dismiss with prejudice was void. Likewise, except for determining appealability, the subsequent orders granting attorneys fees were a nullity.[1]

---

1. Williams v. Ezell, 531 F.2d 1261, 1264 (5th Cir. 1976).

Bond v. Fortson, 334 F.Supp. 1192 (N.D.Ga.)(three-judge court), aff'd, 404 U.S. 930 (1971).

This suit was brought by various citizens, including Andrew Young and Julian Bond, challenging Georgia's run-off (majority vote) laws for members of Congress, adopted in 1964. Majority vote and run-off requirements are universally acknowledged as disadvantaging minority candidates. Indeed, majority vote requirements have elicited a higher percentage of objections than almost any other voting change submitted under §5 of the Voting Rights Act.[1]

The court granted defendants' motion for summary judgment. It felt that the 1964 law was a response to the abolition of the county unit system, and "negate[d] the inference of any discriminatory purpose proffered by the plaintiffs, insubstantially based as it is."[2]

The court's decision was also based on the theory that the claim was not ripe for adjudication. "We do not know what Congressional races [the plaintiffs] seek to enter or vote in, how many candidates will be in each race, and whether those candidates will be white, black or members of some other minority." Ibid. Finding the complaint all too speculative

---

1. Armand Derfner, "Racial Discrimination and the Right to Vote," 26 VAND.L.REV. 523, 553, 579 n.245 (1973).

2. 334 F.Supp. at 1194.

and calling for an advisory opinion, the court entered judgment for defendants.[1]

This decision illustrates several difficulties in election law litigation.

First, plaintiffs' claim that a run-off provision was in conflict with 2 U.S.C. §§1 and 7 prescribing the dates of congressional elections and Art. I, §2, cl. 2 and §3 of cl.3 of the Constitution for adding an impermissible qualification for office, in no way had to be based on racial discrimination. Yet these were lumped into the race discussion and rejected without being addressed.

Second, Andrew Young had already run for Congress in 1970 and been defeated, so the court's doubt as to who would run for what was quite beside the point.

Lastly, and most critically, courts are usually quite ready to criticize plaintiffs for waiting too long to bring election lawsuits. A suit brought after election seldom gains more than prospective relief. Georgia's run-off elections are three weeks after the general election, providing little time to litigate such issues. (A plurality winner's political liability in suing to stop a run-off in federal court cannot be gainsaid.) Andrew Young and his co-plaintiff brought suit

---

1. And lastly, the court applied what must be considered a rather strange application of the Younger v. Harris, 401 U.S. 37 (1971) abstention doctrine.

a year in advance not only to provide adequate time for due consideration of difficult issues, but also to settle issues in advance of a campaign. To know if the winner must garner a plurality or majority is something every candidate wishes to know prior to beginning a campaign. But here the plaintiffs were frustrated in their attempts to get issues settled in a timely fashion. Andrew Young, of course, was elected to Congress in 1972 without a run-off.

Thomson, Georgia; McDuffie County, Georgia: Bowdry v. Hawes, Civ. No. 176-128 (S.D.Ga. Jan. 3, 1978).

Black citizens of McDuffie County, Georgia, brought suit on July 1, 1976, against the mayor and city council of the City of Thomson, the members of the Board of Education, and the Board of Commissioners of McDuffie County, Georgia. They contended that the system of at-large elections for the three bodies unconstitutionally diluted black voting strength.

The population of Thomson is 6,503, of which 2,385 are black. No black, however, prior to the filing of the complaint, had ever been elected to the city council. The population of McDuffie County is 15,276, of which 6,060 are black. No black, however, has ever held office on the Board of Commissioners.

Following extensive discovery, all defendants agreed to settle the lawsuit without further litigation through adoption of reapportionment plans. Under the agreed plans, adopted on January 3, 1978, the city was divided into two districts with two council members being elected from the majority-black northern district and three council members from the majority-white southern district. The mayor continues to be elected at-large. The Board of Commissioners, composed of two members and a chairman, was apportioned into two districts, each of which elects one commissioner. The chairman is elected at-large. The seven-member Board of Education, utilizing districts lines

drawn for the other two bodies, was apportioned into four education districts. Two members are elected from three of the districts and one member elected from the fourth.

Since the case was settled without a trial, there was no occasion for the district court to enter detailed findings. However, the record documents a rich history in McDuffie County of racial discrimination and denial of equal opportunities to blacks to engage in politics.

Prior to the 1974 elections, the city charter of Thomson was amended to provide for numbered posts and staggered terms of office for council members, and election of the mayor by majority vote. The new provisions were submitted to the Department of Justice, but on September 3, 1974, the Attorney General objected to all three: "Our analysis shows that where, as in Thomson, there is increasing participation in the political process by the black community, the use of numbered posts, staggered terms and majority requirements have the potential for reducing the opportunity for minority voters to elect candidates of their choice . . . .Under such circumstances, the Attorney General cannot certify that no such effect will ensue."[1]

At the next elections in 1974, a striking example of "cuing," i.e., the endorsement by the white community leaders of a particular candidate prior to the actual election[2] took place during the race for mayor. Prior to the election, the

1. Letter from J. Stanley Pottinger, Assistant Attorney General, to Jack D. Evans, City Attorney, September 3, 1974.

2. See V.O. Key, The Responsible Electorate, cited in McMillan v. Escambia County, 638 F.2d 1239, 1241 n.6 (5th Cir. 1981).

incumbent mayor, W.C. Leverette, announced that he would not seek re-relection.[1] E. Wilson Hawes, a white Thomson native, was the first to offer for the vacant post. Luther Wilson, Jr., a black assistant principal at the local high school, offered next. Subsequently, William M. Wheeler, a white McDuffie County attorney, filed for the vacant mayoral position.

Local whites soon approached the two white candidates and urged them to conduct a meeting. Each candidate, they said, should nominate twelve persons whose judgment he respected. These twenty-four would then gather, discuss the race, and vote their preference. According to Hawes, the purpose of the meeting was to "decide which white man was to run."[2] Had the majority vote requirement not been blocked, there would have been no need for one of the white candidates to get out of the race. Whites could have simply regrouped in the run-off, even if the black was the top vote getter.

The mini-election was held on October 21, 1974, and Wheeler was the winner. Following the meeting, Hawes announced that pursuant to the "gentlemen's agreement" he was bowing out of the race. However, he had an apparent change of heart, whereupon, Wheeler got out of the race, leaving Hawes as the white community's candidate to oppose Wilson. Wheeler publicly

---

1. The details of cuing at the election are taken from the following news stories: "Three Seek Mayor's Post; Council Race Draws Eight," The McDuffie Progress, October, 1974; "Meeting Decides Candidates' Fate," The Augusta Chronicle, October 24, 1974; "Thomson's Mayoral Race Up in Air," The Atlanta Constitution, October 26, 1974; "City Primary Scheduled Wednesday," The McDuffie Progress, October, 1974; "Sheik Hawes Gallops to Mayor's Chair," The McDuffie Progress, November 7, 1974.

2. The Atlanta Constitution, supra.

announced, "I am not now a candidate. . . .Somebody had to honor the gentlemen's agreement of Tuesday night, and since Hawes didn't, I will."[1]

The general election was held on October 30. The headlines of the next edition of The McDuffie Progress told the results: "Sheik Hawes Gallops to Mayor's Chair."

Luther Wilson remembers the campaign in 1974 as being decidedly racial: "Whites circulated stories about me in the community that I was a 'black militant' who couldn't operate the city. But prior to that election, I was generally regarded as a racial moderate."[2]

McDuffie County, like its adjoining neighbor Burke County, has a long history of racial discrimination. One example is enough to show the continuing legacy of that discrimination. On December 29, 1964, newly elected county commissioners were required to take the following oath: "I will refrain from directly or indirectly subscribing to or teaching any theory of government or economics or of social relations which is inconsistent with the fundamental principles of patriotism and high ideals of Americanism."[3] In McDuffie County, then, as well as in the 1974 mayor's race for the City of Thomson, that meant preservation of the supremacy of the white race.

---

1. Ibid.

2. Interview with Luther Wilson, Milledgeville, Ga., September, 1976.

3. Minutes of December 29, 1964, meeting of McDuffie County Board of Commissioners.

Harris County, Georgia; Brown v. Reames, 618 F.2d 782 (5th Cir. May 21, 1980).

This lawsuit was begun on August 11, 1975, by black citizens of Harris County who contend that the at-large method of electing the five-member Board of Commissioners, including the use of numbered posts, staggered terms, majority vote and run-off, dilutes minority voting strength. Harris County is 45% black, but no black within living memory has ever been elected to the Commission or any other county office.

No blacks registered in Harris County until the administration of Franklin Roosevelt.[1] Some blacks voted at that time, but for the next two elections, according to Mr. Willie Simpson, a long time resident of the County, "they dug some graves there by the courthouse. . .some short graves and burned some crosses at the crossroads."[2] The KKK remained active in Harris County and its members were observed dressed in white hoods and sheets late into the 1950's.

Prior to the Voting Rights Act of 1965, most blacks in Harris County did not vote at all. As of December 19, 1962, only 263 blacks were registered to vote in the entire county--8.5% of the eligible population. By contrast, more than 100% of the eligible whites were registered.[3] Following enactment of the Voting

---

1. Brown v. Reames, Civ. No. 75-80-COL. (M.D. Ga.), Trial Transcript, p. 117.

2. Ibid., pp. 115, 118.

3. Ibid., Record, pp. 127, 140-41.

Rights Act and the suspension of literacy tests, by August 31, 1967, black voter registration in Harris County had increased to 1,119, but still only 36.1% of the eligible population.[1] To the present time, black registration remains substantially depressed.

Voter lists in Harris County were maintained on a racial basis until 1964-65.[2] Many blacks did not register to vote in the county simply because of their belief that their votes would not be effective and because of their fears of retaliation, economic and otherwise, by the white community.[3]

No black ever served as a poll worker in Harris County until 1972. During that year, both the Department of Justice and local black citizens requested the judge of probate, who runs county elections, to appoint blacks to these positions. In response to the requests, the judge appointed approximately six blacks out of approximately 38 persons to serve as poll workers for the 1972 election. The judge "received a phone call from a man who identified himself as Barry Weinstein of the Civil Rights Division of the Department of Justice to which I said, who else would Barry Weinstein work for. He laughed. He said I was a nice fellow."[4] At the next election in 1974, only one black was appointed to serve as a poll worker.

---

1. Ibid.
2. Ibid., Trial Transcript, p. 310.
3. Ibid., pp. 106-08, 112.
4. Ibid., p. 151.

Prior to the 1975 elections, Willie Simpson, a black man, went to the judge of probate and asked that blacks be appointed as poll workers in the Shiloh area of the county.[1] The judge sent Mr. Simpson to the chairman of the Democratic Party, but he took no action. No blacks at all served as poll wokers in the 1975 election. In 1976, there were two blacks appointed as poll workers. No black had ever been appointed or served as a poll manager in any election in Harris County.[2]

In 1974, when the county first used voting machines, Willie James Brown, one of the plaintiffs, wrote to the judge of probate asking that he take action to instruct citizens in the use of the machines. Brown never received a reply.[3]

The Democratic Party in Georgia and Harris County from historically excluded blacks, even those few registered, from party membership and voting in primaries. The all-white primary remained in effect until it was declared unconstitutional in 1945.[4] The legacy of discrimination, however, remains. No black has ever been an officer or member of the executive committee of the Democratic Party of Harris County. The chairman has indicated that he does not intend to take affirmative steps to insure greater participation by blacks in Party affairs. "I'm going to mind my own business and I want everybody else to do that, too."[5]

---

1. Ibid., p. 116.

2. Ibid., Record, pp. 116, 173.

3. Ibid., Trial Trasncript, p. 74.

4. King v. Chapman, 62 F.Supp. 639 (M.D. Ga. 1945), aff'd. 154 F.2d 460 (5th Cir. 1946), cert. den. 66 S.Ct. 904 (1946).

5. Brown v. Reames, supra, Trial Transcript, pp. 285-86.

Racial segregation has always been the way of life in Harris County. Penal facilities in Georgia were racially segregated until after the decision in 1968 in Wilson v. Kelley.[1] However, the Harris County jail remained racially segregated until 1975, when the sheriff of the county was added as a named defendant in a complaint in intervention filed in Wilson v. Kelley by the Department of Justice. On September 23, 1975, the complaint in intervention was dismissed without prejudice based upon a stipulation that the jail was at that time being operated on a non-discriminatory basis and that adequate records of inmate housing assignment were being maintained.[2]

Discrimination against blacks in jury selection has been a chronic problem in Harris County. In Gamble v. Grimes,[3] a Federal district court concluded that blacks had been unconstitutionally excluded from Gamble's grand and trial jury venires. The evidence showed that no persons on the 1955 master grand jury list were black and that only seven (2.3%) of those on the 1955 master traverse jury list were black. Blacks remained excluded from juries, however, until a suit was brought in 1974, by black and female citizens of the county alleging that they and members of their class had been discriminated against in jury duty.[4] The evidence showed that from January, 1970, through January, 1974, only 11.96% of those summoned for grand jury duty

---

1. 294 F.Supp. 1005 (N.D. Ga. 1968), aff'd., 396 U.S. 266 (1968).

2. Brown v. Reames, supra, Record, p. 228.

3. Civ. No. 9991 (N.D. Ga. July 27, 1966).

4. Robinson v. Kimbrough, 540 F.2d 1264 (5th Cir. 1976), rehearing granted, 549 F.2d 1045 (5th Cir. 1977), on remand, 558 F.2d 773 (5th Cir. 1977).

were black and 13.34% of those summoned for traverse jury duty were black.[1] The jury discrimination litigation was only recently concluded in an appellate court decision awarding plaintiffs attorneys fees.[2]

Desegregation of schools was bitterly contested in Harris County until 1970-1971, when litigation by the Justice Department and the threat of termination of funds forced the adoption of a desegregation plan.[3] The Board of Commissioners continued to support segregated schools for more than 15 years after the Brown decision through appropriation of county money.[4] Following desegregation, a private school was established in Harris County. That school, known as the Tri-County Academy, leased a former public school building from the Shiloh Chamber of Commerce, which had purchased the building from the county board of education.[5] The judge of probate, who was also the attorney for the Harris County School Board, was opposed to school desegregation, and assisted in forming the private school.[6]

Blacks were traditionally excluded from serving on the Harris County Board of Education, the members of which are appointed by the grand jury. Willie James Brown, a plaintiff in the lawsuit and a resident of Pine Mountain, wrote a letter

---

1. Brown v. Reames, supra, Record, pp. 113-14, 172.
2. Robinson v. Kimbrough, 620 F.2d 468 (5th Cir. 1980).
3. Brown v. Reames, supra, Record, pp. 184-35, 190-202, 205-06.
4. Ibid., Dep. of Teal, pp. 30-1.
5. Ibid., p. 184-85, 205-06.
6. Ibid., Trial Transcript, pp. 195-96.

in 1972 to the local district attorney requesting that blacks be appointed to the board. He never received a reply.[1] Two years later, following desegregation of the grand jury, Brown and another black, Henry Lewis Walker, petitioned the grand jury for appointment to the school board. They were unopposed and became the first blacks ever to serve.[2]

County officials promptly secured the passage of legislation requiring the board of education to be elected at-large. No black, however, has ever been elected to any county office at-large. The proposed change was submitted to the Department of Justice, which objected to it in 1975: "minority candidates have not been able to become elected to any county-wide office in Harris County because of the county's system of at-large elections. The use of an at-large system under these circumstances has the discriminatory effect of diluting the ability of minority candidates to participate as members of the Board of Education."[3]

Subsequently, in an effort to get the Department of Justice to reconsider its objection, the county wrote a letter to the Attorney General that "the two black members of the Harris County Board of Education were in favor of the bill. . . they did not object to this arrangement for the Board of Education. . . .the two black members of the Board of Education of Harris County evidently did not feel that the act would

---

1. Ibid., pp. 74-5.
2. Ibid., p. 59-60, 88-9.
3. Ibid., Record, p. 217.

dilute minority voting rights, nor would it have a racially discriminatory effect."[1] The fact is, however, that one of those members--Brown--never favored, nor ever indicated to anyone that he favored at-large voting for the Board of Education.[2]

At-large elections are devastating for blacks because of chronic bloc voting by whites. Black candidates nearly always run last or next to last in multi-candidate races in the predominantly white precincts. That is true even if the black candidates run well in the city of Hamilton, which has a substantial black population. In the 1970 primary, for example, Walker, a black, carried the city of Hamilton in a three-way race for county commission post number one, but came in dead last in the four predominantly white precincts of Pine Mountain Valley, Upper 19th, Skinners and Lower 19th.[3] The pattern is repeated in other elections. In 1974, Bowen, a black, carried Hamilton in a three-way race for post number one. He came in last, however, in Pine Mountain Valley, Skinners, Upper 19th, and Lower 19th.[4] Blacks running for offices in Hamilton and Pine Mountain, two of the largest towns in Harris County, also consistently go down to defeat.[5]

The present apportionment for the board was enacted by the legislature in 1972. The grand jury in 1966 and 1972,

---

1. Ibid., Record, pp. 250, 264-65, 267.
2. Ibid., Trial Transcript, pp. 66-7.
3. Ibid., pp. 22-4, 29-30, and Record, p. 118.
4. Ibid., p. 182.
5. Ibid., pp. 179-83.

during the time blacks were excluded from its membership, had recommended expansion of the commission to five or seven members elected from residential districts at large. The state representative who introduced the act followed the recommendation of the grand jury. He also talked to people in the county to ascertain their wishes, but can only recall one black with whom he discussed the proposed legislation. That black opposed the at-large feature and favored a ward system.[1]

As might be expected, county government has been unresponsive to the needs of the black community. For instance, from October, 1963, to November, 1975, the Commission exercised its power to make appointments 98 times. In only three instances were blacks nominated or appointed.[2] Part of the problem is that local officials are either unconcerned or unaware of race discrimination and its continuing consequences. Commissioner Raymond Reames, for example, said that the under-representation of blacks on boards and commissions "does not concern me. It should concern them."[3] Other commissioners, for example, George Teal and Charles Knowles, were not even aware that racial segregation or discrimination ever existed in Harris County. Knowles was unaware that no blacks were employed at the courthouse; it "didn't occur" to him that few blacks had been appointed to serve on boards and commission; he was not aware that schools were ever segregated in Harris County nor that state laws ever required segregation; he was not aware that prisons and jails were

---

1. Ibid., Trial Transcript, pp. 221-22, 233-35.
2. Ibid., Record, pp. 185-6, 206, 260-56, 267.
3. Ibid., Trial Transcript, p. 397.

ever segregated and was largely unaware of the condition of race relations in Harris County; Teal, who had been on the commission 34 years, didn't remember whether schools in Harris County had ever been segregated--at least not until after his deposition had been recessed; he couldn't recall if penal facilities were racially segregated at one time; he had no knowledge if public accommodations in the county were ever segregated on the basis of race; he couldn't recall whether a predominant number of whites had been appointed to boards and commissions; he knew of no statute or practice in Harris County providing for separation of the races; he couldn't recall whether blacks were ever excluded from the affairs of the Democratic Party nor whether the present members of the Democratic Committee were all white; he was not aware of whether blacks worked at the polls during elections.[1]

The judge of probate was "not aware of any particular problem" that the black community might have.[2] Commissioner Knowles said no special needs or problems "had. . .been made known to me by the black community."[3] His concern was that "all people are not responsive to the government."[4] Commissioner Reames didn't "know of any" lingering effects from segregation.[5]

---

1. Ibid., p. 263-64, 266-68; Dep. of Teal, 9-10, 15, 19, 21-2, 35-6.

2. Ibid., Trial Transcript, p. 197.

3. Ibid., 266.

4. Ibid., 264.

5. Ibid., 378.

In jurisdictions like Harris County, social and private contacts are crucial in the operation of the political process. Candidates rarely run on issues. The judge of probate's campaigns have involved no issues and no platform. He has run on his "personality."[1] The success of candidates depends upon friendships and personal contacts built up over the years, but because of the continuing segregation that exists in Harris County, black candidates have fewer opportunities than whites to establish contacts in the majority white community. When Brown ran for coroner in 1972, he felt unable to campaign in the white neighborhoods because of an atmosphere of racial prejudice, and as a result was unable to establish political alliances with the white community.[2] He received invitations to speak to blacks, but never to white groups or organizations.[3] Since blacks were excluded from membership in social and civic clubs in Harris County, and because the legacy of racial segregation exists, opportunities for black candidates to draw upon personal ties and connections in the white community are severely limited.

Following a lengthy hearing developing these facts, the district court found the present plan plan had neither the purpose nor the effect of diluting minority voting strength.[4] Subsequently, on May 21, 1980, the Court of Appeals summarily vacated and remanded the case to the district court for further proceedings in light of City of Mobile v. Bolden.[5]

---

1. Ibid., p. 192.
2. Ibid., pp. 61-2.
3. Ibid., p. 67.
4. Ibid., December 16, 1977.
5. 446 U.S. 55 (1980).

Georgia; Burns v. Fortson, Civ. No. 17179 (N.D.Ga., Sept. 27, 1972), aff'd, 410 U.S. 686 (1973).

After the decision in Dunn v. Blumstein,[1] Georgia's one year durational residence requirement was held unconstitutional.[2] The state, however, continued to administer a 1964 law requiring voter registration to be cut off 50 days prior to election day.[3] Plaintiffs, who were denied registration after the cut off period, sued in federal court, relying upon, inter alia, the Court's language in Dunn, "that 30 days appears to be an ample period of time for the State to complete whatever administratrive tasks are necessary."[4] Nonetheless, the District Court found 50 days to be "reasonable" and dismissed the claim.[5] The Supreme Court affirmed in a per curiam opinion, stating that "the 50-day registration period approaches the outer constitutional limits in this area..."[6]

Georgia subsequently repealed the 1964 statute and enacted a 30-day registration cut-off period.[7]

---

1. 405 U.S. 330 (1972).
2. Abbott v. Carter, 356 F. Supp. 280 (N.D.Ga., 1972).
3. Ga. Code Ann., §34-611.
4. 405 U.S. at 348.
5. Burns v. Fortson, Civ. No. 17179 (N.D.Ga., Sept. 27, 1972).
6. Ibid, 410 U.S. 686, 687 (1973).
7. Ga. Code Ann., §34-611.

Moultrie, Georgia: Cross v. Baxter, 604 F.2d 875 (5th Cir. 1979), on appeal after remand, 639 F.2d 1383 (5th Cir. 1981).

The plaintiffs in this case are black citizens of Moultrie, Georgia, in Colquitt County, located in southwest Georgia. They filed a complaint on April 20, 1976, against the mayor and city council, charging the defendants with failure to comply with §5 of the Voting Rights Act of 1965 in implementing a 1965 majority vote requirement, and that the method of electing the city council at-large, including the use of numbered posts, staggered terms and majority vote and run-offs, unconstitutionally diluted minority voting strength.

Moultrie has a long history of racial discrimination in elections. John Cross, one of the plaintiffs, attempted to register during the days of the all-white primary in 1941-42, and again in 1943. On each occasion he was denied registration. "[O]n one occasion they told three of us that it was too late in the day. You know, it was about four o'clock and they just closed the window."[1] On another occasion in 1942, "they told us. . .we had to pay poll tax. . . .I was unable to pay."[2] Cross finally registered in 1946 after the federal court's

---

1. Cross v. Baxter, Civ. No. 76-20 (M.D. Ga.) Trial Transcript, p. 30.

2. Ibid., p. 59.

decision declared unconstitutional Georgia's all-white primaries.[1]

Even then, Cross and every other black voter in the City of Moultrie eligible to participate in the Democratic primary were challenged in 1946 for not having proper voter registration qualifications.[2] No whites were challenged.[3]

It was not until the Voting Rights Act of 1965 that any significant number of blacks registered in Moultrie. Prior to the Act, as of December 19, 1962, only 1,117 blacks were registered to vote in the entire county, 27.4 per cent of the eligible population. By contrast, 11,362 whites were registered, 71.1 per cent of the eligible population.[4]

Although the Democratic all-white primary has been abolished, the legacy of party discrimination persists. At the time the lawsuit was filed, no black had ever served as an officer of the party, and only one black had ever served on the twelve-member county executive committee.[5]

City elections were run on a racially segregated basis as late as May, 1962. White voting booths were located

---

1. King v. Chapman, 62 F.Supp. 639 (M.D. Ga. 1945), aff'd, 154 F.2d 460 (5th Cir. 1946).

2. Cross v. Baxter, Trial Transcript, p. 31.

3. Ibid.

4. Political Participation: A Report of the United States Commission on Civil Rights, Washington, D. C., May, 1968, pp. 234-35.

5. Cross v. Baxter, Trial Trasncript, pp. 41-2.

"next to the City Hall, and. . .the Negro polling place in a booth. . .in the fire department."[1] Voter registration lists were also maintained on a racially segregated basis. Neither segregated voting nor segregated registration ended in Moultrie "until the integration issue came up," during the mid-1960's.[2]

Not only have elections been conducted on a racially segregated basis, but municipal elections were traditionally conducted by the Moultrie Lions Club, an organization which excludes blacks from its membership. Such was still the practice when the complaint was filed in 1976. Blacks have occasionally been allowed to assist with operating voting machines but the Lions Club never permitted any blacks to certify voters or hold managerial positions.[3]

The first blacks ever to run for city office in Moultrie were Frank Burke, for city council, and Edward Starkey, for the city school board, in 1964. At that time, a plurality requirement was in effect for the city. Burke received 458 votes, the fourth highest number of votes in a field of six candidates running for three council positions. Starkey received 434 votes and finished last in a field of three.[4]

---

1. Ibid., Plaintiffs' Exhibit 8.
2. Ibid., Trial Transcript, pp. 139-40.
3. Ibid., pp. 36-7, 147.
4. Ibid., Trial Record, pp. 133-34.

The very next year, 1965, following enactment of the Voting Rights Act, the method of elections for city council was changed to provide for election by majority vote.[1] The members of the city council claim they were aware that compliance with §5 was required before the majority vote could be implemented, but no submission was made until after the lawsuit was filed and after a three-judge court had set a date to hear the plaintiffs' §5 claim.[2] The city attorney later explained to the court why the majority vote requirement had never been submitted; "you know lawyers are great procrastinators, . . .Judge, and lots of things go away but this one didn't."[3]

Not only did enactment of the majority vote requirement take place after increased black voter registration following the Voting Rights Act of 1965, and after a black had offered for city office, but the majority vote requirement was responsible for excluding a "successful" black candidate from office. John Cross received a plurality of votes at the May 22, 1973, election for city council. In the run-off, however, he was soundly defeated by his white opponent and never took office.[4] No council member raised any objection to

---

1. Ibid., Plaintiffs' Exhibit 13.

2. Ibid., Trial Transcript, p. 174; Trial Record, pp. 221-23.

3. Ibid., Trial Transcript, p. 188.

4. Ibid., pp. 139-40.

the election procedures or the results.

The three-judge court was duly convened on May 10, 1977, to hear the plaintiffs §5 complaint and enjoined use of the majority vote and run-off provisions.[1] The court required the city to use the pre-existing requirement for election by a plurality of votes case. Following this decision, Frank Wilson, a black florist in Moultrie, qualified for one of two council seats to be filled in the May 24, 1977, election. He ran against four whites and due to splintering of the white vote was elected by a plurality, beating his nearest opponent, the incumbent, by sixty votes.[2] There is little doubt that had Wilson been forced into a run-off, the white voters would have regrouped and he would have been soundly defeated.

The Department of Justice later objected on June 26, 1977, to the majority vote change submitted by the city because, "bloc voting along racial lines may exist" in Moultrie, and the majority vote requirement "may have the effect of abridging minority voting rights."[3]

The 1977 election was doubtless instructive for the white community in Moultrie. At the elections held the next

---

1. Cross v. Baxter, 604 F.2d 875, 878 n. 1 (5th Cir. 1979).

2. Ibid., Trial Transcript, p. 102, Plaintiffs' Exhibit 4.

3. Letter to Hoyt H. Whelchel, Jr., from James P. Turner, Acting Assistant Attorney General, June 26, 1977.

year, three of the five council posts were scheduled to be filled, and the incumbents qualified for each of the posts, Two, Four and Five. Two black candidates entered the race for Posts Two and Four. A white man, Roscoe Cook, qualified for Post Five, and later, shortly before the candidate deadline, a black, Cornelius Ponder, Jr., also qualified for Post Five, leaving that seat to be contested by two whites and one black. Cook subsequently withdrew, leaving black candidates for each post opposed by a single white.[1] This configuration ensured that no black would become elected by receiving less than a majority of votes, as had Frank Wilson, following the invalidation of the majority vote requirement by the three-judge court.

As might be expected, all the black candidates in the 1978 elections were defeated, and by approximately the same number of votes. John Green received 717 (28%), JoAnn Wilson received 652 (26%), and Cornelius Ponder, Jr., 716 (28%) of the votes cast. At the time of the election, blacks were approximately 24 per cent of registered voters in Moultrie.[2]

The city council has traditionally been unresponsive to the needs of the black community. One of the defendants, Donnie Turner, said that prior to the time he was elected to the council in 1972, the "council was neglecting the black

---

1. Cross v. Baxter, Trial Record, Vol. II, p. 296; Vol. III, p. 102; Plaintiffs' Exhibit 4.

2. Ibid., Plaintiffs' Exhibit IIA, B and C.

community," particularly in paving, housing and other services.[1]

Discrimination and inequality based upon race have characterized virtually every aspect of public and private life in Moultrie. Penal facilities were racially segregated until the late 1960's;[2] law enforcement was racially segregated--the first black policeman was not hired until the mid-1960's, and even then was not allowed to arrest whites;[3] juries were racially exclusive. Although blacks constitute 19 per cent of the persons presumptively eligible to serve on juries, only 6 per cent of those on the 1975 master petit jury list for the county were black, and only 5 per cent of those of the 1975 master grand jury list were black;[4] housing for blacks is typically substandard and segregated;[5] employment opportunities for blacks are depressed. For example, when the present city manager assumed his duties in January, 1972, there were no blacks employed in the city hall and only one "in a building adjacent to City Hall.";[6] the majority of blacks presently employed by

---

1. Ibid., Trial Transcript, pp. 173-74.

2. Ibid., pp. 90, 107, 161; Wilson v. Kelley, 294 F.Supp. 1005 (N.D. Ga. 1968), aff'd, 396 U.S. 266 (1968).

3. Ibid., pp. 84-7.

4. Ibid., Plainti-fs' Exhibit 3.

5. Ibid., Trial Transcript, pp. 54-5, 124, 167-168, 212.

6. Ibid., pp. 200-201.

the council work as either garbage collectors or laborers;[1] clubs and churches remain for all practical purposes as rigidly segregated now as they were a hundred years ago.[2] Schools were not desegregated until 1970, and then only after bitter, local resistance.[3] Blacks are substantially under-represented on boards and commissions over which the city council has exercised its appointment power. Even though numerous appointments have been made, and even though there are qualified blacks in Moultrie to serve on the various city boards and commissions, at the time the lawsuit was filed no black had ever been appointed as Civil Defense Director, a member of the Library Board, the Zoning Board of Adjustment and Appeal, Pension Board, Merit Board, Industrial Development Authority, Airport Authority, or Tax Assessor.[4]

A major complaint of the black community, directly related to poor services, has been the inability of blacks to get elected to office. Black citizens asked the mayor and

---

1. Ibid., Plaintiffs' Exhibit 55.

2. Ibid., Trial Transcript, pp. 114, 147-48, 162, 172-73.

3. Ibid., Trial Record, pp. 172, 217; Harrington v. Colquitt County Board of Education, 450 F.2d 1113 (5th Cir. 1971).

4. Ibid., Trial Record, pp. 141-144; Plaintiffs' Exhibit 54.

council in 1975 to adopt a single-member district plan for elections to provide an opportunity for black political participation. As John Cross explained it: "As the present at-large system works in Moultrie, the white majority controls the outcome of every single election. . .people get elected who are naturally more responsive to the needs of whites than they are to blacks."[1] The city council, however, responded that "the present system. . .had worked properly for the entire history of the city" and declined to make any change.[2]

The case was tried on the merits and the black plaintiffs were denied all relief. The district court held on October 26, 1977, there were no barriers to present registration and the at-large system did not preclude "effective participation" by blacks in politics: "the Constitution does not require that elections must be somehow so arranged that black voters be assured that they can elect some candidate of their choice."[3]

On appeal, the Fifth Circuit reversed. It held there was "substantial evidence tending to show inequality of access," that plaintiffs "have demonstrated a history of pervasive discrimination and. . . have carried their burden of proving that past discrimination has present effects;" and, that "Plaintiffs have demonstrated recent pervasive official un-

---

1. Ibid., Plaintiffs' Exhibit 22.
2. Ibid.
3. Ibid., Slip Opinion, p. 18.

responsiveness to minority needs."[1] The case was sent back to the district court.

A second hearing was held on January 25, 1980. A major element of the city's case was the election of a black man, Wesley Ball, to city council Post Three on May 22, 1979.[2] Ball was a 68-year-old retired former waiter at the Colquitt Hotel in Moultrie. He had a seventh grade education, had never run for office, nor had he ever been involved in any political campaign. He ran against Wilson, the black incumbent, and Cook, the white candidate who had withdrawn from the 1978 election.[3]

According to Cook, "most businessmen around. . . white businessmen" had supported Ball or Wilson because if they were defeated by a white opponent, "the ward system would be more effective to come in" and the city might lose its lawsuit.[4] "[T]hey wanted. . .a black post, and they didn't. . . want me on there for that reason. . .said, let them two have it out. . . .Ball and Wilson."[5]

After Ball won the election, someone put a sign on Cook's place of business: "got beat by a black man--business

---

1. Cross v. Baxter, 604 F.2d 875, 881, 883 (5th Cir. 1979).

2. Cross v. Baxter (II), Trial Record, Vol. IV, pp. 48-9.

3. Ibid., pp. 42, 56-8.

4. Ibid., p. 187.

5. Ibid.

for sale--leaving town." Ball himself said that race has always been critical in city politics. He testified that "the primary thing" that had caused black candidates to lose in elections for the City Council was race: "It's been on racial lines."[1]

In addition to evidence of "cuing" by whites to give the appearance of racial fairness to city elections, the plaintiffs showed that: the Lions Club continues officially to participate in management of city elections; as recently as the 1979 elections, black voters were turned away from the polls by members of the Lions Club; city officials continue to ignore §5 of the Voting Rights Act of 1965--an uncleared literacy test was implemented in 1979 for new poll workers (presumably black) who responded to a newspaper ad and volunteered to assist the Lions Club in conducting city elections; and, the city council voted in 1979 strictly along racial lines to retain at-large elections without citing any non-racial reasons supporting the majority's vote.[2]

The continuing rigidity of racial attitudes is revealed by the formation in Moultrie in 1977 and 1978 of a chapter of the Junior Chamber of Commerce. An ad appeared in the Moultrie Observer in October, 1977, announcing a meeting to

---

1. Ibid., pp. 67-68.

2. Ibid., pp. 28-36, 39-41, 44, 66-7, 193-94, 202-04, 239.

be held at a local motel to establish a Jaycee chapter. Frank Wilson attended and was the only black. Those present decided that a second meeting would be held at the same motel the following week and that each person should try to bring five additional people to form the chapter membership. Wilson recruited five blacks and returned to the motel at the appointed time. There was no Jaycee meeting to be found. Three months later another ad appeared in the newspaper announcing that a Jaycee chapter had been formed in Moultrie. It has no black members, according to Wilson: "Not a single one."[1]

Following the rehearing, the district court ruled once again against the plaintiffs, concluding that the at-large system in Moultrie was not discriminatory. The plaintiffs appealed. The Fifth Circuit held that plaintiffs must prove unresponsiveness in order to establish vote dilution, and because the district court had found responsiveness by the Moultrie City Council, a finding shielded from appellate review by the "clearly erroneous" rule, the plaintiffs were absolutely foreclosed from obtaining any relief.[2] None of the evidence of direct discrimination was discussed or even mentioned. It was simply deemed irrelevant.

The plaintiffs have requested the Fifth Circuit to hear the case en banc with all of the active judges reviewing the decision.

---

1. Ibid., pp. 224-229.

2. Cross v. Baxter, 639 F.2d 1383 (5th Cir. 1981).

DeKalb County, Georgia; DeKalb County League of Women Voters, Inc. v. DeKalb County, Georgia, Board of Registrations and Elections, 494 F.Supp. 668 (N.D.Ga. 1980)(three-judge court).

In January, 1980, the DeKalb County Board of Registrations and Elections adopted a policy that it would no longer approve community groups' requests to conduct voter registration drives.

At that time, black voter registration was significantly depressed in comparison with white registration. 81% of white eligible voters were registered, but only 24% of black eligible voters. For a number of years, the League of Women Voters and other groups had routinely secured permission from the Board to conduct drives; their members were deputized to conduct registration on particular days; and, conducted the drives at shopping centers and other convenient sites. The Board had, in fact, already approved four dates that the League would be allowed to conduct registration drives during the 1980 election year at the time its registration policy was rescinded.[1]

When the Board adopted the policy terminating the use of community groups to conduct voter registration, the League filed suit alleging that the policy was a change that required pre-clearance under the Voting Rights Act. The Board defended its action on two grounds: first, that it did not use community groups to reg-

---

1. DeKalb County League of Women Voters, Inc. v. DeKalb County, Georgia, 494 F.Supp. 668,673 (N.D.Ga., 1980).

ister voters on November 1, 1964, and therefore the present policy was not a change from that being administered in 1964; and second, the policy was not a change but a continuation of a policy by which the Board approved or disapproved registration drive requests based upon an evaluation of the need for such activity.

From an examination of the Board's minutes over the past eight years, plaintiffs were able to demonstrate that decisions were not made strictly on the basis of need. In addition, the Board's actions had severe racial impact. The Board contended that its permanent satellite registration sites were sufficient to conduct voter registration, but plaintiffs were able to show that very few sites were located in areas of the county which had substantial minority population. That was at least one of the reasons for the depressed level of black voter registration.

The District Court conducted a trial on April 28 and May 1, 1980, and rejected the Board's first defense, finding that reverting to a policy of having no community registration drives on the theory that this was not a change from November 1, 1964, would subvert the intent of the statute: "It would tend to a result tantamount to repeal of the Act."[1] The court also found that the Board's current policy was to approve no registration

1. Ibid., 494 F.Supp. at 677.

drives regardless of perceived need. The court granted a preliminary injunction enjoining the enforcement of the policy until such time as pre-clearance was received.

The Board submitted the policy and the Attorney General of the United States interposed an objection. The Attorney General was "unable to conclude,. . .that disallowing neighborhood voter registration drives does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color."[1] Subsequently, the plaintiffs agreed to a dissolution of the injunction premised on the Board's rescinding its January, 1980 policy and pledging to comply with the Voting Rights Act regarding community registration drives in the future.

---

1. Letter of September 11, 1980, Drew Days to Harry E. Schmidt.

Sumter County, Georgia (Board of Education): Judson Edge et al. v. Sumter County School District, et al., Civ. No. 80-20-AMER (M.D.Ga.).

Black citizens of Sumter County sued the school board on April 25, 1980 seeking to enforce an objection under §5 of the Voting Rights Act of 1965 to at-large elections. The school board in Sumter County was traditionally appointed by the grand jury, a practice that is still common in the State of Georgia. Several years after a civil rights activist successfully challenged juries in Sumter County on the basis of exclusion of blacks,[1] and following the revision of the jury lists, the method of selecting the school board was changed in 1968 to an elective system. Pursuant to Georgia Laws 1968, p. 2065, the Board of Education was composed of seven members elected by majority vote for staggered four year terms from five education districts, with two members being elected from one district, one member elected from each of the four remaining districts, and one member elected at-large. According to the 1970 census, three of the five education districts were majority black.[2] The 1968 change was never pre-cleared under §5 of the Voting Rights Act of 1965.

In 1972, then Governor of Georgia Jimmy Carter and a number of other residents of Sumter County, sued the school

---

1. Allen v. State, 110 Ga.App. 56 (1964).

2. Carter v. Crenshaw, Civ. No. 768 (M.D.Ga. July 12, 1972).

board, charging that the education districts created by the 1968 act were malapportioned on the basis of population. The plaintiffs also contended that the 1968 act had never been pre-cleared under §5 and that several school board members had close ties with a private all-white school, creating a conflict of interests with their public office holding. The plaintiffs asked that the existing district system be scrapped in favor of an all at-large plan.[1]

The obvious problem with the relief sought by the plaintiffs was that no black in Sumter County's history has ever been elected to countywide office at-large.[2] Under the existing district plan, blacks had an opportunity, assuming high registration and voter turn out, of deciding or winning elections in the three majority black districts. The exclusion of blacks from the school board was one of the reasons schools remained separate and unequal in Sumter County until 1970, when they were desegregated pursuant to a federal court order, long after segregation was declared unconstitutional by the Supreme Court in 1954.[3]

---

1. Ibid., Complaint.

2. Indeed, on April 7, 1980, a district court judge ruled that at-large elections for the Sumter County Board of Commissioners unconstitutionally diluted minority voting strength. Wilkerson v. Ferguson, Civ. No. 77-30-AMER (M.D.Ga.).

3. United States v. Georgia, Civ. No. 12972 (N.D.Ga. December 17, 1969)(ordering desegregation of Americus and Sumter County schools).

The district court ruled in the Carter suit on July 12, 1972, that the Board of Education districts were malapportioned on the basis of population, but deferred to the legislature to take corrective action. The Georgia General Assembly subsequently enacted Georgia Laws 1973, p. 2127, by which the Board presently consists of seven members elected at-large for staggered four year terms. Candidates are required to designate and reside in one of seven education districts for which they are offering; elections are by majority vote.

The new act was submitted for pre-clearance under §5 on May 10, 1973, but the Attorney General objected to the use of at-large elections because they "would result in the dilution and minimization of the voting strength of black citizens."[1] The Board of Education, however, informed the Department of Justice by letter of July 24, 1973, that upon reflection, it considered its submission "a useless and unlawful act," and the objection of the Attorney General "illegal, void and of no effect" in that the at-large election system resulted from a district court order and was exempt from pre-clearance under §5."[2]

---

1. Letter from J. Stanley Pottinger, Assistant Attorney General, to Henry L. Crisp, Board of Education Attorney, July 13, 1973.

2. Letter from Henry L. Crisp, Board of Education Attorney, to J. Stanley Pottinger, Assistant Attorney General, July 24, 1973.

The Department of Justice responded to the Board on September 12, 1973, that the 1973 law with its at-large feature was not exempt from §5 coverage and in view of the outstanding objection by the Attorney General was "inoperable."[1] Notwithstanding the objection of the Attorney General, the Board has been and continues to be elected under the 1973 act at-large.

Since the filing of the complaint, the Department of Justice was given permission on April 20, 1981, to intervene as amicus curiae to enforce the Attorney General's §5 objection.[2] The three-judge court has been designated to hear the case, but no decision has yet been reached.

The §5 violation in this case is in the home county of former president Jimmy Carter, symbol of the new, non-racist South, fully committed to enforcing national laws that protect minority rights. If an aggravated violation of voting rights and the Voting Rights Act can occur there, there is little cause for believing that violations do not occur elsewhere. Indeed, they do.

---

1. Letter from J. Stanley Pottinger, Assistant Attorney General, to Henry L. Crisp, Board of Education Attorney, September 12, 1973.

2. Edge v. Sumter County School District, Civ. No. 80-20-AMER, April 20, 1981.

Vernonburg, Georgia; James V. Falligant, No. C.V. 479-199 (S.D.Ga.).

In the May, 1978 election for the four commissioner positions in the town of Vernonburg, Georgia, four residents ran a write-in campaign and received more votes than the four incumbent candidates.

A critical local issue at the time involved city zoning supported by the incumbents, generated strong -- and adverse -- voter interest immediately prior to the elections.[1] Election officials did not initially certify the results but after several days declared the incumbents the winners because the four write-in candidates had not filed notices that they would be write-in candidates twenty days prior to the election as required by Georgia law.[2] Certifying the incumbents as the winners also violated Georgia law, because they were not the candidates who received the highest number of votes. The appropriate action of the election superintendent should have been to require a new election.[3]

The four write-in candidates brought suit challenging the constitutionality of the notice of write-in provision, and also alleged violations of the Voting Rights Act, as well as a de-

---

1. Savannah Evening Press, April 12, 1978, p. 11.

2. Ga. Code Ann. §2-603, 34-1017.

3. In Georgia, where a person who is ineligible to hold an office gets a majority of votes, the remedy is to invalidate the election and not give the office to the qualified person having the next highest number of votes. See Thompson v. Stone, 205 Ga. 243, 247, 53 S.E. 458 (1949).

nial of equal protection, because the superintendent of elections chose to overlook defects in the declaration of candidacy forms by the incumbents, but strictly enforced the failure of the plaintiffs to file their notices. The plaintiffs also charged that a change in 1965 increasing the size of the city council had never been pre-cleared under §5. The challenge to the constitutionality of the state statute was based primarily on its disqualification of an election winner while serving no useful state interest.

On May 19, 1980, the court sustained the statute, finding it had a rational basis[1], serving to protect the electoral process from last minute distortions and insuring that issues will be aired prior to the election. The city resubmitted to the Attorney General on September 4, 1979, the change involving an increase in the size of the council and no objection was interposed.

---

1. James v. Falligant, No. C.V. 479-199 (S.D.Ga. 1980).

Albany, Georgia: Kane v. Fortson, 369 F.Supp. 1342 (N.D.Ga. 1973) (three-judge court).

Georgia, consistent with the traditional Southern philosophy of placing restrictions on the franchise, followed the common law and enacted a statute that a married women could not establish a domicile for voting purposes different from that of her husband.[1] Patricia Kane, a former resident of New Jersey, moved from New Jersey in 1961. She tried to register to vote when she moved to Albany, Georgia, but was turned away because her husband, a Marine Corps officer assigned to Albany, retained his legal residence in New Jersey.

Ms. Cain then filed suit in federal district court contending that the Georgia law discriminated on the basis of sex and deprived her of the right to vote. The court agreed, granting a temporary restraining order permitting married women to vote in the 1973 elections who would otherwise be barred by the challenged statute. Thereafter, a three-judge court was convened (required at that time to hear the challenge to a state-wide statute), and pursuant to stipulation of the parties entered a final order declaring the Georgia law unconstitutional to the extent that it denied married women independent domicile for purposes of registering to vote. Tje Georgia Code "in so far as it establishes an irrebitable presumption that the domicile and residence of a married woman is that of her husband, and

---

1. Georgia Code §34-632(g).

thereby prevents her from registering to vote in Georgia, violates the nineteenth amendment of the Constitution of the United States."[2]

---

2. 369 F.Supp. at 1343.

Burke County, Georgia; Lodge v. Buxton, 639 F.2d 1358 (5th Cir. 1981).

Burke County is the second largest of Georgia's 159 counties. Its population is in excess of 10,000 people, a slight majority of whom are black. However, no black, to this day, has ever been elected to the five-member county commission.

This lawsuit was filed in April, 1976, by Herman Lodge, a physical therapist at the nearby Veterans Administration Hospital in Augusta, and other black residents of the county, alleging that the system of at-large elections for commission violated their rights under the Constitution and under the Voting Rights Act of 1965. After a lengthy trial, the District Court concluded that the at-large system had been maintained for the purpose of limiting black participation in the electoral process. A reapportionment plan was required, dividing the county into five single-member commissioner districts.[1] The county appealed and the Fifth Circuit affirmed.[2]

The District Court found the following facts showing unresponsiveness of the county government to the needs of the black community, all of which were approved by the Court of Appeals:

---

1. Two of the districts contained a majority of blacks of voting age. The other three contained a majority of whites of voting age.

2. Lodge v. Buxton, 639 F.2d 1358, 1361 n. 4 (5th Cir. 1981). The county subsequently appealed to the Supreme Court 49 U.S.L.W. 3955 [May 12, 1981], and the implementation of the new apportionment plan has been stayed.

(1) Allowing some blacks to continue to be educated in largely segregated and clearly inferior schools;

(2) Failing to hire more than a token number of blacks for county jobs, and paying those blacks hired lower salaries than their white counterparts;

(3) Appointing extremely few blacks to the numerous boards and committees that oversee the execution of the county government, particularly those groups such as the committee overseeing the Department of Family & Children's Services, whose function is to monitor agencies of the county government that work primarily with blacks;

(4) Failing to appoint any blacks to the judge selection committee, with respect to the appointment of a judge for Burke County Small Claims Court, despite the fact that most of the defendants in that court are black;

(5) Making road paving decisions in a manner so as to ignore the legitimate interest of the county's black residents. As to this finding, the Court of Appeals commented: "Our review of the evidence in this case leads us to the conclusion that these

patent examples of discriminatory treatment by Burke's County Commission typify the treatment received by Blacks in Burke County in every interaction they have with the White controlled bureaucracy."[1];

(6) Forcing black residents to take legal action to protect their rights to integrated schools and grand juries and to register to vote without interference; and

(7) Participating in the formation of and in fact contributing public funds to the operation of, a private school established to circumvent the requirement of integration.

Viewing the evidence of lack of responsiveness as a whole, the Court of Appeals concluded that the county commissioners "have demonstrated such insensitivity to the legitmate rights of the county's black residents that it can only be explained as a conscious and willful effort on their part to maintain the invidious vestiges of discrimination. To find otherwise would be to fly in the face of overwhelming and shocking evidence."[2]

The Court of Appeals also concluded that previous acts

---

1. Ibid, 639 F.2d, at 1377 n. 37.

2. Ibid, 639 F.2d at 1377

of official discrimination had a significant negative impact on the opportunity of blacks in Burke County to participate in the electorate. Prior to the Voting Rights Act of 1965, black suffrage was "virtually non-existent."[1] At the present, it is only approximately 38% of those eligible.[2] Evidence of past and present "bloc voting was clear and overwhelming."[3] Inadequate and unequal educational opportunities, both in the past and present, as the result of official discriminatory acts, precluded equal participation of blacks in politics. Moreover, discrimination by the Democratic party in the county primary system deterred blacks from participation in the electorate. At the present time, only one of the 24 members of the Burke County Democratic Executive Commitee is black. Upon the evidence, the court "concluded that the effect of historical discrimination was to restrict the opportunity of blacks to participate in the electoral process in the present."[4]

An additional factor showing discrimination in the use of at-large elections was the depressed socio-economic status of blacks: "Such depression has a direct negative impact on the opportunity for blacks to effectively participate in the electoral process."[5] Blacks were found to have a lack of access to the

---

1. Ibid.
2. Ibid.
3. Ibid., at 1378.
4. Ibid.
5. Ibid., at 1379.

political process because of their inability to participate in the operation of the local Democratic Party; the county commissioners' failure to appoint blacks to local governmental committees; and "the social reality that person-to-person relations, necessary to effective campaigning in a rural county, was virtually impossible on an interracial basis because of the deep-rooted discrimination by Whites against Blacks."[1] The court also found that other factors enhanced the dilution effect of the at-large voting, including the large size of the county, the presence of a majority vote requirement, the use of a numbered post system, and the absence of a residency requirement.

Upon all the evidence, the Court of Appeals concluded that the electoral system was maintained for invidious purposes.

> The picture that plaintiffs paint is all too clear. The vestiges of racism encompass the totality of life in Burke County. The discriminatory acts of public officials enjoy a symbiotic relationship with those of the private sector. The situation is not susceptible to an isolated remedy.(46) While the Court is aware of its inability to alter private conduct, we are equally aware of our duty to prevent public officials from manipulating that conduct within the context of public elections for constitutionally proscribed purposes.
>
> (46) The problems of Blacks in Burke County should not be viewed in a vaccuum. The present treatment of Blacks in the South is directly traceable to their

---

1. Ibid.

Historical position as slaves.[1]

Burke County, as this report tends to demonstrate, is not unique. It is fairly typical, in fact, of Southern counties in which local officials stoutly resist the notion that race is still a problem or a significant factor in the life of the community. For example, in 1971, the City of Waynesboro, the county seat of Burke County, attempted to implement a change from plurality to majority vote for election of the mayor and city council. The Attorney General blocked the change,[2] and the city attorney asked for reconsideration. "I believe that you will find," he wrote to the Department of Justice on January 14, 1972, "that the White and Negro relations in Waynesboro are not strained and that you will find a degree of harmony among the races."[3] These representations can scarcely be credited in light of the finding in 1981 of the Court of Appeals in Lodge v. Buxton, supra, that "[t]he vestiges of racism encompass the totality of life in Burke County."[4]

---

1. Ibid., at 1381 and n. 46.

2. Letter from David L. Norman, Assistant Attorney General, to Jerry Aaniel, City Attorney, January 7, 1972.

3. Letter from Jerry M. Daniel, City Attorney, to David L. Norman, Assistant Attorney General, January 14, 1972.

4. 639 F.2d at 1381.

Young Harris, Georgia: Pinney v. LeTourneau, ___F.Supp.___ (N.D.Ga. Oct. 31, 1980), Civ. No. C80-80G.

Prior to the August, 1980 primary elections in Towns County, over one hundred long time residents filed a voting challenge against 104 registered voters, all of whom were students at Young Harris College. The sole evidence alleged of non-eligibility was their student status.

The Board of Registrars scheduled hearings on the challenges, whereupon the plaintiffs filed suit in federal court that the board was applying an unconstitutional presumption of non-residency as to students in derogation of the right to vote.

The evidence at the federal trial showed that while the registrars made some effort to determine residency by checking car registrations, etc., this was not done until after the board had decided to go forward with hearings on the challenges. State law requied that in order to schedule hearings the board was required to find probable cause that the person challenged was not a resident. The probable cause in this case this was based solely on student status.

The district court entered a preliminary injunction on October 31, 1980 permitting all the students to vote in the 1980 general election:

> As the passage of the twenty-sixth amendment makes clear, the college age population is expected to participate actively in the government of this country through the exercise of their right to vote. If by an uneven

> application of electoral requirements this right is denied them in the formative stages of their growth as responsible citizens, then everyone will suffer as a result.

The case was concluded after the board of registrars restored the students' names to the official voter registration list and agreed not to proceed with any challenges based solely on student status.

Thomaston, Georgia: Scarcy v. Hightower, Civ. No. 79-67-MAC. (M.D.Ga., June 27, 1980).

The facts in this case are unique and complex, but they are an example of the varied ways in which blacks have been excluded from public life and office-holding in the south.

The City of Thomaston, Georgia, contains 10,024 people, of whom 1,963 are black. As of May, 1979, however, no black had ever served as a member of the City Board of Education. That was a consequence of its peculiar member selection system.

In 1915, the Georgia General Assembly created the Board of Education of Thomaston to operate a public school system for the city.[1] The legislation was approved in a subsequent referendum held in 1918. The 1915 statute essentially absorbed the then existing R. E. Lee Institute, a private academy whose charter required segregation, into the public system and made R. E. Lee Institute's seven member, all-white board of trustees the Board of Education with the powers of self-perpetuation. One new member was elected each year by the incumbents to a seven year term.

The R. E. Lee Institute to which the 1915 statute made reference had been incorporated nine years earlier under state law. The Institute's purpose, according to its charter, was the operation of a private, racially segregated school, "for

---

1. Ga. Laws 1915, p. 848.

white pupils and patrons."[1]

A separate school system "for colored youths in the City of Thomaston" was established known as the Thomaston Starr School.[2] As might be expected, the Thomaston Starr School was never the equal of the R. E. Lee Institute. For example, the Starr School frequently opened later than the white school and frequently closed earlier. A 1939 resolution of the Board of Education "unanimously decided to close the Negro schools on April 7, 1939, for the year due to the shortage of funds being supplied by the state."[3] The following year, the Board of Education was advised "to close the Negro school at the end of this month which would give them seven months school this year."[4]

Ten years after the decision in Brown v. Board of Education,[5] the Superintendent "strongly" stressed the need for keeping the black schools in a state of repair because of "the present situation in Georgia."[6] There was considerable opposition to desegregation of schools. In 1956, for example, the Superintendent ceased deducting National Education Association dues from teachers' checks, "since the NEA has taken a stand against segregation."[7]

---

1. Charter of R. E. Lee Institute, 1906.

2. Charter of Thomaston Starr School, 1915.

3. Searcy v. Hightower, Civ. No. 70-67-MAC. (M.D. Ga.) Plaintiffs' Exhibit L-21.

4. Ibid., Plaintiffs' Exhibit L-22.

5. 347 U.S. 483 (1954).

6. Searcy, supra, Plaintiffs' Exhibit L-30.

7. Ibid., Plaintiffs' Exhibit L-14.

In 1965, the Board adopted a freedom of choice plan for desegregation. The freedom of choice plan was objected to by the Department of Health, Education & Welfare, and the public schools were not desegregated until September, 1970.[1] The charter of the R. E. Lee Institute restricting it to a school "for white pupils and patrons" was, howevever, not deleted until 1974.[2]

Because of the self-perpetuation method of choosing school board members, certain local white families in Thomaston have dominated membership of the Board. The Hightower family, has placed six of its members on the Board; the Adams family five; and the Hinson, Varner and Thurston families have each placed two of their members on the Board.[3]

This suit was filed on May 23, 1979, by black residents of Thomaston who charged that board member selection procedures were dsicriminatory. Several months later the Board elected one of the plaintiffs, Rev. Willis Williams, to its membership. Prior to Williams' selection, blacks had asked the Board to allow members of their race to serve, but no action was ever taken.

The District Court ruled against the plaintiffs on June 27, 1980, holding that the method of selection was not inherently unconstitutional, and that plaintiffs had failed to

---

1. Ibid., Plaintiffs' Exhibits L-48 - 54.
2. Amendments to Charter of R. E. Lee Institute, 1974.
3. Searcy, supra, Plaintiffs' Exhibits D and O.

prove that the self-perpetuating method of electing members was conceived or operated as a purposeful device to further racial discrimination. The case has been appealed.

Waynesboro, Georgia: Sullivan v. DeLoach, Civ. No. 76-238 (S.D.Ga. Sept. 11, 1977).

Waynesboro is the county seat of Burke County, Georgia. Its population is 5,530, of which 51.6% are black. Blacks, however, constitute both a minority of registered voters as well as a minority of those eligible to be registered voters. As in Burke County, there has been a long history of past and continuing discrimination based upon race in Waynesboro.[1] No black has ever served as mayor, and prior to the filing of this lawsuit, only one black, J.C. Griggs, ever served on the council. He was elected--unopposed--in December, 1975.[2]

Prior to November 1, 1964, Waynesboro elected its mayor and council by plurality vote. In 1971, however, the city attempted to implement a majority vote requirement for election of the mayor and council.[3] The law was submitted to the Attorney General who interposed an objection on January 7, 1972 for the reason that he could not conclude "that the provision. . .does not have the purpose or effect of abridging the right to vote on account of race."[4] Also in 1971, the city

---

1. See, e.g., the findings in Lodge v. Buxton, 639 F.2d 1358 (5th Cir. 1981).

2. Sullivan v. DeLoach, Civ. No. 76-238 (S.D.Ga.), Complaint, p. 3.

3. Ga. Laws 1971, p. 3328.

4. Letter from David L. Norman, Assistant Attorney General, to Jerry Daniel, City Attorney, January 7, 1972.

changed from a ward system to at-large elections for councilmen. The Department of Justice inexplicably pre-cleared the at-large feature.

Notwithstanding the objection by the Attorney General to the use of a majority vote, the mayor and council from 1972 until the filing of this lawsuit in 1976, held elections under the majority vote requirement of the uncleared 1971 law.[1]

The complaint alleged that at-large elections in Waynesboro were racially discriminatory, and that the majority vote requirement was being implemented in violation of §5 of the Voting Rights Act of 1965. Prior to trial, the defendants agreed not to use the objectional majority vote requirement in any future elections, and consented to entry of an order reapportioning the mayor and six-member council.

The district court entered an order on September 22, 1977, that Waynesboro's method of elections "denies plaintiffs and their class equal access to the political system, in derogation of their rights under the Thirteenth, Fourteenth, and Fifteenth Amendments. . .and. . .42 U.S.C. §§1971 and 1973."[2] Under the new plan ordered by the Court, the city was divided into three wards, with two councilmen elected from each ward.

---

1. Sullivan v. DeLoach, supra, Complaint, p. 4.

2. Ibid., Slip Opinion, p. 2.

The mayor continued to be elected at-large.

The conclusion that Waynesboro's at-large system violated, among other things, the Thirteenth Amendment, was echoed later in the affirmance by the Court of Appeals of the district court's findings that the unconstitutional effects of Burke County's at-large system "is directly traceable to their [blacks] historical position as slaves."[1]

---

1. Lodge v. Buxton, supra, 639 F.2d at 1381, n. 46,

South Carolina Disfranchising Law: Allen v. Ellisor, Civ. No. ____, D.S.C., June 13, 1979, rev. and remanded, ____F.2d____ (1981).

One of the provisions adopted at the South Carolina Disfranchising Convention of 1895 was a law disqualifying persons from voting upon conviction of certain offenses. Every student of South Carolina history knows that the purpose--the only purpose--of the Convention was to disfranchise blacks formally. While the major methods of disfranchisement were the literacy and understanding test, the poll tax, and (soon) the white primary, every other portion of the suffrage article also contributed to the task of disfranchising blacks. As David D. Wallace, South Carolina's leading historian (and who was at the Convention) wrote, "wherever there was considered need for protection against the negro socially or politically there was inserted a clause going as far as it was thought could pass muster with the United States Supreme Court under the Fourteenth and Fifteenth Amendments." Wallace, The Constitution of 1895, 35-36 (1927). One such "clause" was the disfranchising statute.

The law adopted provided:

> The following persons are disqualified from being registered or voting:
>
> First, Persons convicted of burglary, arson, obtaining goods or money under false pretenses,

> perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, house-breaking, receiving stolen goods, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish, miscegenation, larceny, or crimes against the election laws: Provided, That the pardon of the Governor shall remove such disqualification.
>
> Second, Persons who are idiots, insane, paupers supported at the public expense, and persons confined in any public prison.

In 1967 rape and murder were added as disqualifying crimes by the General Assembly, and in 1974 miscegenation was deleted. The other provisions of the statute, however, remained unchanged.

Leading historians have had this to say about the choice of specific crimes as disqualifying:

> It is not difficult to perceive how these elaborate regulations were designed to discriminate against the Negro. Among the disqualifying crimes were those to which he was especially prone: thievery, adultery, arson, wife-beating, housebreaking, and attempted rape. Such crimes as murder and fighting, to which the white man was as disposed as the Negro, were significantly omitted from the list.
> Francis B. Simpkins, Pitchfork Ben Tillman, 297 (1944).

> Additional measures against the Negro vote were provided by a list of disfranchising crimes, including those supposed by the whites to be most frequently committed by Negroes and also those of the most heinous nature.
> George B. Tindall, South Carolina Negroes 1877-1900, 82 (1966).

> A third requirement is that the voters shall never have been convicted of certain crimes involving moral baseness and common among negroes; but the black squint of this should not be over emphasized.
> David D. Wallace, Constitution of 1895, 35 (1927).

But one need not rely on historians for verification. It is known that South Carolina's suffrage article was based on Mississippi's,[1] and when we turn to Mississippi we need look to no less an authority than the Mississippi Supreme Court, in the famous case of Ratliff v. Beal, 74 Miss. 247, 20 So. 865 (1896). In that case, the Mississippi Supreme Court held that the poll tax could not be collected by levying on certain property because it had never been intended by the 1890 Constitutional Convention that the poll tax should be enforced. Rather, its purpose was to disfranchise blacks along with other provisions in the suffrage article. The court went into great detail about the Convention, and this is what it had to say:

> Within the field of permissible action under the limitations imposed by the federal constitution the convention swept the circle of expedients to obstruct the exercise of the franchise by the negro race. By reason of its previous condition of servitude and dependence, this race had acquired or accentuated certain peculiarities of habit, of temperament, and of character, which clearly distinguished it as a race from that of the whites--a patient, docil people, but careless, landless, and migratory

---

1. See Attorney General's Opinion No. 1912, October 1, 1965. The list of disfranchising crimes is almost verbatim in the Mississippi Constitution of 1890 and the South Carolina Constitution of 1895.

> within narrow limits, without forethought, and its crimi-al members given rather to furtive offenses than to the robust crimes of the whites. Restrained by the federal constitution from discriminating against the negro race, the convention discriminated against its characteristics and the offenses to which its weaker members were prone. A voter who should move out of his election precinct, though only to an adjoining farm, was declared ineligible until his new residence should have continued for a year. Payment of taxes for two years at or before a date fixed many months anterior to an election is another requirement, and one well calculated to disqualify the careless. Burglary, theft, arson, and obtaining money under false pretenses were declared to be disqualifications, while robbery and murder and other crimes in which violence was the principal ingredient were not.

The South Carolina statute was first attacked in 1975 by Gary Allen, a black car dealer in Aiken. Allen had been convicted of the crime of forgery in the state court and was struck from the voting rolls for having committed a disqualifying offense.

In his law suit, Allen challenged the disfranchising statute on the grounds that it was an unconstitutional crazy quilt; discriminated on the basis of race; and, violated the Act of June 25, 1868, 15 Stat. 73, readmitting South Carolina into the Union. The 1868 act provided:

> that the constitutions of neither of said states shall ever be so amended or changed as to deprive any citizens or class of citizens of the United States of the right to vote in said state, who are entitled to vote by the constitution thereof herein organized, or except as a punishment for such crimes as are now felonies at common law. . .

The district court on June 13, 1979, ruled on the first of Allen's contentions, holding that "South Carolina's list

of disfranchising crimes is so discriminatorily selected that it is unconstitutional as a denial of equal protection." The court highlighted a few of the law's most obvious irrationalities:

> A simple glance at the crimes that are listed in §7-5-120 (Proviso)(b) and those that are not, reveals what a kaleidoscope quilt is portrayed. For one thing, the law discriminates among persons convicted of crimes of the same magnitude. Beating one's wife[8] disfranchises; beating a stranger, or a son or daughter, does not. Breaking into a house disfranchises; breaking into a car does not. Robbing a person disfranchises; kidnapping him does not. The capriciousness which flows from the statute is patent. . . .
>
> ---
>
> 8. Of course, one must take into consideration the traditional regard for the feminine, preserved and heralded by generation of courteous conduct. Beating one's wife is/was serious in South Carolina, and long before woman's lib came to haunt state legislatures.
>
> * * *
>
> The inequality of §7-5-120 (Proviso)(b) is not limited to the way in which it picks and chooses among crimes of the same magnitude. Inequity also results from the statute's inclusion of much lesser offenses as fornication and wife beating,[10] while excluding serious crimes like manslaughter, kidnapping, and all manner of conspiracies. The man who beats his wife is disfranchised; the man who kills his wife in sudden heat and passion is not. The person who kidnaps another can vote, while the person who has consensual sex with another is to be disfranchised. As to persons convicted of such crimes the statute is particularly irrational and invidious." J.A. 36-37.
>
> ---
>
> 10. But wife beating is neither a common law nor a statutory offense in South Carolina. One convicted of assault and battery where the victim is his wife, however, is subject to disfranchisement under §7-5-120 (Proviso)(b).

The district court measured the disfranchisement provision both by the "compelling interest" test (which it held was probably the correct test) and by the less stringent "rational basis" test, but found that the State could not produce any justification meeting either test. Indeed, the disqualifying scheme makes no sense at all--unless one understands its purpose, i.e., to disfranchise blacks.

The state appealed the district court's order, and the case was argued before a panel of the Fourth Circuit Court of Appeals. Prior to issuance of an opinion, however, the case was put en banc to be heard by all the judges of the court in regular active service. The en banc court reversed and remanded on January 6, 1981. It held that the statute was not facially unconstitutional because §2 of the Fourteenth Amendment give the state unreviewable power to disqualify persons convicted of crime. It sent the case back to the district court, however, to determine whether the statute was enacted to discriminate against blacks.

Several days later, however, the Governor of South Carolina signed into law an act amending the statute which had been enacted by the legislature following the district court's opinion. The new law, which is conceded to be constitutional, disfranchises only those convicted of a felony carring a penalty of five years or more, and only during the time of service of sentence. Although further proceedings were contemplated by the Court of Appeals, the governor's action makes the case now moot.

Allen has accordingly filed a petition for writ of certiorari with the Supreme Court asking that the unreviewed opinion of the Court of Appeals be withdrawn and the complaint dismissed as moot so that it will have no precedential value.

South Carolina: Bly v. McLeod, Civ. No. 72-988 (D.S.C.).

In 1972, South Carolina law provided for absentee balloting by any qualified elector "who will be physically unable to present himself at his precinct on election day."[1] Several professors on the faculty of the University of South Carolina planned to attend a professional meeting in New York on the day of the 1972 Democratic primary, and consequently sought absentee ballots. They were denied ballots by party officials because of an opinion of the Attorney General of South Carolina that the phrase "physically unable" was limited to "health reasons."[2] The aggrieved teachers subsequently brought a federal action, charging that they were being unconstitutionally denied their right to vote. They asked the Court to require the issuance of absentee ballots for the primary election.

The District Court held a hearing on the plaintiffs' motion for a temporary restraining order and enjoined the party officials from denying the absentee ballots.[3] Subsequently, the teachers were allowed to vote absentee in other state elections without further order of the Court when their employment required them to be temporarily out of the state on election day, even though there was no allegation of disability based on health.

In the meantime, the Attorney General of South Carolina sought a declaratory judgment from the State Supreme

---

1. S.C. Code, §23-449.41.

2. Bly v. McLeod, Civ. No. 72-988 (D.S.C.), Transcript of Hearing, August 24, 1972, p. 9.

3. Ibid.

Court authoritatively constructing the absentee ballot statute. The State Court concluded that the phrase "physically unable" indeed was limited to health reasons.[1]

Although the State Court did not consider the federal Constitutional issues, the District Court nonetheless dismissed the complaint. The plaintiffs appealed and the Court vacated and remanded for further consideration of the Constitutional issues.[2]

Following the action of the Court of Appeals, a three-judge court was convened, but before it could hear the Complaint on the merits, the state legislature amended state voting laws, allowing persons who would be out of their counties of residence on election day because of their employment to vote absentee.[3] This action of the legislature, granting the plaintiffs the relief they sought as a matter of state law, mooted their Federal lawsuit.[4]

---

1. State v. Ellisor, 259 S.C. 364 (1972).

2. Bly v. McLeod, 605 F.2d 134, 136 (4th Cir. 1979).

3. S.C.Code, §§7-15-310 and 320.

4. The grant of subsequent request for attorneys' fees by the district court was reversed on appeal. Bly v. McLeod, 605 F.2d 134 (4th Cir. 1979).

State of South Carolina: McClain v. Finney, Civ. No. 71-1259 (D.S.C.,November 13, 1974).

The complaint was filed on December 22, 1971, by six college students attending various schools in Columbia, S.C., each of whom was denied registration by the Board of Registration of Richland County on the grounds that they were not residents ot the county. The plaintiffs contended that the registrars were applying a rpesumption against residency in favor of students in violation of their right to vote.

While the suit was pending, an unrelated action was filed on behalf of students at Furman University in Greenville County, containing allegations basically identical to those in McClain v. Finney.[1] Both cases were assigned to the same judge, who heard the Furman complaint first. He held that the Furman students were not in fact residents and were thus not qualified to register and vote or contest registration procedures.

The decision was summarily affirmed the following year by the Court of Appeals.[2] Because of the adverse ruling in the Furman case, and because the plaintiffs had established residence elsewhere, the case was dismissed without prejudice on November 13, 1974.[3]

---

1. Dyer v. Huff, 382 F.Supp. 1313 (D.S.C. 1973).
2. Ibid., 506 F.2d 1397 (5th Cir. 1974).
3. McClain v. Finney, Civ. No. 71-1259 (D.S.C. 1974).

Columbia, South Carolina: Washington v. Finley, Civ. No. 77-1791, (D.S.C. March 24, 1980).

Columbia is the capital city of South Carolina and 35% of its population is black. Yet no black, within living memory, has ever been elected mayor or to the four-member city council.[1]

Columbia's at-large system of elections was adopted in 1910, at a time when blacks were excluded from the electorate. It would be a mistake, however, to assume that race did not play a critical role in the decision about what kind of government Columbia was to have.

The father of at-large voting in Columbia was John J. McMahan, a member of the local bar and one of Richland County's senators in the South Carolina legislature.[2] McMahan had also been a member of the delegation from Richland County to the South Carolina Disfranchising Convention of 1895. The role he played in the Convention and his subsequent drafting of Columbia's election law make clear that his purpose, in part, was to further the exclusion of blacks from the city electorate.

There can be no dispute about the purpose of the 1895 Convention. It was to disfranchise blacks. A leading South

---

1. Washington v. Finlay, Civ. No. 77-1791 (D.S.C. March 24, 1980), Slip Opinion, pp. 3-4.

2. "Business Men Are on Record; Endorse the McMahan Bill," The State, January 25, 1910; Christie Benet, "A Campaign for a Commission Form of Government," The American City, 1910, pp. 276-78.

Carolina historian, D.D. Wallace, wrote in 1896 that "[t]he motive for calling the Convention was to effect such a revision of the suffrage laws as would make any appeal to the negro or any chance of negro domination an impossibility. The interest of South Carolinians centered on this."[1]

It is not necessary to quote contemporary historians, however, to divine the racial purpose of the Convention. B.R. ("Pitchfork Ben") Tillman, then a United States Senator and the moving force behind the Convention, announced to the assembled delegates their purpose: "[T]he only thing we can do as patriots and as statesmen is to take from [the "ignorant blacks"] every ballot that we can under the laws of our national government."[2]

The basic suffrage qualifications enacted were residence in the state for two years, in the county for one, and in the election district for four months; payment of a one dollar poll tax six months before the day of elections; and registration. To register, the voter had to be able to read and write any section of the constitution or prove that he owned or paid taxes on property in the state worth at least $300. For

---

1. "The South Carolina Convention of 1895," Sewanee Review, IV, p. 354, May, 1896.

2. South Carolina v. Katzenbach, 383 U.S. 301, 310 .9 (1966), and Journal of the Constitutional Convention of the State of South Carolina, 464, 469, 471 (1895).

those who could not meet the literacy test by reading, there was an understanding test where the constitution was read by a registration officer. As D.D. Wallace observed, "[s]uch is the South Carolina suffrage law, under which it is hoped to put negro control of the State beyond possibility and still preserve the suffrage for the illiterate whites of the present generation."[1]

Although the provisions adopted by the Convention were crippling as far as blacks were concerned, John J. McMahan was a vigorous proponent of even more restrictive limitations on the franchise. On the eighth day of the Convention, September 18, 1895, McMahan offered a resolution styled "An Ordinance to Prescribe Who Shall Be Voters."[2] Under the ordinance, the franchise was limited to persons who owned either a hundred acres or more of county land or a town lot or lots with a value of $500. Other persons who did not meet the land ownership qualifications could be designated subsequently by the state legislature as electors if they "are worthy of the ballot and will use it for the advancement of the civilization of the state."[3] McMahan's proposal, described by one historian as

---

1. Sewanee Review, IV, p. 355.

2. Journal of the South Carolina Constitutional Convention, 252-53 (1895).

3. Ibid.

"[e]xpressing a philosphy seldom heard in America since the 1820's,"[1] was not adopted, although its ownership of property feature as a condition for registration was incorporated into the Convention's final suffrage provisions.

On the ninth day of the Convention, September 19, 1895, McMahan introduced a Memorial entitled "Governmental Corporation Debt and the Tendency of Municipal Corporations towards Unlawful Expenditures of Public Funds and Extravagance."[2] The Memorial proposed that the Convention by constitutional means restrict municipal corporations from taxing and creating debt. It singled out the mayor and aldermen of the City of Columbia, at that time elected from districts or wards, as a "forcible argument in favor of the necessity of limiting corporate powers."[3] More specifically, the indebtedness incurred in the construction of the Columbia opera house was a beacon "warning statesmen of the danger of committing to the uncertain tide of unrestricted suffrage, or worse still, to the possible aldermanic action of the municipal ballot box," the issue of the power to incur corporate debt.[4] (Emphasis supplied.) It is apparent that for

---

1. J. Morgan Kousser, The Shaping of Southern Politics, Yale University Press, 1974, p. 151.

2. Journal of the Constitutional Convention of the State of South Carolina, 161 (1895).

3. Ibid., 163.

4. Ibid.

McMahan, "good government" was directly tied to restricted suffrage, which meant utilizing at-large voting and continuing the exclusion of blacks from elections.

The McMahan bill enacted in 1910 incorporated all the racially discriminatory provisions limiting the suffrage in general elections adopted by the Disfranchising Convention of 1895, and applied them for the first time to the primary.[1] No person could vote in the city primary unless he was a registered elector. In addition, would-be voters had to furnish receipts showing payment of all city, county, and state taxes. Only then were special tickets issued allowing persons to vote. Poll taxes were notorious as a device to thwart black registration, and some people criticized the McMahan bill for the reason that it "would deprive many citizens of their voting privileges."[2] But limitation of the franchise was one of the very things to be accomplished by the McMahan bill. The State newspaper, in fact, using the code words of the day, supported the bill precisely for the reason that "[t]he elections will be safeguarded."[3] The McMahan bill was adopted overwhelmingly in an all white citywide referendum.[4]

---

1. Benet, pp. 277-78.

2. Benet, p. 277.

3. "Fight Ahead for Columbia," The State, January 25, 1910.

4. "Commission Form Endorsed at Polls," The State, April 3, 1910.

McMahan accomplished precisely what he set out to do in 1910--to perpetuate the exclusion of blacks from the electorate, consolidate local rule in the hands of a white, business and professional elite, and bring to an end broad based, participatory government for the City of Columbia. Blacks have run for office on many occasions since enactment of the Voting Rights Act of 1965, but none has ever been elected.

The complaint was filed in this case by black citizens of Columbia on September 6, 1977, who charged that the at-large method of elections diluted their voting strength. Part of their proof was evidence of Columbia's past and continuing racial history, with de jure and de facto discrimination extending to virtually all areas of life.

Blacks did not register and vote in significant numbers in Columbia until after abolition of the all white primary in 1947,[1] and enactment of the Voting Rights Act of 1965. In 1964, for example, blacks were only 13% of the registered voters in all of Richland County, of which Columbia is the county seat.[2]

Schools were segregated from the first grade through college, and remained so long after the decision in Brown v. Board of Education, 247 U.S. 483 (1954), due to the deliberate

---

1. Elmore v. Rice, 72 F.Supp. 516, 520 (E.D.S.C. 1947), aff'd sub nom. Rice v. Elmore, 165 F.2d 387 (4th Cir. 1947).

2. Political Participation; A Report of the United States Commission on Civil Rights, Washington, D.C., May, 1968, pp. 252-53.

strategy of "massive resistance" to desegregation by state and local officials.[1]

Public accommodations, public housing, health care facilities, parks, public employment, public transportation and penal facilities were all rigidly segregated by law and by custom until passage of civil rights laws in the mid-1960's and federal judicial intervention.[2]

So significant has race been that it was libelous per se in South Carolina as late as 1957 to publish in print that a white person is a Negro.[3] During the same year, a bill was introduced into the South Carolina House of Representatives requiring any blood bank in the state to label all blood "so as to indicate white or colored."[4] The preceding year (two years after the Brown decision), the House and Senate passed a resolution removing as "inemical to the traditions of South Carolina" a book entitled Swimming Hole, which was about "the insignificance of skin color."[5]

Because of this past history of discrimination, blacks in Columbia exist at a lower socio-economic level than whites in

---

1. See, e.g, "S.C. Planning Three Legal Fights to Keep Segregation," The Charlotte Observer, August 11, 1955; "Hollings Backs Citizens Councils," The State, September 16, 1955; "S.C. Spokesmen Plead Case Against Civil Rights Bills," News & Courier, February 15, 1957; Washington v. Finlay, Slip Opinion, p. 5.

2. Ibid.

3. Bowen v. Independent Publishing Co., 230 S.C. 509, 96 S.E.2d 564 (1957).

4. Journal of Proceedings of the House of Representatives of South Carolina, 1957, p. 918.

5. Ibid., 1956, pp. 936-37.

housing, education, income, health care, and employment.[1] Residential areas in the city, public and private, are racially identifiable, and whites oppose the dispersal to their neighborhoods of integrated public housing.[2]

Blacks have been excluded from many local boards and commissions to which the mayor and council make appointments. For the ten year period of 1967-77, no blacks were appointed to the following boards, although in every case significant numbers of whites were appointed: Board of Plumbing Examiners; Board of Electrical Examiners; Richland-Lexington Airport Commission; Decent Literature Committee; Industry Development Commission; Historical and Cultural Building Committee; Board of Assessment Appeals; Committee to Employ the Handicapped; Building Board of Adjustment Appeals; Riverbanks Parks Commission; Ministerial Recorders; Air-Conditioning Board of Appeals; Air-Conditioning Study Committee, Board of Health; Facade Advisory Committee; Charity and Solicitations Committee; Columbia Music Association; and Building Board of Adjustments.[3]

Blacks have also been discriminated against in employment. At the time of trial in March, 1980, no blacks were

---

1. Washington v. Finlay, Slip Opinion, p. 5.

2. Ibid., Trial Transcript, p. 110, testimony of Frank Washington.

3. Ibid., pp. 29-97, testimony of Alvin Hinkle.

employed in the following Divisions of City government: Legislative (6 employees); Administration (5 employees): Legal (7 employees); Zoning (4 employees); Finance (3 employees); License Inspectors (4 employees); Police Administration (4 employees); Civil Defense (5 employees); Public Utility (2 employees). Blacks who were employed were clustered in lower pay, lower status jobs. For example, sixty-six (66) employed blacks worked in the Street Cleaning Division. Thirty-four (34) blacks worked in Sewer Maintenance and Construction. Forty-four (44) blacks worked in the Water System Division; thirty-one (31) in the Division of Beautification and twenty-five (25) in the Tree and Forestry Division.[1]

The city presently maintains a membership for the Columbia City Manager in the all-white Summit Club, and on occasion has conducted business there. At one time, the city also maintained a membership for the city manager in the racially exclusive Wildwood Country Club.[2]

Because of the continuing effects of past discrimination, Columbia remains essentially two societies, one black and one white. Consequently, one of the critical problems faced by

---

1. Ibid., Plaintiffs' Exhibit 69.

2. Ibid., Trial Transcript, pp. 580-81, 637-38, testimony of Graydon Olive and Terance Bott.

minority candidates is the lack of access to the dominant, numerically superior white community. As one black candidate, E. J. Cromartie, explained:

> In the white community, there's a tremendous problem of access. . . .You have civic organizations such as the Rotary, of course, there are no blacks in the Rotary Club. There are no blacks in the Civitan Club or the Summit Club. . . .The policial process is simply an outgrowth. . .of how we live.[1]

In addition to the lack of access by black candidates to the white community, it is difficult in Columbia for others to campaign effectively for black candidates in the white community. The Fire Fighters Association, for example, got an adverse reaction in the 1978 mayor and council elections in white neighborhoods urging voters to support a bi-racial ticket.[2] There was no comparable problem in black neighborhoods. And when a black who was successful in the primary election in 1972 ran in the general election, mailings were made by the Democratic Party to black registered voters, but not to white for fear of "stirring up a bunch of persons to vote against" the black candidate.[3]

Cultural and social barriers erected by segregation continue significantly to impede black political opportunities

---

1. Ibid., pp. 417-18.
2. Ibid., p. 146, testimony of Johnny White.
3. Ibid., p. 137.

minority candidates is the lack of access to the dominant, numerically superior white community. As one black candidate, E.J. Cromartie, explained:

> In the white community, there's a tremendous problem of access. . . .You have civic organizations such as the Rotary, of course, and there are no blacks in the Civitan Club or the Summit Club. . . .The political process is simply an outgrowth. . .of how we live.[1]

In addition to the lack of access by black candidates to the white community, it is difficult in Columbia for others to campaign effectively for black candidates in the white community. The Fire Fighters Association, for example, got an adverse reaction in the 1978 mayor and council elections in white neighborhoods urging voters to support a bi-racial ticket.[2] There was no comparable problem in black neighborhoods. And when a black who was successful in the primary election in 1972 ran in the general election, mailings were made by the Democratic Party to black registered voters, but not to white for fear of "stirring up a bunch of persons to vote against" the black candidate.[3]

Cultural and social barriers erected by segregation continue significantly to impede black political opportunities

---

1. Ibid., pp. 417-18.
2. Ibid., p. 146, testimony of Johnny White.
3. Ibid., p. 137.

and deny minority candidates white support. According to another black candidate for city council, Franchot Brown:

> We cannot depend, as voting practices have proven in the past, on the white vote to elect a black candidate to city council. That's it, and I'm not being racist in what I'm saying, and I'm certainly not being anti-white or pro-black. I'm speaking from the facts as they have proven themselves in past campaign results.[1]

Douglas McKay, an expert in the field of electoral geography, conducted a study, based upon census data, of the relationship in Columbia between socio-economic and class factors and voting behavior. Race, he said, was "very significant" in explaining voting behavior, and has continuing significance.[2] In fact, because of the constant relationship between socio-economic conditions, such as the race of voters, it is actually possible to predict voting behavior in the City of Columbia.[3] In McKay's judgment, at-large voting clearly disadvantages blacks.

Earl Black, professor of government at the University of South Carolina and author of Southern Governors and Civil Rights (1976), concluded that the chances of a black winning office in the City of Columbia are slim:

---

1. Ibid., p. 139
2. Ibid., pp. 20, 22.
3. Ibid., pp. 9, 21-2, 24.

> They are not able to get that minimum degree of white support given very heavy black support and given relatively high black-to-white turnout.[1]

While blacks have actually won in the Democratic primary, the importance of the primary in city politics has diminished. Because of an influx of Republican, primarily white, voters, the general election has an added significance, the consequence of which "is that the size of the black vote is diluted when you move from Democratic primaries to the general elections."[2]

Racial bloc voting, because of an "underlying cleavage along racial lines," is a "working assumption as far as politics in Columbia is concerned." "For many--it's most unlikely that they are going to take seriously the question of whether they vote for a black candidate or not."[3] In Columbia, there is a "typical pattern of widespread racial polarization."[4] There is

> a very strong reason to conclude that although it is not impossible for black candidates to win, it is unlikely, given the nature of the rules of the game. The requirements that blacks have a substantial minority of white allies for support puts a very heavy burden on black candidates, and to this point in time, black candidates in the city council races have not been able to find the 30 percent or 33 percent of the white voters that they need to win.

---

1. Ibid., p. 55.
2. Ibid.
3. Ibid., 56, 57.
4. Ibid., 62.

After reviewing precinct returns for all city elections in which blacks were candidates, Professor Black concluded that "at-large elections of this type put black candidates at a severe disadvantage."[1]

The complaint in this case was tried on December 17-19, 1979, and February 5, 1980. By order dated March 24, 1980, the district court entered judgment for the defendants. The court held there was "no evidence that blacks cannot be elected under the present system," and that the plaintiffs "failed to prove any racially discriminatory intent or purpose on the part of the Defendants in maintaining a City Council with four councilmen elected at large."[2]

The plaintiffs appealed and arguments were heard by the Fourth Circuit Court of Appeals in February, 1981.

---

1. Ibid., 69.
2. Ibid., Slip Opinion, pp. 9, 13.

POSTCRIPT:

On two occasions, referenda have been held in Columbia calling for a combination of districts and at-large elections for city government to provide an opportunity for minority office holding. Both were defeated.[1] At the last such election on April 7, 1981, the vote was deeply polarized. According to local media accounts, "racial scare tactics and demagogery took over. . . .for their part the white establishment of Columbians for Good Government helped whip up the 'politics of fear,' with leaflets distributed to thousands of white homes in the closing days of the election."[2] The mayor and council, to a man, opposed the proposed plan.[3]

---

1. "Council Savors Win in 6-2-1 Plan Vote," The State, April 8, 1981; Washington v. Finlay, Slip Opinion, p. 4.

2. "Sweet End to Bitter Fight for Opponents of 6-2-1," The State, April 9, 1981.

3. "City Councilmen Differ on Best Way to Fight 6-2-1," The State, February 25, 1981.

Mississippi; Riddell v. The National Democratic Party and Aaron Henry, et al., 344 F.Supp. 908 (S.D.Miaa. 1972), reversed, 508 F.2d 770 (5th Cir. 1975).

Discrimination by political parties, as the Riddell litigation demonstrates, did not end with abolition of the all-white southern primaries in the mid-1940s.

Following political party delegate challenges in 1964 and 1968, based upon, among other things, the exclusion of blacks, the National Democratic Party recognized and issued its convention call to a predominantly black political party in Mississippi. This party (known as the Loyalists), with its chairman Aaron Henry, was a successor to the Freedom Democratic Party. It considered itself the successor to the Democratic Party of Mississippi, and attempted to register its officers with the secretary of state and generally to conduct political party business. The secretary of state considered this party a legal nonentity and continued to recognize the Democratic Party of Mississippi (known as the Regulars) which the National Democratic Party had found to discriminate against black citizens.

Aaron Henry found his party faced numerous legal obstacles. A state statute required political parties to register with the secretary of state, but in order to register, the party had to conduct precinct meetings at the polling places. Many polling places were owned by private persons, were located at segregated clubs, all-white churches, and even private carports. The state took the position that it could not provide access to these polling

places since they were private property and because Aaron Henry's party was not registered. Additionally, the party registration statute prohibited any new party from using any part of the name of a party already registered. Any form of the term "Democrat" was already registered by Aaron Henry's opponents.[1]

Aaron Henry's party conducted precinct, county, congressional and state conventions as best it could in preparation for the 1972 National Democratic Party Convention. Thereupon, they and the National Party were sued in federal court by the Democratic Party of Mississippi (the Regulars). The Regulars sought to enjoin the National Party from doing business with the Loyalists, sought to be allowed to attend the 1972 convention, to recover any money the Loyalists had raised by the use of the name "Democrat," and essentially wanted to put the Loyalists our of business.

The District Court refused to issue any injunction, but did remand the Regulars to a convention delegate challenge before the National Party. This challenge was rejected and the Loyalists were again seated at the 1972 convention. The District Court did, however, find the Loyalists to have no legal existence and no right to the Democratic party name.

All parties appealed. The Court of Appeals for the

---

1. Miss. Code §3107-01.

Fifth Circuit reversed the District Court saying:

> [W]e believe that the state's attempt to deprive the Loyalists of the opportunity to describe themselves on the ballot as part of the Democratic Party is an unconstitutional and impermissible restraint on the Loyalists' constitutional guarantees of free association. 1

In 1976 the two state parties merged and a consent agreement, based upon the invalidation of the party registration statute, was entered by the court.

---

1. Riddell v. National Democratic Party, 508 F.2d 770, 779 (5th Cir. 1975).

Tennessee; Dunn v. Blumstein, 405 U.S. 330 (1972).

James Blumstein moved to Tennessee in June, 1970, to take a job as a law professor at the University of Tennessee in Knoxville. Several weeks later he tried to register to vote but was turned down because he didn't satisfy the state's durational residency requirement for becoming a voter, i.e., residence in the state for a year and in the county for three months. He filed a lawsuit which made its way to the Supreme Court two years later. The Court held the state law unconstitutional.

Acknowledging that states may impose restrictions on the franchise to assure that only bona fide residents vote, the Court found that durational residency requirements do not serve that interest in the least restrictive manner. Rather, they discriminate between newly arrived and long time residents, all of whom are bona fide residents. The Court gave weight to 42 U.S.C. §1973aa-1, which abolished durational residency requirements for presidential elections. "[T]he conclusive presumptions of durational residence requirements are much too crude. They exclude too many people who should not, and need not, be excluded."[1]

Although there was no specific claim of race discrimination raised by the white plaintiff in this case, durational residency requirements were a common method of restricting the franchise to the supposedly more stable white community and excluding migratory blacks.[2] The effect of the decision was to render invalid such requirements in many states of the Union.

---

1. Dunn v. Blumstein, 405 U.S. 330, 360 (1972).

2. Armand Derfner, "Racial Discrimination and the Right to Vote," 26 Vand. L. Rev. 523, 535 (1973).

Henderson, North Carolina; Hatton v. City of Henderson, North Carolina, No. 75-2061 (4th Cir. June 3, 1976)(unreported).

On February 20, 1974, the NAACP filed a lawsuit on its own behalf and that of black voters and candidates, challenging the at-large election system, with residential candidacy districts, in the City of Henderson, North Carolina. Blacks were 45% of the city's population, but no blacks had ever been elected to city office. The District Court granted summary judgment for the city, for the reason that the plaintiffs had not proved the electoral process was not open to blacks. Plaintiffs appealed.

The Fourth Circuit affirmed on June 3, 1976, on the basis of the District Court's opinion and Dusch v. Davis, 387 U.S. 112 (1968).

The ACLU Foundation, Inc. filed a Motion for Leave to File a Memorandum Amicus Curiae, arguing that summary judgment was inappropriate in a case under the Fifteenth Amendment involving dilution of minority voting strength by an at-large system. Amicus pointed out that Dusch v. Davis had no application to racial dilution claims, the Supreme Court expressly leaving that question open in that opinion, reiterating this in Dallas County v. Reese, 421 U.S. 477 (1975). Although the Court ordered the parties to respond to the motion, it ultimately let its decision stand, declining to order a rehearing sua sponte.

Bush v. Sebesta and Farr v. Taylor, 359 F.Supp. (M.D.Fla. 1973), vacated, 416 U.S. 918 (1974), aff'd, 423 U.S. 975 (1975).

Plaintiffs, various aspiring political candidates, challenged Florida's five per cent filing fee for candidates. Florida, like many other states, allowed for no other manner to gain ballot access than to pay the filing fee of five percent of the annual salary of the office sought. This was a long standing device which discouraged all but mainstream, "acceptable" candidates and those affluent enough to pay the filing fee regardless of the seriousness of their candidacy.

In view of the Supreme Court's decision requiring some alternative method of qualifying,[1] the district court imposed an interim remedy for the 1972 elections, setting out petition requirements (10,000 names for statewide offices, one percent of the population up to 3,000 names for other offices). The court upheld the filing fee system, its only defect, the court said, being the absence of an alternative method.

Plaintiffs appealed, arguing that since 91 per cent of the filing fee went unencumbered to the political party (and the party did not finance primaries), the fee was not justified by any compelling state interest. They also challenged the court's remedy which required candidates in multi-member districts to gather up to six times the numbers of signatures (in a six member district) than a candidate in a single-member district.

---

1. Bullock v. Carter, 405 U.S. 134 (1971).

After the Supreme Court entered opinions in three candidate qualification cases,[1] that vacated the judgment of the Florida court and remanded the consideration in light of the new cases.

Six weeks later the Florida Legislature enacted a petitionary statute far more onerous than the court's interim remedy. The number of signatures for statewide office was increased to 115,000, local offices more than doubled. The five per cent filing fee for those who could afford it was retained.

The district court sustained the petitioning requirements as not unconstitutionally burdensome when considered under the recent Supreme Court decisions, including the aspect of multi-member district candidates having to gather up to six times the number of signatures required of a single-member district candidate. Plaintiffs again appealed but the Supreme Court affirmed without opinion.

---

1. Lubin v. Panish, 415 U.S. 109 (1974); Storer v. Brown, 415 U.S. 724 (1974); American Party of Texas, v. White, 415 U.S. 744 (1974).

Mr. McDONALD. I would like now if I may introduce Mr. Edward Brown, for the record. Mr. Brown is from Camilla, Ga., and will further identify himself by telling us what he has been up to in the last few years.

Mr. EDWARDS. We will also introduce Ms. Laura Murphy from the Washington office of the ACLU. Glad to have you.

STATEMENT OF ED BROWN

Mr. BROWN. Good morning, Mr. Chairman. I am district coordinator of the southern district of the NAACP, which includes 20 counties in southwest Georgia. I appreciate the opportunity of appearing before this committee and to express my complete support for the Rodino bill extending the Voting Rights Act of 1965. I have run for political office on two occasions: in 1976 for the State house of representatives, and in 1979 for mayor of Camilla.

My experience has been that race is a tremendous handicap in running for office in southwest Georgia. No. 1, it is difficult to campaign in white areas. I tried it, but whites were reluctant to accept my campaign material. On one occasion a man tore up my card as I stood on his front doorstep.

Private clubs and churches are basically segregated, so it is hard to establish political coalition with whites. The exclusive white club runs the election in Camilla. The all-white Rotary Club runs the election in Pelham, Ga. An all-white club does the same in Macon, the third largest precinct.

As might be expected, racial bloc voting is the norm in my county. During my State race a deputy sheriff carried whites to the polls, but he never carried one black. My wife voted, and as she was marking her ballot she overheard the deputy instruct the voter in the adjoining booth not to vote for Edward Brown, "He is a nigger."

Another point, in my running for mayor my pollwatcher was denied entrance to the polls until 11:30 on election day. The reason was because my white opponent did not have a pollwatcher, and Georgia law says you must submit, make a submission asking for a pollwatcher 21 days prior to the election. During that same election the city local police guarded the lines of voters all day, a practice which intimidated blacks, to discourage them from coming to vote. In fact, two blacks were arrested for interfering with the voting; charges were later dismissed.

I received a majority of the vote cast at the polls, 1,001, to my opponent's 932. But after the absentee ballots were counted, I was declared the loser by a vote of 1,055 to 1,034. Mitchell County has 50 elected officials, 50 or more, only 4 black. Since 1948 it has had five suits filed against it: In 1948 for discrimination in voting; in 1964, *Whitus* v. *Balkcum* jury selection; 1967, U.S. Supreme Court finds discrimination in grand jury; in 1976, the district court, *Brown* v. *Culpeper,* they admitted guilt. But I would like to say during the time of running for mayor, there was several other instances where we had quite a bit of trouble. And during the time of running for State representative I lost a car to a fire. But I would rather hold off. And I thank you very much for letting me make this report.

Mr. EDWARDS. Thank you very much, Mr. Brown.

Ms. Murphy?

Ms. MURPHY. I have no statement. I am just here to answer questions.

Mr. EDWARDS. Very good. I am glad to have you.

Are there any white elected officials in Georgia that would agree with your testimony?

Mr. MCDONALD. I believe Congressman Fowler would not dissent from what I have had to say. I hesitate to put words in anyone's mouth, but he has publicly stated that he supports the Voting Rights Act. I am certain he does so because he believes there is a need for it.

There are black elected officials, Congressman, who obviously would also endorse what Mr. Brown and I said.

Mr. EDWARDS. Sitting up here it is rather discouraging. The unanimity in Georgia and other black Southern States is not very encouraging as far as the future is concerned. Progress is large in some ways, but we have such a long way to go. You will agree we have a long way to go.

Mr. MCDONALD. We certainly do have a long way to go. It is discouraging in some ways. But in quite another way victories do give us an enormous lift. Just as a personal note, I have found it enormously encouraging to represent people like Mr. Brown and Mr. Cross and others who in the face of seemingly stunning odds and impediments have done very positive things with their lives. That gives me a lift which carries me over a lot of the despair about the extent to which racism still exists.

One of the things I find most discouraging is the chronic evidence of racial bloc voting. That means to me that white folks, not just elected officials who might have some vested interest in retaining the present system, but the general electorate has deep resistance to blacks holding office. That is quite discouraging, aside from the individual attitudes one encounters.

Mr. EDWARDS. These white members of public service clubs, Rotary, Kiwanis, chambers of commerce, the other clubs that I believe you mentioned, Mr. Brown, these people have been to college. They have taken constitutional law in law school. They have gone to Harvard and Yale, even Stanford and UCLA. Are they not protesting this continuing effort to discriminate?

Mr. MCDONALD. No; people deal with that in different ways. Some simply deny racial discrimination exists or ever existed. I recall taking depositions of members of the board of commissioners in Harris County, Ga., deposing people who had been on that board of commissioners for 30 years. I asked them if they were aware of any particular problems that the black community had, and they all said no. And I said well, are you not aware that at one time the schools were segregated here in Harris County? No; they said. Incredible that they were not aware of that. They were not aware that the prisons and jails were racially segregated when the county government itself operated some of those facilities.

I think for some people you either have to say they are not being candid with you or they simply are incredibly ignorant about what goes on in their jurisdictions. I find it somewhat difficult to credit that last explanation. There are people who understand what is going on, people who are educated and have seen the way things

work in other places other than the traditional Southern way. I think some of them are anguished, but under oath they will insist to you that there is no problem with race discrimination in their jurisdictions. They say if a qualified black would run, that person would get elected, even though the evidence shows overwhelmingly that the whites do not vote for blacks.

Mr. EDWARDS. Are you discriminated against? Is Dr. Sherman discriminated against? Are you looked upon with some degree of disfavor? Is Dr. Sherman looked upon by other white residents of Georgia as someone who is causing a lot of trouble?

Mr. MCDONALD. Well, in some of these jurisdictions that is exactly the perception. I will give you a precise example. One of our voting cases was in Greenville, Ga., in Meriwether County, which is a county about an hour's drive from Atlanta. We represented a black man named Tobe Harris who lost a very close election for the city council in Greenville. We were successful in an election challenge because the city used a county voter registration list and there were a number of people who voted who did not live in the city. There was evidence of whites and blacks doing that. There was also evidence of the person who ran the elections committing, in my opinion, flagrant violations of the election laws. He was soliciting votes for a white candidate in the polling place, for example. He would go into the polling booth according to some of the testimony to ask people to vote for his candidate.

At any rate, that election was set aside by a State court judge, so flagrant were the violations. At the next election, Tobe Harris was elected to the city government. Within a matter of days thereafter, three people were indicted for voter fraud, three blacks. No whites. We subsequently agreed to represent those three young men. They were 18 years old. They had never voted before. They knew there was an election. They went down to the city. They were on the list and they voted. The same was true of a number of whites. Yet, the only people who were charged were the three blacks.

We filed a motion to dismiss those charges—they were accusations, they were not grand jury indictments—on the grounds of selective racial prosecution. I recall vividly going down to the courtroom which was then in the old school gymnasium in Greenville, because the courthouse had burned and had not yet been rebuilt, and filing those motions in open court. Suddenly, the prosecutor jumped up and walked over to me and punched me in the chest several times in open court. I was absolutely amazed. Committed battery, if you will, technically, and insisted that nobody was going to come down to his town and accuse them of racial discrimination.

That is an exaggerated example. But I was not unprepared for the kind of reception I got, although I must say that the poke in the chest stunned me, took me aback. But in places like Atlanta, of course, people like me who do civil rights work have our own friends and so on. It is not as though we feel we live in a different part of the world.

Mr. EDWARDS. Thank you.

Counsel.

Ms. DAVIS. Thank you, Mr. Chairman.

Mr. McDonald, how many voting rights cases has your office handled?

Mr. McDONALD. Well, over the past 10 years we have done about 63. Almost all of those were Federal civil actions. But some of them were criminal defense. For example, the three people we represented in Meriwether County—but most of those were affirmative civil suits.

Ms. DAVIS. What percentage of those cases were section 5 claims or constitutional claims?

Mr. McDONALD. Probably 35 percent of those are section 5 claims. A little more than 20 of those involved section 5. I may say that we tended to file more constitutional challenges during the early years because we were not aware of the pattern of noncompliance with section 5. It is as if that simply was under the rug. But once you began to see the pattern, then we were able to do some investigating and discovered that section 5 problems are there in abundance. Of course, if you have an option about whether to bring a suit to enforce section 5 or bring a constitutional challenge, in every instance you will choose the section 5 route because section 5 litigation as you know was designed by Congress to be streamlined. All you have got to show is whether the jurisdiction is covered, whether there has been a change, and whether it has been precleared. Those are the only issues for the three-judge court and the jurisdiction. Then if there is a submission the jurisdiction has the burden of showing that the change is not regressive.

But in constitutional litigation by contrast, the burden is on the plaintiffs. You must make out a violation of the Constitution. We have done a lot of constitutional litigation, and it is horrendously expensive and enormously time consuming. Mr. Lodge testified about the Burke County case. There were three of us who were involved in that case. I was talking to David Walbert, chief trial attorney in that case, and was wondering to him how many hours the three of us had in the litigation. We think we have got upwards of 500 hours in that lawsuit alone. The case is now pending in the U.S. Supreme Court, Burke County Board of Commissioners filed an appeal. So we have more rounds coming up. We may have more rounds after the round in the U.S. Supreme Court. Conceivably a case like that could take 750 hours. Just reckon the cost of that in addition to attorneys' time. If we billed our time at $100 an hour, which is quite modest by Washington standards, that is $75,000.

Plus the decisions indicate that, if a case is unique or has special problems where you would be justified in asking for a bonus. That is a lot of money. If we prevail, the county has to pay us plus they have to pay their own attorneys; heaven knows how much they are being paid. Plus there are our costs and expenses. Section 5 is not just good for us. It has got to be good for a county like Burke it seems to me to solve its problems in an efficient, cheap administrative way. They do not have the resources to pay the kind of money, that litigation entails.

Ms. MURPHY. Counsel?

Ms. DAVIS. Yes.

Ms. MURPHY. I might add that the ACLU would not be able to afford to continue its litigation if section 5 were to end. Not at its

present rate. Even with the presence of attorneys' fees, the drain on our budget of this kind of litigation is very severe. I just believe that we cannot go on without section 5 because the burden is on the plaintiffs and their litigators. We have national financial problems as it is now. The Southern regional office is not taking on all the cases that it could take on. So under the present scheme, it is expensive.

But should section 5 expire, we would not be able to handle the volume of complaints which merit our attention. If we look at the objections from Georgia those represent lawsuits. If those objections were lawsuits we couldn't possibly carry that kind of caseload.

So it is a severe financial burden to the ACLU, the NAACP and Legal Defense Fund. We don't think we should bear that kind of burden.

Ms. DAVIS. The section 5 cases you have handled are they primarily ones where Justice has interposed an objection and the jurisdiction has ignored it, or where submission has not been made?

Mr. MCDONALD. Most are where submissions have not been made. Some involve objections which the jurisdictions have refused to honor.

Ms. DAVIS. Procedurally in those instances do you first contact the Justice Department so they know the submission has not been made?

Mr. MCDONALD. Here is what we do quite frankly. We notify the Department of Justice and then we bring the suit. Because that is the quickest way to remedy the problem.

Ms. DAVIS. You mentioned earlier that you had some positive things to say about the Justice Department. I am wondering if there are instances in Georgia where the Justice Department has taken steps to enforce its section 5 objections.

Mr. MCDONALD. Independent actions? They have intervened in our lawsuit in Sumter County. I feel somewhat torn, to be very honest, about their doing that. It is great for our case. It is great for our plaintiffs. But as they say in legal circles, it is a me-too suit. They need to be doing their own stuff, it seems to me.

If I could take the detached view, I might have questions about their intervention. But as an advocate I welcome them in the lawsuit.

Ms. DAVIS. But you have no examples where they have done that, independently sought to enforce those objections?

Mr. MCDONALD. None come to mind in Georgia.

Ms. DAVIS. If I may, Mr. Chairman, does the law under section 5, which presently has an intent or effect standard, mandate proportional representation or quotas?

Mr. MCDONALD. No. Quite honestly, and I will answer the question as directly as I can, I know the charge is made, that people who advocate the effect standard, are really seeking proportional representation. We are not asking for that. I think the analogy is wholly success with the law of jury discrimination. The law is that a criminal defendant is not entitled to a jury that proportionally represents any particular class.

A black is not entitled to a jury that proportionally represents blacks; a woman is not constitutionally entitled to a jury that proportionally represents women. But what they are entitled to are procedures which don't exclude those groups. The same thing is true with voting rights. When we seek single member districts for example, it is to insure that minority candidates may run without losing automatically. But that does not mean that any black candidate will get elected. I don't think that any court or any legislature can insure proportional representaton because the voters are the ones who choose who their representatives will be. Blacks can and do vote for whites. And a black majority community may very well elect a white.

I think there is no constitutional requirement that that be otherwise. It seems to me what the Constitution does require is that people not be automatically excluded from the electoral process because of race.

Ms. DAVIS. Thank you.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. No questions, Mr. Chairman.

Mr. EDWARDS. When some of these counties or cities make submissions under section 5 to the Department of Justice, we understand that then the Department of Justice gets in touch with people in the towns or cities and gets opinions, either over the telephone or some way like that, to indicate whether or not there might be discrimination. Is this the common practice?

Mr. MCDONALD. It is a common practice. In our office, as a matter of fact, we get the list of submissions, and we try to notify the Department of Justice if there is anything in a particular county which we know about. On occasion they will call to solicit comments. But we always try to send comments in in areas we know something about without waiting for them to be solicited. There is an opportunity of course for that kind of input.

Mr. EDWARDS. It wouldn't be a good system to have, however, if the submissions were not mandatory. There would be a system only where the Justice Department would object first if there was an objection back home.

Mr. MCDONALD. I absolutely agree that if we want to protect minority voting and address the whole question of changes, there has got to be an affirmative obligation on the part of the jurisdiction to make the submission. If we shift that burden to community groups, we will have a worse situation than we have presently got. We need more assurance that these things get submitted, it seems to me, not less.

There ought to be some procedure for the Department of Justice actively to monitor all changes so that they can make sure they get submitted. For example, a city council may enact a new ordinance repealing some provision of its election code. And the Justice Department never knows about that. There ought to be something in the whole procedure so that doesn't happen. States, for example, could be required to submit their session laws as a matter of course. And they perhaps should have the obligation of collecting all changes at the local level. But we need more, not less of what you talk about, to make sure these things get to the Department of Justice.

Mr. EDWARDS. Is this process that the cities and counties and States have to go through in complying with section 5 a terrible burden financially and emotionally on them?

Mr. MCDONALD. It is not a financial burden, Mr. Chairman. And I have been in many of these counties. Quite candidly, I don't want to misrepresent what I hear, people don't object to the administrative or financial burden. It simply costs a stamp and sending something up to Washington. They may have to write a followup letter, but that is not very important.

But the real objection is the philosophical one. People think it is demeaning to go to Washington to get, I am paraphrasing what I hear, to get permission from somebody in the Federal bureaucracy to change their election laws. That is why they don't like it, based on philosophical grounds. But it is not quite honestly, in my experience, an administrative burden.

Attorney General Daniel McLeod, from my native State of South Carolina, said recently at an ABA meeting I attended that complying with section 5 was not an administrative burden. A philosophical burden, spiritual burden, but not administrative.

I brought some documents with me which I would like very much to submit for the record. I said earlier that I thought there would be an erosion in black voter participation. I think that is true because of bloc voting. Whites don't want blacks to hold office. But there is also, for example, a provision on the registration form in South Carolina which requires a literacy test. It is not enforced because it was suspended by the Voting Rights Act in 1965. But if you walk into a voter registration office in South Carolina they will give you this form, which I would like to submit for the record which provides: "I will demonstrate to the registration board that I can read and write a section of the constitution of South Carolina."

The State of Georgia still contains in its constitution the old good character or understanding test. Of course, it is not applied because it has been suspended, but I would like to attach a copy of that.

Mr. EDWARDS. Without objection, it will be received. (See exhibits 1-6 at p. 2588.)

Mr. MCDONALD. I also have a copy of the 1958 literacy test in Georgia which contains the infamous 30 questions and I would submit it to the chairman to see how well he would do. I don't think I could register in Georgia, you had to pass, I think it was 20 of the 30.

Mr. EDWARDS. I don't think the chairman could make it either. That will be received. (See p. 2608.)

Mr. MCDONALD. Finally, I brought, if I may, some newspaper articles which talk about the queuing episode that I talked about in the city of Thomson. (See p. 2615.)

I know there has been some testimony from others about no racial discrimination existing in the State of Georgia. I don't know Professor Saye. I know he gave some of that testimony. I know he is from Clarke County. I was curious to see whether or not our office had had any litigation in Clarke County. I forgot until I went through our files that in 1974, not so long ago, we represented a young girl named Jackie Bagget, and her fiance, Ron Clark. They were an interracial couple who were students at the University of Georgia. They went to see Ms. Ruby Hartman, the ordinary of Clarke County and asked for a marriage license. They were refused

the marriage license because the ordinary said she didn't approve of interracial marriage.

We filed a lawsuit in 1974. I have a copy of the complaint. The defendent filed her answer and she said that on the statute books in Georgia are laws against miscegenation and to violate those by issuing a marriage license would subject her to criminal prosecution and that those laws were presumptively valid.

After conference with the district court judge a marriage license was forthwith issued, and the case was subsequently dismissed on payment of some nominal damages by Ms. Hartman. But that is only to say that anywhere you look in the State of Georgia, Rome or Clarke County, you find these kinds of examples. Race is a continuing problem in the State of Georgia.

Ms. MURPHY. Mr. Chairman, speaking of Rome, Mr. McDonald probably addressed some of the issues brought up by Mr. Brinson earlier stating that Rome ought to be able to bail out of continued coverage under section 5.

Within the ACLU we have been kicking around ideas about bailout which we are not prepared to make any solid recommendations. But we do think in the course of the legislation that the issue of bailout will come up. Congressman Butler has already told us that he may introduce a bailout bill. I would like Mr. McDonald to address some of those issues. Maybe counsel has some questions to that effect.

Mr. MCDONALD. Well, of course, we support the present bailout and urge extension of the act pursuant to the Rodino bill. We are often asked whether or not there is any other way to write the law. I know that there is more than one way to do anything in this life, including writing voting rights laws.

I think the bailout ought to be maintained because it is not expensive, it is not an administrative burden. I don't know of those so called pockets of racial harmony where the peaceable kingdom exists and the buffalo and tiger in fact lie down together. They may be there, but I don't personally know of any. I don't know of any places unfairly captured under section 5. But assuming for purposes of the argument that we could try to come up with a different bailout, I should think it would have to provide that those jurisdictions have nondiluting electoral systems. That is, they would be obligated to demonstrate that their systems were in fact ones that did not have the potential for diluting minority voting strength.

I think coupled with that there would certainly have to be a retriggering mechanism which could get those jurisdictions recovered in the event there were regressive changes.

Ms. DAVIS. Thank you, Mr. Chairman. Both Ms. Murphy and Mr. McDonald have anticipated the balance of the questions that I wanted to raise.

Mr. Brown, the testimony that we have heard today from other persons from Georgia suggests that the only time that changes have occurred in places in Georgia is through a great degree of struggle, very often, litigation. Do you have any examples, either in Mitchell County or elsewhere in Georgia, where you feel that voluntary changes in race relations have occurred in that State?

Mr. BROWN. No, no. I don't know of any place that it has gotten better. The only reason I would say we do get any relief is because of section 5 voting rights, 1965 Voting Rights Act.

Ms. DAVIS. Would you agree with Mr. Lodge's statement that for many election officials who personally might want to see changes, the Voting Rights Act enables them to allow those changes to take place, and provide them with an explanation to their constituencies that the matter is out of their hands, that the changes have to go forward because it is required by the Federal Government?

Mr. BROWN. They may do so, you know. But I can't say how they feel personally.

Ms. DAVIS. What was the result in your election? It wasn't clear from your statement.

Mr. BROWN. As far as the votes accumulated at the polls, I had 1,101 and my opponent had 932. But the election officials said they had a couple of hundred, 200 absentee ballots. They then again said they had 180. They finally ended up with 156. I got 30 and he got the rest, and I ended up 24 votes shy.

Ms. DAVIS. Has that discouraged you or other blacks in your county from running for public office?

Mr. BROWN. Well, you know, it would have some effect. But, I look at it in the sense that it will continue on. But a lot of people knew that it was something besides absentee ballots and how they got there, because one gentleman had sold his house and moved to another city. And he was on the absentee list. Another lady was living in the next city in another county. She voted, too. There were several instances. There were people on there that were senile in some of the convalescent canters. Didn't know they had even voted. But I didn't have the 24 that I was beaten by. So it ended up in that manner.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman.

Mr. McDonald, when you made reference to the literacy test you used the word "suspended." Did you intend to suggest that if the provisions in issue expire in 1982, these "devices" will come back into effect?

Mr. MCDONALD. I have had that discussion with people in South Carolina, and I have been told by folks that they would not. Quite frankly, I was wondering to myself, sitting here earlier, whether I would want to rethink through my position that we would see a use of discriminatory tests. And I believe that we would see it used somewhere in that State. I firmly believe that somebody somewhere along the line, like Ms. Ruby Hartman, the judge of probate, would say that that is on the books and it is the law and we have got to enforce the law.

Mr. BOYD. What about section 4a of the act which says that "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"? Literacy tests are defined as tests or devices.

Mr. MCDONALD. I am assuming that if we are talking about not continuing the Voting Rights Act, we would also include not continuing the ban on literacy tests. But if the law stays in place, obviously we would not see use of the tests.

Mr. BOYD. There is no such proposal, is there?

Mr. McDONALD. I may misunderstand Senator Thurmond, who formally was my Senator, but I think he is calling for repeal of the Voting Rights Act. I understood this provision——

Mr. BOYD. That would require affirmative legislation. Has he introduced any?

Mr. McDONALD. Not to my knowledge.

Mr. BOYD. Thank you. Thank you, Mr. Chairman.

Mr. EDWARDS. We have no further questions. We thank the panel very much. We are going to be able to continue this morning until just before 12. We will continue with our first Alabama panel.

Abigail Turner is an attorney with the Alabama Legal Services. Theresa Burroughs is chairman of the board of the Hale County Civil Improvement League and Hon. Eddie Hardaway, district judge of Sumter County, Ala.

We welcome all of you.

TESTIMONY OF ABIGAIL TURNER, LEGAL SERVICES CORP. OF ALABAMA, MOBILE ALA.; THERESA BURROUGHS, CHAIRMAN OF THE BOARD, HALE COUNTY CIVIC IMPROVEMENT LEAGUE; AND HON. EDDIE HARDAWAY, DISTRICT JUDGE, SUMTER COUNTY, ALA.

Ms. TURNER. Thank you, Mr. Chairman.

Mr. EDWARDS. Without objection, all of the statements will be made a part of the record.

Ms. Turner, we are glad you are here. You may proceed.

Ms. TURNER. I am Abigail Turner, an attorney with the Legal Services Corp. of Alabama in Mobile, Ala. Our staff has represented black citizens in cases charging violations of the Voting Rights Act.

To ascertain whether these violations were isolated examples of noncompliance, we conducted a survey of black political participation in Alabama. The survey was designed to determine the dimensions of black political participation in Alabama since 1975, when the act was last renewed. Information was gathered by legal services staff from governmental officials, representatives of voter organizations and other citizens across the State. The situations, other than our cases, which I will describe below, are known to me as a result of that survey.

The Voting Rights Act led to dramatic increases in registration, candidacy, holding of elective office and voting of formerly disenfranchised black Alabamians. In 1960, prior to the passage of the act, only 57,500 blacks had registered; this number had grown to over 420,000 in 1980. However, these important advances do not tell the whole story. Barriers to registration and voting still hinder black Alabamians from equal political participation.

In Monroe County where 44 percent of the population is black, 30 percent of the registered voters are white. Black political leaders in that county report that blacks have been denied registration by the all-white board of registrars because they did not have social security cards. They did not have cards because they had never worked in covered employment. Others who were unable to state the names of two registered voters who could vouch for them were denied registration.

This voucher requirement is expressly prohibited by the act, 42 U.S.C. 19793b(c). Alabama law permits boards of registrars to appoint deputy registrars, but the Monroe County Board had refused repeated requests to appoint them.

Pickens County in west Alabama has a 42-percent black population. However, 67 percent of the registered voters are white. Vigorous registration campaigns in that county have confronted stiff opposition. Again, registrars refused to appoint deputy registrars. Persons assisting in the registration campaigns reported that on at least two occasions registrars called the sheriff when groups of blacks appeared to register. The sheriff, a deputy and the courthouse grounds keeper stood over the applicants as they attempted to complete the forms. That had a chilling effect.

In the last 2 years, the Legal Services Corp. of Alabama has represented clients whose rights to nondiscrimination in voting have been violated. These cases clearly illustrate the effectiveness of the legal tools provided in the Voting Rights Act.

Hayneville incorporation. The town of Hayneville, which lies in the heart of Alabama's black belt, incorporated in 1968 and drew its boundaries so that 85 percent of the electorate were white. Hayneville is the county seat for Lowndes County, which in 1970 was 77 percent black. The incorporation was not submitted to the Justice Department until 1978.

We represented black citizens excluded from the town and provided evidence to the Justice Department that the intent and effect of the incorporation was to exclude blacks. Justice objected to the incorporation under section 5 and suggested that the town expand its boundaries to include the contiguous black neighborhoods whose residents desired to be in the incorporated area. Consequently, the town passed a resolution to incorporate the additional areas, and the legislature enacted the new boundaries in 1980.

Clio annexations. The town of Clio annexed territory in 1967 and 1976 and did not submit the changes to the Justice Department under section 5. The U.S. Attorney General requested submission of the 1976 annexation and warned the town that it could not legally implement the annexation as it affected voting until the town had complied with section 5. Ignoring this, Clio held municipal elections in July 1980. Persons in the annexed areas voted. An all-white, five-member council was elected which included two residents from the annexed areas. Clio's population in 1980, including the annexed areas, was 47 percent black.

Mary Gamble, a black citizen, lost her race for town council by five votes. We represented her in filing suit under the Voting Rights Act challenging the failure to preclear the annexations. In March 1981, the three-judge Federal court found the annexations violated section 5 of the Voting Rights Act. The court terminated immediately the terms of the two persons residing in the annexed area, and the terms of the remainder of the council and the mayor in 120 days. *Gamble* v. *Town of Clio,* civil action No. 80-1456-N (M.D. Ala. 1981). The town has scheduled new elections for next week.

Mary Gamble believes she faced serious economic problems because she was a black candidate. Ms. Gamble had a loan, secured by a second mortgage on her home, from the only bank in Clio. The

white man who has been mayor of Clio for more than 25 years is the president of the Bank of Clio. Two weeks before the town council election, the mayor, president of the bank, notified her that she had 3 days to bring her note to a current status. After she filed an election contest in State court, the mayor came to her house about the note.

Wilcox County's purging of voters. No black person was registered to vote in Wilcox County prior to enactment of the Voting Rights Act. With the act's passage, Federal registrars came to this majority black county and registered several thousand black voters.

In 1978 a black man was elected sheriff of the county and two blacks were elected to the county commission. Before the next local elections in 1980, the Wilcox County Board of Registrars decided to purge voters who had been convicted of disqualifying crimes or had died. Registered voters to be purged were not notified according to State law. They learned that their names were being removed only when the U.S. Office of Personnel Management, pursuant to section 7 of the Voting Rights Act, began contacting the persons on the list who had been registered by the Federal registrars.

One of our client's name had been removed because of death. Another's child had died, and the adult's name had been removed. A third person was removed because of an alleged first degree murder charge; he had never been charged.

The Office of Personnel Management found that many registered voters to be purged were properly registered and had been victims of an inaccurate investigation by the board of registrars. Most of the persons on the purge list were black.

When the board proceeded with the purgation despite the inaccuracies, black citizens complained to the Department of Justice and the Office of Personnel Management. Our clients filed suit to enjoin the purgation, so they could vote in the September 1980 primary.

The Justice Department observers at the primary insisted that the persons purged be allowed to vote; Justice later disapproved the purgation of federally registered voters. At the preliminary injunction hearing prior to the November 1980 general election, the defendants consented to restore the persons' names improperly removed and to purge in accord with State and Federal law.

The Alabama Legislature in May 1981 enacted a voter reidentification requirement for Wilcox County. Actually the process is a reregistration. The county's first black sheriff, Prince Arnold, described the effect on black voters: "It took us 15 years to get these people registered. Now we will have nine months to do what took 15 years." The bill required a voter to appear in person before the board of registrars between the hours of 9 and 4. The board is only required to sit 1 day in each location. Voters must complete a questionnaire which includes social security number and driver's license number. Unlike similar bills which apply to other counties in Alabama, the Wilcox County act contains no option to present other identification.

Section 5 preclearance has been an important weapon in the fight to protect the voting rights of blacks in Alabama. The Attorney General has interposed objections to 43 voting changes submit-

ted from Alabama. Those are listed in an attachment at the end of my statement. This list shows the numerous methods by which Alabama jurisdictions have attempted to thwart effective black political activity. Included are 7 at-large election systems and 15 annexations. Many of these changes are very recent. Nineteen have occurred since January 1, 1975.

Voluntary compliance with the preclearance requirements is the heart of section 5. Alabama counties and towns continue to avoid the requirements of the Voting Rights Act by failing and/or refusing to comply with section 5. That was the case in Hayneville and Clio, as I noted above. These are not isolated occurrences. In 1975, the Alabama Legislature passed 38 acts which changed voting laws. The changes still have not been submitted for preclearance; 24 of the changes involve annexations.

While the Voting Rights Act has opened the door for blacks to overcome more than 100 years of disenfranchisement, there are still major barriers to equal political participation in Alabama. Without the extension of the Voting Rights Act, this equality will never be realized.

Mr. EDWARDS. Thank you very much, Ms. Turner.

Mr. Edwards.

[The complete statement follows:]

TESTIMONY OF ABIGAIL TURNER ON THE VOTING RIGHTS ACT
BEFORE THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE HOUSE JUDICIARY COMMITTEE
JUNE 3, 1981

Mr. Chairman, members of the Subcommittee, I am Abigail Turner, an attorney with the Legal Services Corporation of Alabama in Mobile, Alabama. Our staff has represented black citizens in cases charging violations of the Voting Rights Act. To ascertain whether these violations were isolated examples of noncompliance, we conducted a survey of black political participation in Alabama. The survey was designed to determine the dimensions of black political participation in Alabama since 1975, when the Act was last renewed. Information was gathered by Legal Services staff from governmental officials, representatives of voter organizations and other citizens across the state. The situations, other than our cases, which I will describe below are known to me as a result of that survey.

The Voting Rights Act led to dramatic increases in registration, candidacy, holding of elective office and voting of formerly disenfranchised black Alabamians. In 1960 prior to the passage of the Act, only 57,500 blacks had registered; this number had grown to over 420,000 in 1980. However, these important advances do not tell the whole story. Barriers to registration and voting still hinder

black Alabamians from equal political participation.

In Monroe County where 44% of the population is black, 80% of the registered voters are white. Black political leaders in that county report that blacks have been denied registration by the all white board of registrars because they did not have Social Security cards. They did not have cards because they had never worked in covered employment. Others who were unable to state the name of two registered voters who could vouch for them were denied registration. This voucher requirement is expressly prohibited by the Act, 42 U.S.C. §1973b(c). Alabama law permits boards of registrars to appoint deputy registrars, but the Monroe County Board had refused repeated requests to appoint them.

Pickens County in west Alabama has a 42% black population. However, 67% of the registered voters are white. Vigorous registration campaigns in that county have confronted stiff opposition. Again, registrars refused to appoint deputy registrars. Persons assisting in the registration campaigns reported that on at least two occasions registrars called the sheriff when groups of blacks appeared to register. The sheriff, a deputy and the courthouse grounds keeper stood over the applicants as they attempted to complete the forms. That had a chilling effect.

In the last two years, the Legal Services Corporation of Alabama has represented clients whose rights to nondiscrimination

in voting have been violated. These cases clearly illustrate the effectiveness of the legal tools provided in the Voting Rights Act.

Hayneville Incorporation.

The Town of Hayneville, which lies in the heart of Alabama's black belt, incorporated in 1968 and drew its boundaries so that 85% of the electorate were white. Hayneville is the county seat for Lowndes County, which in 1970 was 77% black. The incorporation was not submitted to the Justice Department until 1978. We represented black citizens excluded from the town and provided evidence to the Justice Department that the intent and effect of the incorporation was to exclude blacks. Justice objected to the incorporation under Section 5 and suggested that the town expand its boundaries to include the contiguous black neighborhoods whose residents desired to be in the incorporated area. Consequently, the town passed a resolution to incorporate the additional areas, and the legislature enacted the new boundaries in 1980.

Clio Annexations.

The Town of Clio annexed territory in 1967 and 1976 and did not submit the changes to the Justice Department under Section 5. The United States Attorney General requested submission of the 1976 annexation and warned the town that

it could not legally implement the annexation as it affected voting until the town had complied with Section 5. Ignoring this, Clio held municipal elections in July 1980. Persons in the annexed areas voted. An all white five-member council was elected which included two residents from the annexed areas. Clio's population in 1980, including the annexed areas, was 47% black. Mary Gamble, a black citizen, lost her race for town council by five votes. We represented her in filing suit under the Voting Rights Act challenging the failure to preclear the annexations. In March 1981, the three-judge federal court found the annexations violated Section 5 of the Voting Rights Act. The court terminated immediately the terms of the two persons residing in the annexed area, and the terms of the remainder of the council and the mayor in 120 days. Gamble v. Town of Clio, Civil Action No. 80-1456-N (M.D. Ala. 1981). The town has scheduled new elections for next week.

Mary Gamble believes she faced serious economic problems because she was a black candidate. Ms. Gamble had a loan, secured by a second mortgage on her home, from the only bank in Clio. The white man who has been Mayor of Clio for more than 25 years is the President of the Bank of Clio. Two weeks before the town council election, the Mayor, President of the Bank, notified her that she had three days to bring

her note to a current status. After she filed an election contest in state court, the Mayor came to her house about the note.

Wilcox County's Purging of Voters

No black person was registered to vote in Wilcox County prior to enactment of the Voting Rights Act. With the Act's passage, federal registrars came to this majority black county and registered several thousand black voters.

In 1978 a black man was elected sheriff of the county and two blacks were elected to the county commission. Before the next local elections in 1980, the Wilcox County Board of Registrars decided to purge voters who had been convicted of disqualifying crimes or had died. Registered voters to be purged were not notified according to state law. They learned that their names were being removed only when the United States Office of Personnel Management, pursuant to Section 7 of the Voting Rights Act, began contacting the persons on the list who had been registered by the federal registrars. One of our client's name had been removed because of death. Another's child had died, and the adult's name had been removed. A third person was removed because of an alleged first degree murder charge; he had never been charged.

The Office of Personnel Management found that many registered voters to be purged were properly registered and had been victims of an inaccurate investigation by the Board of Registrars. Most of the persons on the purge list were black.

When the board proceeded with the purgation despite the inaccuracies, black citizens complained to the Department of Justice and the Office of Personnel Management. Our clients filed suit to enjoin the purgation, so they could vote in the September 1980 primary. The Justice Department observors at the primary insisted that the persons purged be allowed to vote; Justice later disapproved the purgation of federally registered voters. At the preliminary injunction hearing prior to the November 1980 general election, the defendants consented to restore the persons' names improperly removed and to purge in accord with state and federal law.

The Alabama Legislature in May 1981 enacted a voter reidentification requirement for Wilcox County. Actually the process is a reregistration. The county's first black sheriff, Prince Arnold, described the effect on black voters: "It took us 15 years to get these people registered. Now we'll have nine months to do what took 15 years." The bill requires a voter to appear in person before the board of registrars between the hours of 9:00 and 4:00. The board is

only required to sit one day in each location. Voters must complete a questionnaire which includes Social Security number and driver's license number. Unlike similar bills which apply to other counties in Alabama, the Wilcox County act contains no option to present other identification.

Section 5 preclearance has been an important weapon in the fight to protect the voting rights of blacks in Alabama. The Attorney General has interposed objections to forty-three voting changes submitted from Alabama. Those are listed in an attachment at the end of my statement. This list shows the numerous methods by which Alabama jurisdictions have attempted to thwart effective black political activity. Included are seven at-large election systems and 15 annexations. Many of these changes are very recent. Nineteen have occurred since January 1, 1975.

Voluntary compliance with the preclearance requirements is the heart of Section 5. Alabama counties and towns continue to avoid the requirements of the Voting Rights Act by failing and/or refusing to comply with Section 5. That was the case in Hayneville and Clio as I noted above. These are not isolated occurrences. In 1975, the Alabama legislature passed 81 acts which changed voting laws. Thirty-three of those still have not been submitted for preclearance. Of the 48 submitted, three have been objected to and five are pending.

While the Voting Rights Act has opened the door for blacks to overcome more than 100 years of disenfranchisement, there are still major barriers to equal political participation in Alabama. Without the extension of the Voting Rights Act, this equality will never be realized.

I will be happy to answer questions you may have.

ALABAMA VOTING LAWS OBJECTED TO
BY THE DEPARTMENT OF JUSTICE
1965-September 1980

Submission	Jurisdiction	Date
Independent candidate qualification requirement	State	8/1/69
Independent candidate petition signature requirement	State	8/14/72
Absentee registration literacy requirement	State	3/13/70
Assistance to illiterates restricted	State	4/4/72
Elective to appointive judges(municipal)	State	12/26/72
Primary date contested elections	State	1/16/76
Combines two counties for judicial district	State	2/20/76
At-large election of county commission	Clarke County	2/26/79
At-large elections	Hale County	4/23/76
At-large elections	Hale County	12/39/76
At-large elections; Residency requirement	Autauga County Board of Education	3/20/72
At-large elections; Residency requirement	Sheffield	7/6/70
At-large elections; Majority vote requirement; Residency requirement	Autauga County	3/20/76
At-large elections; Majority vote requirement; Residency requirement; Staggered terms	Pike County	8/12/74

Method of election of county commission	Barbour County	7/28/78
Multi-member districts; Anti-single shot	Sumter County Democratic Executive Committee	10/29/74
Reapportionment of Democratic Party Executive Committee	Pickens County	2/18/76
Poll list signature requirement	Baldwin County	11/13/69
	Dale County	11/13/69
	Morgan County	11/13/69
	Montgomery County	11/13/69
	Mobile County	11/13/69
	Lee County	11/13/69
	Escambia County	11/13/69
	Russell County	11/13/69
	Mobile County	12/16/69
Redistricting	Pickens County Board of Education	3/5/76
Redistricting	Selma	4/28/80
Annexation	Alabaster	12/27/79
Annexation	Pleasant Grove	4/28/80
Annexations (6)	Alabaster	7/7/75
Annexations (7)	Bessemer	9/12/75
Candidate qualification procedures	Mobile	8/3/73
Form of city government Specified duties for commissioners	Mobile	3/2/76
Numbered posts	Birmingham	7/9/71
Staggered terms	Phenix City	12/12/75
Incorporation	Hayneville	12/29/78

Source: U.S. Department of Justice
Civil Rights Division, 9/30/80

THE VOTING RIGHTS ACT IN ALABAMA: A CURRENT LEGAL ASSESSMENT

Jane Reed Cox
Abigail Turner

June 1981

TABLE OF CONTENTS

APPENDICES

I. BLACK POLITICAL PARTICIPATION IN ALABAMA HAS INCREASED DRAMATICALLY SINCE PASSAGE OF THE VOTING RIGHTS ACT, DESPITE CONTINUING OBSTACLES

A. Introduction

The effectiveness of the legal tools provided in the Voting Rights Act is illustrated by three recent instances in which the Legal Services Corporation of Alabama has represented black citizens in Alabama challenging racial discrimination in voting rights. The Legal Services Corporation of Alabama is a private, non-profit Alabama corporation funded by Congress to represent low income persons in civil proceedings. This includes representation in civil rights matters such as voting discrimination.

Although the Voting Rights Act has provided black citizens new political participation opportunities, Legal Services' clients continue to encounter barriers to exercising their right to vote:

- Hayneville Incorporation. In 1968, the Town of Hayneville incorporated and drew its boundaries so that 85% of the electorate were white. Hayneville is the county seat for Lowndes County, which in 1970 was 77% black. The incorporation was implemented and was not submitted to the Justice Department for pre-clearance, as required by Section 5 of the Voting Rights Act, until 1978. Legal Services represented black citizens excluded from the town and provided evidence to the Justice Department that the intent and effect of the incorporation was to exclude blacks. The Justice Department objected to the incorporation on December 29, 1978, and notified the town that it could comply with the Act by expanding its boundaries to include the contiguous black neighborhoods whose residents desired to be in the town. Consequently, the town passed a resolution to incorporate the additional areas, and the legislature enacted the new boundaries in 1980.

- Clio Annexations. The Town of Clio annexed territory in 1967 and 1976 and did not submit the changes to the Justice Department. The United States Attorney General asked for submission of the 1976 annexation, warning the town that it could not be legally implemented without compliance with the Act. Ignoring this, the town held municipal elections in July 1980 with persons in the annexed areas voting and

running for office. Mary Gamble, a black citizen, lost her town council race by five votes. On her behalf, Legal Services Corporation of Alabama filed suit challenging the annexations as violative of the Act. The three-judge court in Gamble v. Town of Clio, Civil Action No. 80-0456-N (M.D. Ala. 1980) found the annexations violated Section 5 of the Voting Rights Act, terminated immediately the terms of office of two persons residing in the annexed area, and the terms of the remainder of the council and the mayor in 120 days. New elections were held on June 9, 1981.

Wilcox County. No black person was registered to vote in Wilcox County prior to enactment of the Voting Rights Act. With the Act's passage, federal registrars came to this majority black county and registered several thousand black voters.

In 1978, black men were elected to the positions of sheriff and tax collector. Before the next local elections in 1980, the Wilcox County Board of Registrars decided to purge voters who had been convicted of disqualifying crimes or had died. Registered voters to be purged were not notified as required by state law. They learned that their names were being removed only when the United States Office of Personnel Management, pursuant to Section 7 of the Voting Rights Act, began contacting the persons on the list who had been registered by the federal registrars. One of our client's name had been removed erroneously supposedly because of death. Another's child had died, and the parent's name had been removed. The name of a third person was removed because of an alleged first degree murder charge; he had never been charged.

The Office of Personnel Management found that many registered voters to be purged were properly registered and had been victims of an inaccurate investigation by the Board of Registrars. Most of the persons on the purge list were black.

When the board proceeded with the purgation despite the inaccuracies, black citizens

> complained to the Department of Justice and the Office of Personnel Managment. It was necessary for our clients to file suit to enjoin the purgation, so they could vote in the September 1980 primary. The Justice Department observors at the primary insisted that the persons purged be allowed to vote; Justice later disapproved the purgation of federally registered voters. At the preliminary injunction hearing prior to the November 1980 general election, the defendants consented to restore the persons' names improperly removed and to purge in accord with state and federal law.

These cases demonstrate the continuing value of the Voting Rights Act and the need to preserve the legal remedies provided in it. However, a survey of black political participation in Alabama was necessary to demonstrate more fully that these cases were not isolated examples. The survey was designed to determine the dimensions of black political participation in Alabama since 1975, when the Act was last renewed. It also examined barriers to full participation. Information was gathered by Legal Services staff from governmental officials, representatives of voter organizations and other citizens across the state. The results reported below are not meant to be an exhaustive explanation of every facet of black political participation. The report serves the limited purpose of documenting the remedial effects of the Act and the need for amending Section 2 and renewing Section 5 of the Act in light of continuing barriers to equal political participation.

B. Increased Political Participation.

The Voting Rights Act led to dramatic increases in registration, candidacy, holding of elective office and voting of formerly disenfranchised black Alabamians. Because the act of registering is not only a prerequisite to voting but also to running for and holding elective office, registration figures are strong indicators of minority political participation and impact. In the past 20 years, the increase in the number of blacks registered to vote in Alabama has markedly increased. While only 57,470 blacks had registered in 1960, by 1970, 284,717 were on the rolls,[1] and this number had grown to an estimated 417,000 by 1980.[2] See Table 1 in the Appendix for registered voters by county. Similarly, as shown below, the percentage of the black voting population which is registered to vote has increased dramatically.

	Black Voting Age Population	Blacks Registered	Percent Voting Age Population Registered
1960	481,320	57,470	12%
1970	457,806	284,717	62
1980	609,000	417,000	.68

Sources: Black Voting Age Population 1960 - United States Department of Commerce, Bureau of the Census, General Population Characteristics 1960, table no. 16, p. 2-31, 1970 - United States Department of Commerce, Bureau of the Census, General Population Characteristics 1970, table no. 20, p. 2-52, Abstract of the United States 1980, table number 852; Registration figures 1960, 1970 - Elizabeth Sanders, Political Science Department, Rice University[3] 1980 - Legal Services Corporation of Alabama Survey[4]

The exact number of blacks elected to office in Alabama between Reconstruction and the passage of the Voting Rights Act is not known. However, in 1965, Lucius D. Amerson was elected Sheriff of Macon County, the first black Alabamian elected to a county office in nearly a century.[5] By 1968, three years after passage of the Act, only 24 blacks held office.[6] Thus, the 278 black elected officials who now serve at the state, county and municipal levels represent a significant increase. The distribution by the types of office held by blacks in 1980 is shown in Table 2 of the Appendix.

The simple numbers of black elected officials, however, do not tell the whole story. No black has been elected to a statewide office, none has been elected to Congress. Of the 20 black mayors only four were elected in towns of over 5,000; only one of the 20 towns had less than 50% black population. See Table 3 for list of towns with black mayors.

It is generally believed that newly registered Alabama blacks have voted in substantial numbers since passage of the Act. Although records of voting by race are unavailable in Alabama, a comparison of voter turnout nationally and in Alabama indicates a trend which substantiates this belief.[7] The voter turnout in Alabama in 1964 was far below the national average. Voter turnout in Alabama sharply increased from 1964 to 1980 at a time when turnout across the country decreased.

Voter Turnout In Presidential Elections 1964 to 1980

Year	Percentage of Voting Age Population Voting	
	U.S.	Alabama
1964	61.8%	35.9%
1968	60.7	52.7
1972	55.7	44.2
1976	54.0	47.3
1980	53.9	49.7

Sources: Data for 1964, 1968, 1972, 1976 -League of Women Voters, Washington, D.C.; Data for 1980 - Committee for Study of The American Electorate "Non-Voting Study"

Further evidence of the effectiveness of the Voting Rights Act can be seen in the number of blacks who have sought elective office in Alabama in recent years. The survey has identified at least 692 black candidates who have run for office in Alabama since 1975. Their distribution by type of office sought is shown in Table 4 of the Appendix.

FOOTNOTES

SECTION I

[1] Registration figures for 1960 and 1970 were provided by Elizabeth Sanders, Rice University, who collected the data during preparation of her doctoral dissertation "Political Adjustment in Dixie: Suffrage Expansion and Policy Change." See her footnote for source.

"8 . . . . In the early 1960's, Governor Wallace's voting consultant on the State Sovereignty Commission, Martha Witt Smith, undertook a county-by-county compilation of black voter registration, principally in order to demonstrate to local registrars the results of changed literacy requirements. Local registrars cooperated by granting her access to their informal codes as well as formal records. Smith's county figures for 1960 and a subsequent enumeration in 1970 were made available to the writer."

[2] This registration estimate is based on data compiled during the Legal Services Corporation of Alabama's survey. For counties where voter registration records by race are not maintained, estimates made by informed observers, i.e., probate judges and/or black political leaders, were relied upon.

[3] Supra, n.1

[4] Supra, n.2

[5] Staff telephone interview with Lucius D. Amerson 5/29/81

[6] U.S. Commission on Civil Rights, The Voting Rights Act: Ten Years After. January 1975. Table 5, p. 50.

[7] In the publication of "The Voting Rights Act: Ten Years After" the U.S. Civil Rights Commission compares national voter turnout and turnout in states covered by the Act in order to test the assertion that increased registration of blacks after the Act resulted in increased voting by blacks.

II. BARRIERS KEEP BLACKS FROM FULL POLITICAL PARTICIPATION

In addition to demonstrating the Act's remedial effect of increased participation, the survey examined the context in which the Voting Rights Act functions in Alabama at the present. This section provides additional factual information to show the socio-political context of elections held in Alabama from 1975 through 1980. Many of the barriers described were encountered during the elections of July through November 1980. The factual information was obtained primarily through interviews with black citizens across Alabama and reflects their accounts of irregularities in voting practices and their prevailing perceptions of continued barriers to equal participation.

A. Registration Requirements Hinder Black Citizens.

Registering to vote in some Alabama counties can be an onerous process tailored for the convenience of registrars with the effect of frequently making it difficult for black persons to register. Each applicant must appear in person before the board of registrars or a deputy registrar. Ala. Code §17-4-122 (See infra at 9 for discussion on deputy registrars). The only persons entitled to register by mail in Alabama are members of the armed forces, persons employed outside the United States, persons away at college, and the spouses and children of such persons. Ala. Code §17-4-134. Other limitations registrants face in some counties include (1) registration only at the courthouse (2) between 9:00 A.M. and 4:00 P.M. (3) on poorly advertised and limited days and (4) no Saturday registration.[1]

Alabama laws of general application prescribe the maximum number of days registrars may meet per year for fifty-nine counties.[2] (The other eight operate under the provisions of local bills.) However, registrars are not required to meet even this limited number of days.

Number of Counties	Maximum Number of Days Boards of Registrars Meet
35	120
18	168
5	216
1	150

While the law states that as many as 25 session days may be used for special registration sessions,[3] in 20 counties, black citizens reported that such special sessions were rarely or never held.[4]

The Voting Rights Act forbids the use of a "test or device" as a condition for registering to vote in jurisdictions, such as Alabama, where these devices have historically prevented black people from registering. 42 U.S.C. §1973b. The prohibited tests or devices include any requirement that a person

1. demonstrate the ability to read, write, understand, or interpret any matter;

2. demonstrate any educational achievement or knowledge of any particular subject;

3. possess good moral character; or

4. prove his or her qualifications by the voucher of registered voters or members of any other class.

The Fifth Circuit struck down Wilcox County's requirement that a registrant have a registered voter complete a portion of the registration form and affirm that the applicant is a resident. This voucher device was stricken, prior to the passage of the Voting Rights Act, because it had a discriminatory effect on black applicants. United States v. Logue, 344 F.2d 290, 292 (5th Cir. 1965).

Despite these prohibitions on vouchers, they are utilized in Monroe County. Black political leaders in that county report that blacks have been denied registration by the all white board of registrars because they did not have Social Security cards.[5] They did not have cards because they had never worked in covered employment. Others who were unable to state the name of two registered voters who could vouch for them were denied registration.[6] These practices perhaps account for the low registration of Monroe County blacks; although 44% of the population is black, only 20% of the registered voters are black.

In other counties also, the registrant must produce a Social Security card or, less frequently, birth certificate or school record.[7] Furthermore, these documents are not a condition of registration for all applicants in all counties. In Bibb County, the Social Security number is simply listed as unavailable if the applicant does not have his or her card,[8] but in Russell County applications have been torn up

9

when blacks could not produce their Social Security cards.[9] Blacks with no Social Security card must buy a copy of their school record in order to register in Marengo County,[10] a county in which 70.1% of blacks in 1970 had incomes below the poverty level;[11] purchase of a school record for low income blacks in that county is a real financial barrier as was the $1.50 Alabama poll tax outlawed by the Voting Rights Act. This school record purchase is not required in other counties.

In Chambers County, blacks attempting to register in 1976 and 1977 were denied because they did not know their beat or precinct number.[12] In other counties, it is considered to be the responsibility of the registrars to determine an applicant's voting place.[13]

There were reports that blacks have been treated in an unpleasant and intimidating manner by registrars, according to persons from Elmore, Hale, Lee, Marengo, Marshall, Monroe, Morgan, and Russell Counties.[14] None of these counties has any minority registrars. Pickens County registrars have called the sheriff when several blacks came to the office to register. The sheriff, a deputy and the courthouse groundskeeper then stood over the applicants as they attempted to complete the forms.[15] It had a chilling effect.

People who have promoted and encouraged black voter registration have in recent years been jailed and prosecuted in Russell[16] and Pickens counties.[17] In Morgan County, a black activist appeared before the County Commission to get additional polling places in black neighborhoods, over the opposition of the chair of the board of registrars. Immediately following the Commission meeting, the white woman chair went to the black man's probation officer and to the trial judge and initiated an effort to get the man's probation revoked. The black leader spent five days in jail, and his probationary period was extended. The voting activist believes that revocation proceedings would never had been brought nor his probation extended had he not been involved in black voter registration activity.[18]

In 1978, the Alabama legislature passed legislation stating that boards of registrars "may" appoint deputy registrars. Ala. Code §17-4-158. At the same time, the statute requiring boards to visit each precinct of their county was repealed. Subsequent to the passage of this Act, the NAACP State Conference of Branches mounted an intensive campaign to get black people appointed as deputy registrars. Contacts were made in person and in writing to county boards urging the appointment of black citizens. Lists of black people willing to accept these unpaid volunteer positions

were provided.[19] After a year of frustration, the NAACP enlisted the help of the Governor.[20] Governor Fob James sent letters on May 6, 1980 to all boards of registrars urging that they comply with the spirit and intent of the law. (See Appendix 5) Despite all these efforts, registrars in many counties with sizeable black populations have refused to appoint deputy registrars. The absence of these deputies correlates directly with low black registration figures.

Counties of 25% or More Black and No Black Deputy Registrars	Percent Black Population	Registered Black Voters Percent of Total Registered Voters
Barbour	45	33
Chambers	36	23
Coosa	35	23
Dallas	55	45
Hale	63	53
Henry	38	28
Marengo	53	34
Monroe	44	20
Pickens	42	33
Pike	35	22
Tallapoosa	27	18

*Except where otherwise noted, population data used in the report is based on Total Population By County: Alabama 1980, U.S. Census of Population Preliminary provided by Alabama Office of State Planning and Federal Planning.

In several counties where black deputy registrars were appointed, when their diligence and productivity became obvious, unreasonable restrictions were placed upon them or they were permitted to serve only for a short time.[21] In Lee County, one of three deputized black women was informed that completed applications must be returned on the same day that they had been picked up from the registrars' office.[22] After turning in a large number of completed applications, another of these women was told that she could no longer sign the forms but would have to help in the office under a registrar's supervision. The stated reason was because of errors she had made. In fact, there was one error on one form - the beat number was listed incorrectly.[23] Finally the plans of these women to conduct a registration drive in the rural areas of the county were completely frustrated, when they were denied forms altogether.[24] In effect, they were no longer deputy registrars.

Deputy registrars were very effective when used. The NAACP reported that the utilization of minority deputy registrars in Jefferson County contributed to the marked increase in black voters in that county and to the election of a black mayor in Birmingham, Richard Arrington.[25] In Conecuh County, ten black deputy registrars registered almost 800 people in only two months.[26] More than 2,500 names were added to the voting rolls in Wilcox County by these volunteers.[27] Similar successes are reported in Bibb County.[28] Two Russell County deputy registrars added 1,980 blacks to the registration rolls.[29] The efforts of deputy registrars to register black college students and others in Montgomery County helped make possible the election of two black county commissioners in 1980, one of whom ran unopposed.[30]

In the 1981 session of the Alabama legislature, at least three bills were introduced which would have facilitated voter registration in Alabama. None passed. Two of these would have authorized certain officials - - high school principals, college and university personnel and city clerks - - to serve as registrars. S. 324, S. 9.

B. 1981 Reidentification Legislation Will Erase Substantial Numbers of Qualified Blacks From the Voting Lists.

A series of what are called voter reidentification bills have been passed by the Alabama legislature during the current session. Actually, the process prescribed by these bills more closely resembles reregistration than it does reidentification. Black political leaders believe that they were systematically drafted with the purpose of disenfranchising black voters in large numbers in counties with majority black populations. "It took us 15 years to get these people registered," said Wilcox County Sheriff Prince Arnold, the County's first black sheriff. "We've only been able to vote for 15 years. Now, we'll have nine months to do what took 15 years," he said, adding that the bill "appears to be deliberately aimed at blacks."[31]

This opinion is substantiated by the following facts. Five of the counties for which this legislation was introduced have substantial black populations.

Lowndes	75.1%
Perry	60.2
Sumter	69.5
Wilcox	68.9
Dallas	55.2

Bills were passed requiring purges in Perry, Sumter and Wilcox Counties. Blacks have finally achieved some degree

of political success by electing blacks to countywide offices in each of these counties.

The bills state that registrars will visit each beat for the purpose of enabling registered voters to reidentify. The visit will be between 9:00 A.M. and 5:00 P.M. on a week day. In Sumter and Perry Counties, a person can only reidentify at the courthouse or the beat where s/he lives, not in the beat where s/he works. Weekend or evening sessions are not authorized or specified, making reidentification burdensome for low income working people, the majority of whom are black in the counties which will purge. Also, negatively impacted are students attending colleges in other areas. This is significant in Perry County because of an intense and successful campaign to have black college students participate in local elections by using absentee ballots.[32]

The prescribed method of notification of reidentification - - one notice in a county newspaper - - appears to be designed to ensure that few people will know about it. It almost excludes low income and poorly educated citizens, most of whom do not buy and read newspapers.

Persons reidentifying must complete a questionnaire which repeats many of the same questions asked upon initial registration. Wilcox County's questionnaire requires Social Security and driver's license numbers with no other identification options noted.

The fear expressed by black political leaders that the implementation of this legislation will be devastating is based on the impact of an almost identical enactment on Choctaw County two years ago. Introduced after two black county commissioners were elected for the first time, the purge resulted in a major reduction in black registered voters. The Choctaw County Voters League has documented over 700 eligible blacks dropped from the rolls (approximately 20% of registered blacks),[33] and they believe there were many more. This, of course, is a number large enough to spell defeat for minority candidates. Anthony Butler, president of the League, characterized many of those who failed to re-identify as elderly people who have vivid and bitter memories of past experiences with registrars.[34]

C. Black Registrants Have Been Omitted From Poll Lists.

In a number of counties, legally registered black people have found that their names have been left off the voting list at their ward or precinct place. In Chambers County, a black man who worked at the polls between 1975 and 1978 reported many registered blacks were unable to vote at their polling place for this reason. He believed that this

occurred because there were no minority registrars, and the white registrars were unfamiliar with black neighborhoods and communities.[35] In Chilton County, it was reported that polling places were changed shortly before an election in 1980 and many black citizens were unaware of the change. In at least one case, a black married couple found that their names appeared on the lists of two widely separated polling places.[36]

A large number of voters' names were omitted in Conecuh County during the 1980 election for Evergreen City Council. Dozens of blacks who had been voting in Evergreen for years were informed that they could not vote as their names were not on the list of registered voters. Voting a challenged ballot, an optional procedure under Alabama law, was not mentioned by poll workers. Ala. Code §17-12-3. Instead, they were told they would have to go to the courthouse or city clerk and get a note verifying their eligibility. Many did not make that extra trip. The incumbent black mayor pro tem, running for a second term, lost by four votes.[37]

D. Assistance to Illiterate Voters Has Been Circumscribed.

In at least eight counties, serious violations of election law have occurred when illiterate or handicapped blacks have been denied the right to have the person of their choice provide them needed assistance, as provided under Alabama law. Ala. Code §§17-8-29; 17-9-25. Our survey revealed this in Marshall, Monroe, Russell, Marengo, and Conecuh counties.[38] In Washington County and Pickens County in the 1980 election, and Perry County in 1978,[39] people who assisted more than one voter were harassed and threatened with arrest.

E. Blacks Seeking to Vote Absentee Were Intimidated.

Absentee ballots have been the object of continuing controversy in the Alabama election process. Lack of confidentiality and inequitable eligibility criteria were two problems which were corrected in 1978 by legislative action. However, blacks continue to maintain that they have been unfairly denied the use of absentee ballots and/or that they have been harassed and threatened because they did use them. In Russell County, it was reported that a number of minority voters were visited by "a man from the D.A.'s with a big gun on his hip" who questioned them about their absentee votes.[40] One elderly black woman,[41] thoroughly frightened, said she might never vote again.

F. Black Voters Perceive Economic Threats.

Blacks continue to fear economic retaliation for voting or "voting wrong". Welfare recipients in Autauga County reportedly were advised by case workers to vote for a certain candidate for mayor, who they were told, would be good to them.[42] In Washington County, it is widely believed by blacks and Indians that how a person casts his or her vote is known by others and can result in serious repercussions. An Indian woman reported that her vote for Gallasneed Weaver, an Indian running for county commissioner, resulted in her termination from the county administered CETA program.[43]

Mary Gamble believes she faced serious economic problems because she was a black candidate in July 1980 for town council in Clio. Ms. Gamble had a loan, secured by a second mortgage on her home, from the only bank in Clio. The white man who has been Mayor of Clio for more than 25 years is the president of the only bank in Clio. Two weeks before the town council election, the Mayor, president of the bank, notified her that she had three days to bring her note to a current status. After she filed an election contest in state court, the Mayor came to her house about the note.[44]

G. Candidacy Information Is Difficult to Obtain In Some Counties.

Black citizens describe repeated instances of deadlines missed and opportunities lost because of a lack of accurate and timely information. Black persons in Hale County report that upcoming elections are never publicized in the Newbern community so that qualifying deadlines pass without their knowledge.[45] District Court Judge Eddie Hardaway, the first black elected to a major Sumter County office other than school board, reported that one local official volunteered information intentionally designed to mislead him as to what positions would be available in the upcoming November 1980 election.[46]

FOOTNOTES
SECTION II

[1] Staff interviews with Sally Hadnott, Autauga County, 4/1/81, Robert Ellis, Baldwin County, 3/27/81, Ernestine Myles, Butler County, 4/4/81, Amos Gunn, Chambers County 3/4/81, John Sims, Chilton County, 4/4/81, Anthony Butler, Choctaw County, 3/20/81, Elma Brock and Bernest Brooks, Coffee County 4/4/81, Tommy Duncan and Beverly Stone, Coosa County, 4/6/81, Charles Blaylock and Lewis Washington, Elmore County 4/8/81, H. K. Matthews, Escambia County, 2/25/81, Sam Pendleton, Lauderdale County, Franklin County 5/16/81, Teresa Burroughs, Hale County 3/81, Annie Mae Martin, Henry County, 6/5/81, Hoover White, Lawrence County 4/81, Ed Ayers and Roosevelt Agee, Marengo County, 3/14/81, James Minson, Marshall County 4/4/81, Ann Walsh, Mobile County 3/25/81, Ernestine Odom, 4/4/81, Willie Frank Marshall 5/27/81 and George Brown 2/24/81, Monroe County, James Guster, Morgan County 4/20/81, Albert Turner, Perry County, 3/25/81, Geraldine Sawyer, Pickens County, 4/23/81, Judge Eddie Hardaway, Sumter County, 3/24/81, Marrel Hayes, Tallapoosa County, 3/6/81, Bryant Melton, Tuscaloosa County 4/81

[2] Alabama Code §17-4-156

[3] Ibid.

[4] Staff interviews with Sally Hadnott, Autauga County, 4/1/81, Robert E. Ellis, Baldwin County, 3/27/81 Ernestine Myles, Butler County, 4/4/81, Amos Gunn, Chambers County 3/4/81, John Sims, Chilton County, 4/4/81, Anthony Butler, Choctaw County, 3/20/81, Elma Brock and Bernest Brooks, Coffee County, 4/4/81, Charles Blaylock and Lewis Washington, Elmore County, 4/8/81, H. K. Matthews, Escambia County, 2/25/81, Sam Pendleton, Lauderdale County, 5/16/81, Teresa Burroughs, Hale County 3/81, Annie Mae Martin, Henry County, 6/5/81, Hoover White, Lawrence County 4/81, Ed Ayers and Roosevelt Agee, Marengo County 3/14/81, James Minson, Marshall County 4/4/81, Ernestine Odom 4/4/81 Willie Frank Marshall 5/27/81, and George Brown 2/24/81, Monroe County, James Guster, Morgan County 4/20/81, Albert Turner, Perry County, 3/25/81, Geraldine Sawyer, Pickens County 4/23/81, Judge Eddie Hardaway, Sumter County 3/24/81.

[5] Staff interview with Ernestine Odom, 4/4/81

[6] Staff interview with Willie Frank Marshall 5/27/81

[7] Staff interview with Sally Hadnott, Autauga County 4/1/81, Ernestine Myles, Butler County 4/4/81, Amos Gunn, Chambers County 3/4/81, John Sims, Chilton County, 4/4/81, Anthony Butler, Choctaw County 3/20/81, Charles Barron, Clarke

County, 2/26/81, Reverend Lathonen Wright, Clay County, 4/14/81, Bernest Brooks, Coffee County, 4/4/81, Larry Fluker, Conecuh County, 2/23/81, Harvey Smith, Coosa County, 4/6/81, Teresa Burroughs, Hale County 3/12/81, Annie Mae Martin, Henry County, Nancy Gibb, Lee County, 5/27/81, Charles Smith, Lowndes County, 3/25/81, Roosevelt Agee, Marengo County, 3/14/81, Ernestine Odom, Monroe County, 4/4/81, Albert Turner, Perry County, 3/25/81 Geraldine Sawyer, Pickens County, 4/23/81, Judge Eddie Hardaway, Sumter County, 5/24/81, Charles Woods, Talladega County, 3/20/81, Bryant Melton, Tuscaloosa County, 4/81, Albert Ridgeway and Robbie Reed, Washington County, 3/12/81.

[8] Staff interview with Eddie Brown 5/6/81

[9] Staff interview with Arthur Sumbry 3/5/81

[10] Staff interview with Roosevelt Agee 3/14/81

[11] United States Department of Commerce, Bureau of the Census, General Social and Economic Characteristics of Alabama, Census PC(1)-C2 Alabama, Table 128 p. 2-204.

[12] Staff interview with Amos Gunn 3/4/81

[13] Staff interview with Beverly Stone and Harvey Smith, Coosa County Registrars 4/6/81, S. I. Harry, Elmore County Registrar 3/30/81, Nancy Gibb, Lee County Deputy Registrar 5/26/81, and Eddie Brown, Bibb County Deputy Registrar 5/6/81

[14] Staff interviews with Charles Blaylock, Elmore County 4/8/81, Teresa Burroughs, Hale County, 5/28/81, Barbara Pitts, Lee County, 5/1/81, Roosevelt Agee, Marengo County, 3/14/81, James Minson, Marshall County 4/4/81, Ernestine Odom, Monroe County, 4/4/81, James Guster, Morgan County, 4/20/81, Arthur Sumbry, Russell County 3/5/81

[15] Staff interview with Geraldine Sawyer, Pickens County 4/23/81

[16] Staff interview with Arthur Sumbry 3/5/81

[17] Staff interview with Geraldine Sawyer, Pickens County 4/23/81

[18] Legal Services of North Central Alabama, staff interview with James Guster 4/20/81

[19] Staff interview with Charles Woods, NAACP State Conference President 3/20/81

[43] Staff interview with Nola Reid 1/13/81.

[44] Staff interview with Mary Gamble 6/1/81.

[45] Staff interview with Teresa Burroughs 3/15/81.

[46] Staff interview with Judge Eddie Hardaway 3/24/81.

III. THE ACT HAS BEEN USED SUCCESSFULLY TO PROTECT BLACK VOTING RIGHTS IN THE STATE

The judicial and administrative remedies provided for by the Voting Rights Act have been used successfully in Alabama to eliminate many racially discriminatory voting laws and procedures and to prevent the substitution of new laws designed to serve the same purpose. The tools provided in the Voting Rights Act - - Section 5 pre-clearance, authorized litigation and the use of federal examiners and observers - - have proved to be reliable weapons in the fight to protect the voting rights of blacks in Alabama.

The Section 5 pre-clearance requirement has been an effective remedy. 42 U.S.C. §1973c. It has provided the mechanism by which the U.S. Attorney General could prevent the implementation in Alabama of racially discriminatory voting legislation. Further, it is believed to have served as a deterrent to the enactment of flagrantly discriminatory legislation.[1]

The Attorney General has acted to interpose his objection to 72 voting changes submitted by the state, as of February 28, 1981. That is, the Department of Justice determined that on the basis of the information submitted that the proposed change was discriminatory in purpose or effect. An examination of the types of changes to which the Attorney General has objected reveals the numerous methods by which jurisdictions have attempted to thwart effective minority political activity. Alabama submissions objected to by the Attorney General are shown below:

Year	Change	County
1969	Garrett Act	State
	Poll list signature	Baldwin
	Poll list signature	Dale
	Poll list signature	Morgan
	Poll list signature	Montgomery
	Poll list signature	Mobile
	Poll list signature	Lee
	Poll list signature	Escambia
	Poll list signature	Russell
	Poll list signature	Mobile
1970	Absentee registration literacy requirement	State
	Numbered posts	Jefferson Birmingham
	Anti-single shot	Talladega
	Numbered posts	Jefferson Birmingham

Year	Change	County
1972	At-large election	Autauga
	Residency requirement	Autauga
	At large elections	Autauga
	Majority vote requirement	Autauga
	Residency requirement	Autauga
	Assistance to illiterates restricted	State
	Assistance to illiterates restricted	State
	Independent candidate signature requirement	State
	Elective to appointive justices	State
1973	Candidate qualification procedures	Mobile
1974	At-large elections	Pike
	Majority vote requirement	Pike
	Residency requirement	Pike
	Staggered terms	Pike
1974	Multi-member districts	Sumter
	Anti-single shot	Sumter
1975	Numbered posts	Talladega
	Annexation	Jefferson
	Annexation	Shelby
	Annexation	Shelby
	Annexation	Shelby
	Annexation	Shelby
	Annexation	Shelby
	Annexation	Jefferson
	Annexation	Jefferson
	Annexation	Jefferson
	Annexation	Jefferson
	Annexation	Jefferson
	Annexation	Jefferson
	Annexation	Jefferson
	Staggered terms	Russell
1976	Primary date contested elections	State
	Reapportionment of Democratic Party Executive Committee	Pickens
	Combines 2 counties for judicial district	State
	Form of city government and specified duties for commissioner	Mobile
	Redistricting	Pickens
	At-large nomination and election of county commission	State

Year	Change	County
	At-large election of Board of education and commissioners	Chambers
	Numbered posts	Chambers
	Majority vote requirements	Chambers
	Staggered terms	Chambers
	At-large election	Hale
	At-large election	Colbert
	Residency requirement	Colbert
	At-large election	Hale
	At-large election	Hale
	At-large election	Hale
1977	Annexations	Shelby
	Method of electing county commissioners	Barbour
	Method of electing county commissioners	Barbour
	Incorporation	Lowndes
	At-large election of county commissioners	Clarke
1980	Annexation	Jefferson
	Redistricting	Dallas
	Voting machines	Sumter
	Numbered beats	Sumter
	Polling places	Sumter

While the clear intent of Section 5 was that all changes in voting laws or practices be submitted to the Justice Department, or that a declaratory judgment be obtained in the federal court in the District of Columbia, significant numbers of changes have not been submitted. For example, in 1975, there were at least 90 acts passed by the Alabama Legislature dealing with voting. Thirty-eight of these acts were never submitted to the Department of Justice for pre-clearance. See Table 6 in Appendix for list of these acts. As a result, new pieces of discriminatory legislation have been implemented.

The fact that many concerned black individuals and groups do not possess sufficient knowledge as to preclearance protections and procedures is another serious hindrance to the effectiveness of Section 5. For example, in Washington County, black and Indian leaders did not learn until a visit by a Southern Regional Council staff member on September 3, 1980, that they could voice their concerns to the Justice Department about a change to at-large elections for the County Commission which had been enacted in 1969. Unfortunately,

the submission, which was not made until December of 1979, had already been approved on August 8, 1980.[2] A similar situation took place in Choctaw County regarding a voter re-identification bill which was approved by the Department of Justice in August of 1978. According to the President of the Choctaw County Voters League, when inquiries were made at the Justice Department as to why the legislation was not objected to, he was told that two black elected officials contacted by phone by Justice had indicated that they approved of the submission. Both of these individuals deny that they were contacted or that they approved the change.[3] Again, black community leaders voiced their opposition too late, the submission had already been approved and implemented with dire results - at least 700 eligible black voters were dropped from the voting rolls.[4]

FOOTNOTES

SECTION III

[1] Staff interviews with George Brown 2/24/81, Albert Turner 3/25/81, Eddie Hardaway 3/24/81, Charles Woods 3/20/81, Albert Ridgeway 3/13/81, Charles Blaylock 4/8181, Roosevelt Agee 3/14/81.

[2] Staff interview with Reverend Albert Ridgeway and Gallasneed Weaver 3/13/81 and telephone interview with David Bell 5/20/81.

[3] Staff telephone interview with Anthony Butler 3/20/81.

[4] Ibid.

IV. AT-LARGE ELECTION STRUCTURES DILUTE THE CHANCE OF BLACKS BEING ELECTED TO COUNTY AND MUNICIPAL OFFICES

A number of Alabama's political subdivisions are governed by election laws which by intent or effect dilute the vote of minority electors. Perhaps the most pervasive of these is the at-large system of election. In counties or municipalities where blacks constitute less than a majority of the electorate, and racially polarized voting occurs, this election system in most cases results in failure for minority candidates.

The courts have not definitively decided the legality of at-large systems as found in Alabama. Whether an at-large system of electing members of a county or municipal governing body which dilutes minority voting strength violates Section 2 of the Voting Rights Act, 42 U.S.C. §1973, was not fully resolved in City of Mobile v. Bolden, 446 U.S. 55, 100 S.Ct. 1490 (1980) Only Justice Stewart's plurality opinion addressed this question, answering it in the negative. One Fifth Circuit panel post- Bolden has held that Section 2 prohibits intentional vote dilution. United States v. Uvalde Consolidated Independent School District, 625 F.2d 547 (5th Cir. 1980) cert. denied, #80-1237, 49 L.W. 3680 (1981). A second panel stated in dictum that a Section 2 cause of action was coextensive with the fifteenth amendment claim. Lodge v. Buxton, 639 F.2d 1358, 1364, n.11 (5th Cir. 1981),. A third panel adopted Justice Stewart's view that a vote dilution claim cannot be made out under Section 2. McMillan v. Escambia County, 638 F.2d 1239, 1243 n.9 (5th Cir. 1981).

The breadth of the fourteenth and fifteenth amendments' protection of minority voting rights from the dilutive effects of at-large systems is also unsettled. In Bolden a majority of the Justices agreed that vote dilution may violate the fourteenth amendment, but there was no majority view of whether discriminatory purpose as well as effect must be proved under the fourteenth or fifteenth amendment. The Stewart plurality in Bolden would require a showing of invidious purpose to make out a fourteenth amendment claim. 100 S.Ct. at 1497, 1501. According to the Stewart plurality, the fifteenth amendment does not extend to dilution claims. 100 S.Ct. at 1499. Fifth Circuit panels have reached conflicting results on these questions. See Lodge v. Buxton, supra; McMillan v. Escambia County, supra; and United States v. Uvalde Consolidated Independent School District, supra.

The survey results show clearly that in Alabama the at-large systems serve to keep black representation at extremely low levels. This situation demonstrates the need to amend Section 2 of the Act to outlaw voting practices which have the "effect" of diluting minority voting strength.

A. County Commissions

The vast majority of the 67 county commissions in Alabama are elected at-large. According to our survey and one recently completed by the Association of County Commissions of Alabama, county commission election forms are as follows:[1]

Systems for Electing County Commissions

At-large election with residence requirement in numbered district	40
At-large election with no residence requirement	5
Nominated by district and elected countywide	6
Single member nominations and elections	16
	67

At-large county commission election plans have inhibited black candidates from being elected to county governing bodies, except where blacks constitute a large majority of the population. In counties where blacks constitute more than three-fifths of the population, they can, not surprisingly, elect county commissioners in at-large elections.

County	Percent Black Population	At Large Commission Total*	Black
Macon	84.2%	5	5*
Greene	78.0	5	5*
Lowndes	75.0	5	4
Wilcox	68.8	5	2
Bullock	67.6	5	4*
Perry	60.1	5	3

*Includes Probate Judge

Even in heavily black counties, the at-large system often prohibits the election of black candidates to the commissions. In sixteen counties where blacks exceed 25 percent of the total population, no black sits on the Commission.

Counties More Than 25% Black	Percent Black Population	At-Large County Commission	
		Total	Black
Sumter	69.3%	4	0
Dallas	54.6	5	0
Marengo	53.3	5	0
Barbour	44.4	5	0
Monroe	43.0	5	0
Clarke	42.7	5	0
Butler	38.7	5	0
Henry	37.9	5	0
Coosa	34.7	5	0
Jefferson	33.3	4	0
Washington	28.1	5	0
Escambia	29.6	5	0
Talladega	30.8	5	0
Tuscaloosa	27.2	4	0
Tallapoosa	27.0	6	0
Crenshaw	26.2	5	0

Conversely, single-member district elections facilitate the election of black candidates to the county commission. In the following counties where commissioners are elected by district, blacks serve on the county governing body:

County	Percent Black Population	County Commission	
		Total	Black
Hale	62.8%	5	1
Choctaw	43.5	5	2
Montgomery	39.4	5	2
Mobile	31.5	3	1

In each of these counties, except Choctaw, single-member district elections were gained only as a result of federal court orders. Hale County illustrates the importance of the Voting Rights Act in protecting newly enfranchised blacks from dilution of their votes through institution of at-large election procedures. Prior to passage of the Act, Hale County Commissioners had been elected by district. In November 1965, Hale County changed to an at-large system. This change was not precleared under Section 5. In United States v. County Commission Hale County, Alabama, the three-judge court invalidated the change to at-large elections. 425

F.Supp. 433 (S.D. Ala. 1976), aff'd per curiam, 430 U.S. 924 (1977). See also Brown v. Moore, 428 F.Supp. 1123 (S.D. Ala. 1976) (Mobile), Hendrix v. McKinney, 460 F.Supp. 626 (M.D. Ala. 1978) (Montgomery).

The election of black commissioners even where county commission elections are by district has been hindered by other voting rules. An Alabama statute which requires a run-off unless a candidate receives a majority of votes dilutes the strength of black votes. Ala. Code §17-16-36 Under a plurality-win system, a black candidate has a better opportunity to win if white voters split their votes among several white candidates and blacks engage in "single-shot voting" for the black candidate. In City of Rome v. United States, the Supreme Court in affirming the lower court's finding regarding the effect of plurality-win requirements explained single-shot voting, 446 U.S. 156, 100 S.Ct. 1548, 1566 (1980).

> Consider [a] town of 600 whites and 400 blacks with at-large election to choose four council members. Each voter is able to cast four votes. Suppose there are eight white candidates, with the votes of the whites split among them approximately equally, and one black candidate, with all the blacks voting for him and no one else. The result is that each white candidate receives about 300 votes and the black candidate receives 400 votes. The black has probably won a seat. This technique is called single-shot voting. Single-shot voting enables a minority group to win some at-large seats if it concentrates its vote behind a limited number of candidates and if the vote of the majority is divided among a number of candidates.
> U.S. Commission on Civil Rights, The Voting Rights Act: Ten Years After, 206-207 (1975).

Thus, if a black candidate runs against two whites for a commissoner's position, s/he cannot win by gaining a plurality. In a run-off, a black candidate is in most cases running against a white candidate.

Other voting rules frequently employed in Alabama also serve to decrease the likelihood of a black's being elected. In City of Rome the Supreme Court affirmed the lower court's conclusion that numbered posts, staggered terms and residency provisions force head-to-head contests between blacks and whites and deprive blacks of the opportunity to elect a candidate by single-shot voting. 100 S.Ct. 1548, 1566 (1980). For example, if four commissioner seats are open and the places are numbered, there are four individual races, instead of a true at-large election where the four

persons with the greatest numbers of votes get the four seats. Residency requirements similarly lead to head-to-head contests. Staggered terms have the same effect: "'if each member has a 4-year term and one member is elected each year, then the opportunity for single-shot voting will never arise.'" Supra at 1548 citing to City of Rome v. United States, 472 F.Supp. 221, 244 n.95 (D.D.C. 1979) (quoting U.S. Commission on Civil Rights, supra, n.19, at 207-208).

The effect of these voting rules is shown by the absence of black commissioners in counties which have district elections with other dilutive rules:

Counties With District Elections Where
No Blacks Hold County Commission Posts

County	Percent Black Population	Dilutive Voting Rules: Staggered Terms	Dilutive Voting Rules: Numbered Posts
Pickens	41.8%	X	
Conecuh	41.1	X	X
Chambers	35.5	X	X
Pike	35.0	X	

B. County School Boards

At-large election plans also have the effect of minimizing the numbers of blacks elected to county school boards. Blacks hold only 37 of the 344 county school board seats in Alabama. The large majority of these black elected board members reside in counties with large black populations:

Percent Black Population	Number Black School Board Members
100-75%	14
74-50	15
49-25	8
24-0	0

Of the eight black board members serving in counties less than 50% black, three were elected in county elections districted by court order[2] and one was appointed to fill an unexpired term.[3] Thus, only four of Alabama's 37 black board members were elected at-large in counties less than 50% black.

The following Alabama counties with a black population over 25% have no blacks serving on the county board of education. Black enrollment (1979-80) as a percent of the total is also shown.

Counties with No Blacks on County School Board

County	Percent Black Population	Percent Black Enrollment in County Schools
Dallas	55%	75%
Clarke	43	65
Pickens	42	60
Conecuh	41	59
Chambers	36	55
Pike	35	54
Henry	38	53
Coosa	35	52
Washington	33	41
Escambia	32	40
Tallapoosa	27	39
Crenshaw	27	36
Lee	25	34
Tuscaloosa	28	23
Jefferson	34	16*

Source: Enrollment Figures - State Department of Education, Business Office[4]

* The majority (89%) of the black population of Jefferson County resides within municipalities served by city school systems.

This pattern which requires large black voting majorities to elect black school board members is repeated in the election of black candidates for county superintendent of schools. Only five heavily black Alabama counties have black superintendents:

Counties with Black School Superintendents	Percent Black Population
Macon	84%
Greene	78
Lowndes	75
Bullock	68
Perry	60

C. County Sheriffs

The county sheriff in Alabama is not only the chief law enforcement officer, but he, also, has substantial responsibilities related to elections. He, along with the probate judge and county clerk, selects poll workers for primaries and general elections. Ala. Code §17-6-1. He distributes voting materials and keeps the peace during elections. Ala. Code §§17-16-22, 17-16-70. Blacks have been elected sheriffs in only six of the eight majority black counties:

Counties With Black Sheriffs	Percent Black Population
Macon	87%
Greene	78
Lowndes	75
Wilcox	69
Bullock	68
Perry	60

D. Other County Offices

Only three blacks have been elected to serve as circuit clerks; the same number have been elected coroner. There are four black tax assessors and five tax collectors. Black citizens have been successful in being elected to these offices only in heavily black counties:

County	Percent Black Population	Circuit Clerk	Coroner	Tax Assessor	Tax Collector
Macon	84%	X	X		X
Greene	78	X	X	X	X
Lowndes	75		X	X	X
Wilcox	69				
Bullock	68	X		X	X
Perry	60			X	X

E. Municipal Officials

Alabama's twenty-one black mayors are found almost exclusively in municipalities with black majorities. Only one has been elected in a municipality which is less than 50 percent black.

Percent Black Population	Municipalities with Black Mayors
100-75%	12
74-50	7
49-25	1
24-0	0

(Census data was unavailable for White Hall which has a black mayor, as it is unincorporated.)

Most municipal elections in Alabama are conducted on an at-large basis. Only four of the 428 cities and towns hold elections by district according to information supplied by the Alabama League of Municipalities.

The at-large election system has the same dilutive effect on election of municipal governing bodies as it does on county elections. Two-thirds of the blacks serving on municipal councils or commissions are in cities or towns with black majorities. Most (71%) serve in towns of less than 5,000 people. Only twelve of the elected black council members are serving in cities or towns with populations 25% or less black.

Black Members of Municipal Governing Bodies

Percent Black Population	Number Elected Blacks
100-75%	62
74-50	35
49-25	36
24-0	12
	145

Table 7 in the Appendix shows Alabama municipalities which have black elected officials.

Black residents of cities and towns across Alabama are unable to elect blacks to at-large city councils and commissions The large majority (101) of the 152 municipalities with this election system and with populations at least 25 percent black have no black elected officials The table below lists towns of over 2,500 population, with at least one-fourth the population black, which have no black council members.

Cities/Towns At-Large Elections	Total Population	Black Population
Mobile	199,392	36
Tuscaloosa	73,228	35
Bessemer	31,720	51
Opelika	22,087	34
Alexander City	13,747	28
Troy	12,600	34
Eufaula	12,097	34
Greenville	7,807	39
Bay Minette	7,455	25
Lanett	6,897	31
Jackson	6,073	34
Roanoke	5,901	37
Monroeville	4,846	29
Wetumpka	4,341	25
Evergreen	4,171	40
Lafayette	3,647	57
Dadeville	3,263	39
Brundidge	3,213	54
Greensboro	3,248	61
Abbeville	3,185	36
Livingston	3.176	47
Brent	2,820	42
Linden	2,753	49
Graysville	2,642	35

See Table 8 in the Appendix for a complete listing of Alabama municipalities with at-large election systems and no black council members. Twenty-seven of these cities and towns have black majorities, as indicated in Table 9 of the Appendix.

As in county elections, single-member district elections facilitate the election of black candidates to the council. Each of the four cities which have this form has black elected officials.

City	Percent Black Population	City Council Total	Black
Selma	53%	11	5
Anniston	40	4	1
Montgomery	39	9	4
Phenix City	36	4	1

This section clearly shows that the effect of at-large election structures in Alabama's counties and municipalities is to make it almost impossible for black persons to be elected to those offices. The section is not meant to argue

for proportional representation. It is merely the accepted academic technique for an initial step in examining the effect of election structures.[6] These results make a strong case for amending Section 2 of the Act to cover such structures. Regardless of the purpose of their adoption, the effect in Alabama is unquestionably discriminatory.

FOOTNOTES

SECTION IV

[1] Staff telephone interview with Mary Lou McHugh, (Association of County Commissions of Alabama staff member) 5/21/81.

[2] Choctaw, one black school board member, districted by Johnson v. Board of Education of Choctaw County, No. 77-169-P (S.D. Ala. March 24, 1978) and Mobile, two black school board members, districted by Brown v. Moore, 428 F.Supp. 1123 (S.D. Ala. 1976), aff'd, 575 F.2d 298 (5th Cir. 1978), vacated and remanded sub nom Williams v. Brown, 446 U.S. 236 (1980), elections held by districts pending decision on remand Moore v. Brown, ___ U.S. ____ 101 S.Ct. 16 (1980).

[3] Staff interview with William V. Neville 5/28/81.

[4] Staff telephone interview with Ruth Lockett, State Department of Education, Business Office 6/10/81.

[5] Staff interview with Julie Sinclair, Librarian, Alabama League of Municipalities 5/4/81.

[6] Richard E. Engstrom and Michael McDonald, The Election of Blacks to City Councils: Clarifying the Impact of Electoral Arrangements on Seats/Population Relationship American Political Science Review, June, 1981.

Conclusion

That the Voting Rights Act has made effective participation in the democratic process a reality for scores of formerly disenfranchised black Alabamians is clearly shown in this report. That serious obstacles continue to confront black voters is documented as well. The reported problems underscore the need for extension of Section 5 and the amendment of Section 2 of the Voting Rights Act in order that these barriers may finally be removed and all Alabamians may freely take part in this most basic of rights.

TABLE 1

REGISTERED VOTERS BY COUNTY, 1980

County	Percent Black Population[1]	White Registered Voters		Black Registered Voters	
		Number	Percent of Total	Number	Percent of Total
Autauga	23%	11,900*	68%	5,600*	32%
Baldwin	16	39,037*	82	8,569*	18
Barbour	45	9,280	67	4,535	33
Bibb	24	6,636	82	1,440	18
Blount	2	Not Available			
Bullock	68	3,057	35	5,677	65
Butler	39	9,817	73	3,622	27
Calhoun	19	Not Available			
Chambers	36	11,612	77	3,448	23
Cherokee	8	10,509*	90	1,168*	10
Chilton	12	17,300*	94	1,200*	6
Choctaw	44	5,200*	63	3,000*	37
Clarke	43	12,693	68	5,868	32
Clay	17	Not Available			
Cleburne	5	7,185	96	268	4
Coffee	18	Not Available			
Colbert	17	28,291	88	3,815	12
Conecuh	41	7,404	66	3,814	34
Coosa	35	4,481	77	1,325	17
Covington	13	19,921	91	1,979	9
Crenshaw	27	6,912	72	2,688	28
Cullman	1	36,467	99.64	130	.36
Dale	19	20,830	89	2,519	11
Dallas	55	17,479	55	14,133	45
DeKalb	2	Not Available			
Elmore	23	14,246*	72	5,540*	28
Escambia	32	17,576	82	3,743	18
Etowah	14	56,857	90	6,331	10
Fayette	13	9,932*	86	1,617*	14
Franklin	5	Not Available			
Geneva	13	16,566	91	1,638	9
Greene	78	2,151	29	5,331	71
Hale	63	4,010	47	4,590	53
Henry	38	6,300	72	2,400	28
Houston	23	37,000	89	4,800	11
Jackson	5	26,136	96	1,089	4
Jefferson	34	251,247	73	92,544	27
Lamar	12	10,271	90	1,141	10
Lauderdale	10	33,600*	89	4,103*	11

County	Percent Black Population[1]	White Registered Voters Number	White Registered Voters Percent of Total	Black Registered Voters Number	Black Registered Voters Percent of Total
Lawrence	17	16,265*	90	1,806*	10
Lee	25	34,084*	90	3,916*	10
Limestone	15	21,942	92	1.804	8
Lowndes	75	2,701	31	5,921	69
Macon	85	2,945	20	11,493	80
Madison	21	80,925	88	11,239	12
Marengo	53	11,290*	66	5,800*	34
Marion	3	Not Available			
Marshall	2	40,583	99	410	1
Mobile	32	109,101*	69	48,918*	31
Monroe	44	11,511	80	2,848	20
Montgomery	40	88,200	74	31,800	26
Morgan	10	45,312	95	2,514	5
Perry	60	5,531*	56	4,269*	44
Pickens	42	8,525	67	4,280	33
Pike	35	10,900	78	3,100	22
Randolph	24	9,050*	78	2,552*	22
Russell	40	15,150*	54	12,906*	46
St. Clair	10	Not Available			
Shelby	11	32,978	89	4,076	11
Sumter	70	5,490	45	6,710	55
Talladega	31	30,464*	69	13,687*	31
Tallapoosa	27	19,310	82	4,239	18
Tuscaloosa	28	56,905*	83	11,655*	17
Walker	7	Not Available			
Washington	33	8,533	78	2,407	22
Wilcox	69	3,875*	31	8,625*	69
Winston	.6	12,507*	99.8	25*	.2
Total	25.6	1,455,980		416,665	

*Records of voter registration by race not maintained; numbers represent estimate of informed observers, i.e., Probate Judge and/or local black political leader(s)

[1] Population data: Alabama Office of State Planning and Federal Planning, Total Population By County: Alabama 1980, U.S. Census of Population Preliminary

TABLE 2

BLACK ELECTED OFFICIALS IN ALABAMA
FOR SELECTED POSITIONS
1981

	Total	Black	Percent of Total
State			
Senators	35	3	9%
Representatives	105	13	12
County			
County Commissioners	308	27	9
Probate Judges	67	2	3
Sheriffs	67	6	9
Judges	200	5	2
Coroners	67	3	4
Circuit Clerks	67	3	4
Tax Collectors	64[a]	5	8
Tax Assessors	68[b]	4	6
Superintendents of Schools	39	5	13
School Board Members	344	37	11
Municipal			
Mayors	428	20	5
Council Members	2041	145	7
Total	3900	278	7

a. The positions of tax collector and tax assessor have been combined into a new position called revenue commissioner in Cullman, Morgan and Pickens counties. These officials are included under Tax Assessors on this table.

b. Jefferson County has two tax assessors, one of whom serves Bessemer.

TABLE 3

ALABAMA MUNICIPALITIES WITH BLACK MAYORS
1981

Municipalities	Population	Percent Black
Akron	604	76%
Birmingham	284,413	56
Brighton	5,308	86
Camp Hill	1,623	62
Forkland	429	76
Franklin	133	26
Geiger	200	75
Gordon	362	70
Hobson City	1,288	99
Lisman	402	71
McMullen	164	76
Memphis	95	100
Mosses	649	100
Prichard	39,541	74
Ridgeville	182	97
Roosevelt City	3,352	99
Triana	285	98
Tuskegee	11,028	94
Union	358	84
Uniontown	2,112	71

TABLE 4

DISTRIBUTION OF BLACK CANDIDATES
BY TYPE OF OFFICE SOUGHT
1975-1980

Federal:	
U.S. Congress	1
State:	
Senators	4
Representatives	21
Other[1]	1
County:	
County Commissioners	83
Probate Judges	5
Sheriffs	22
Judges	6
Superintendents of Schools	6
School Board Members	71
Other Officials[2]	76
Municipal:	
Mayors	43
Council Members	353
	692

[1] Secretary of State.

[2] Includes circuit clerks, tax collectors and assessors, and representatives to Democratic Executive Committees.

bc Mr. Woods
NAACP

APPENDIX 5

STATE OF ALABAMA

GOVERNOR'S OFFICE

MONTGOMERY 36130

FOB JAMES
GOVERNOR

May 6, 1980

TO ALL BOARDS OF REGISTRARS,

It has come to my attention that many citizens in this state have applied for Deputy Registrars with their county Boards of Registrars. In some cases, because of confusion and the lack of understanding of the intent of the law, some boards have not appointed eligible persons as Deputy Registrars.

Therefore, I am calling on board members individually and collectively to appoint those citizens who apply to become Deputy Registrars, in keeping with the spirit and intent of the law. By appointing Deputy Registrars, you will be helping many citizens of this state to fight the high cost of gasoline and inflation, by making registration more accessible to all; particularly, since Deputy Registrars serve free and on a voluntary basis.

To ensure that the working people have a chance to register and vote, I am asking that you revise your working hours, where appropriate, by staggering them and holding some Saturday and evening sessions. Please know that I am counting on you to carry out this patriotic commitment on behalf of the people of Alabama.

Sincerely,

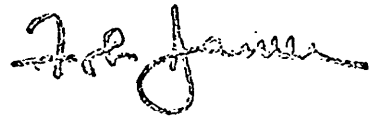


TABLE 6

ALABAMA ACTS PASSED IN 1975 CONCERNING VOTING AND NOT SUBMITTED UNDER SECTION 5

Annexations

Act Number	County	City
640	Morgan	Flint
167	Baldwin	Gulf Shores
719	Morgan	Hartselle
283	Morgan	Trinity
134	Morgan	Trinity
687	Etowah	Walnut Grove
708	Marshall	Albertville
589	Fayette	Belk
728	Morgan	Falkville
478	Escambia	Flomaton
882	DeKalb	Fort Payne
1067	Cullman	Good Hope
674	Lauderdale	Killen
1003	Talladega	Lincoln
610	Mobile	Chickasaw
689	Blount	Snead
1078	Randolph	Wedowee
1170	Randolph	Wedowee
115	Barbour	Blue Springs
120	Sumter	Cuba

Other Acts Concerning Voting

Act Number	County	Description
836	Madison	Provides for election of president and vice president of Huntsville City Board of Education
1162	State	Repeal of act requiring election of city boards of education in cities with population of 70,000-300,000
841	Baldwin	Amendment to act 239 to alter districts of commissioners
325	Calhoun	Anniston council-manager form of government abandoned

151	Tuscaloosa	Regulates use of voting machines
608	Montgomery	Mayor-council form of government established
957	Tuscaloosa	Appointment of Board of Registrars
995	Marshall	Use of voting machines approved
996	Marshall	Use of voting machines approved
136	State	Registration districts redefined and registrars appointed
72	Pickens	Board of Education creation by election
762	DeKalb	Provides for general election of members of county commission
1150	Mobile	Board of School Commissioners districts reapportioned, terms, and election dates fixed
448	Randolph	Probate judge given power to appoint registrars
743	Randolph	Probate judge given power to appoint registrars
678	Chambers	Board of Education election from districts
914	Marshall	Establishes committee to review county government
113	Jefferson	Amendment creating procedures for change of districting and exclusion of districts from municipalities. Limited to districts with 2400-3000 housing units.

Total of 38 acts not submitted

Source: Alabama Laws (and Joint Resolutions) of the Legislature of Alabama, 1975. Index and Volumes I-IV. "Index of Section 5 Submissions as of February 28, 1981," compiled by the United States Department of Justice.

TABLE 7

Alabama Municipalities with
Black Elected Council Members

Municipality	Population		Elected Council Members	
	Total	% Black	Total	Black
Memphis	95	100%	5	5
Mosses	649	100	5	5
Hobson City	1,268	99	5	5
Roosevelt City	3,352	99	5	5
Triana	285	98	5	4
Ridgeville	182	97	5	5
Tuskegee	12,716	94	5	4
Brighton	5,308	86	5	4
Union	358	84	5	4
Midway	593	81	5	3
Akron	604	76	5	5
Forkland	429	76	5	4
McMullen	164	76	5	4
Geiger	200	75	5	5
Prichard	39,541	74	5	3
Lisman	402	71	5	5
Uniontown	2,071	71	5	3
Gordon	362	70	5	1
Union Springs	4,431	69	5	1
Hillsboro	278	66	5	1
Camp Hill	1,623	62	5	4
Autaugaville	843	59	5	1
Hurtsboro	752	46	5	1
Union Springs	4,431	69	5	1
Birmingham	284,413	56	9	3
Selma	26,684	53	11	5
Fairfield	13,040	53	13	8
Demopolis	7,678	49	5	1
Pickensville	132	48	5	1
Margaret	744	46	5	3
Atmore	8,789	44	5	1
Daphne	3,406	42	5	1
Thomasville	4,387	43	4	1
Brewton	6,680	40	5	1
Anniston	29,523	40	4	1
Montgomery	178,157	39	9	4
Silas	343	38	5	1
Lockhart	547	37	5	1
Talladega	19,128	37	5	1
Castleberry	847	36	5	1
Phenix City	26,353	36	4	1
Sipsey	678	35	5	2
Coffeeville	448	35	5	1
Coosada	950	35	5	1

45

Municipality	Population Total	Population % Black	Elected Council Members Total	Elected Council Members Black
Coosada	950	35	5	1
Ashford	2,165	32	5	1
Millport	1,287	32	5	1
Ashville	1,489	31	5	1
West Blocton	1,147	29	5	1
Adamsville	2,498	28	5	1
Ozark	13,188	23	5	1
Millbrook	3,101	27	5	2
Chatom	1,122	26	5	1
McKenzie	605	26	5	1
Dothan	48,750	26	4	1
Keenedy	604	25	4	1
Sylacauga	12,708	23	5	1
Slocomb	1,883	23	5	1
Florala	2,165	21	5	1
Citronelle	2,841	20	5	1
Attalla	7,737	18	5	1
Jemison	1,828	17	5	1
Riverside	849	17	5	1
Auburn	28,471	16	9	1
Hollywood	1,110	15	5	1
Jacksonville	9,735	12	5	1
Piedmont	5,544	10	5	1
Bayou La Batre	2,005	10	5	1

TABLE 8

TOWNS 25%-50% OR MORE BLACK WITH NO BLACK ELECTED COUNCIL MEMBERS 1981

Town	Population	Percent Black Population
Abbeville	3,155	36%
Alexander City	13,807	27
Aliceville	3,207	45
Ashland	2,052	30
Ashville	1,489	31
Bay Minette	7,455	35
Benton	74	31
Boligee	164	49
Brantley	1,151	33
Brent	2,842	42
Camden	2,406	40
Carrollton	1,104	43
Cherokee	1,589	28
Childersburg	5,084	26
Columbia	881	25
Dadeville	3,263	39
Daviston	334	26
Dozier	494	39
Eufaula	12,097	34
Evergreen	4,171	40
Faunsdale	174	34
Franklin	133	26
Fulton	606	32
Gadsden	47,255	25
Gantt	314	28
Georgiana	1,993	50
Glenwood	341	35
Gordo	2,112	38
Goshen	365	26
Graysville	2,642	35
Greenville	7.807	39
Grove Hill	1,912	34
Haleburg	106	25
Harpersville	934	40
Headland	3,327	34
Jackson	6,073	34
Lanett	6,897	31
Leighton	1,218	50
Lincoln	2,081	42
Linden	2,773	39
Lineville	2,257	40

Town	Population	Percent Black Population
Lipscomb	3,741	43
Livingston	3,176	47
Loachapoka	335	36
Louisville	791	43
Lowndesboro	207	41
Madrid	238	30
Maplesville	754	32
Millry	956	40
Mobile	199,392	36
Monroeville	4,846	29
Mount Vernon	1,038	41
Mulga	405	44
Myrtlewood	252	28
New Brocton	1,392	30
Notasulga	851	27
Oak Hill	63	38
Opelika	22,087	34
Parrish	1,583	33
Pine Apple	298	47
Providence	363	33
Reform	2,245	37
Repton	313	36
River Falls	669	41
Roanoke	5,901	37
Rockford	494	34
Silas	393	38
Town Creek	1,201	27
Troy	12,600	34
Tuscaloosa	73,228	35
Vincent	1,652	28
Wadley	532	28
Waldo	231	38
Waverly	190	42
Wedowee	908	34
Wetumpka	4,341	25

TABLE 9

ALABAMA MUNICIPALITIES OVER 50% BLACK
WITH NO BLACK ELECTED COUNCIL MEMBERS

	Population	Percent Black	County
Gantts Quarry	71	86	Talladega
Vredenburgh	433	86	Monroe
Newbern	307	84	Hale
Dayton	911	81	Marengo
Epes	399	80	Sumter
Beatrice	558	71	Monroe
Gainesville	207	66	Sumter
Newville	814	64	Henry
North Johns	243	64	Jefferson
Fort Deposit	1,519	63	Lowndes
York	3,358	62	Sumter
Goodwater	1,895	62	Coosa
Greensboro	3,248	61	Hale
Moundville	1,269	61	Tuscaloosa
Hayneville	592	60	Lowndes
Five Points	197	59	Chambers
Lafayette	3,647	57	Chambers
Bessemer	29,611	55	Jefferson
Brundidge	3,213	55	Pike
Pollard	144	54	Escambia
Eutaw	2,444	53	Greene
Thomaston	679	53	Marengo
Georgiana	1,993	50	Butler
Leighton	1,231	50	Colbert

JU 15-404

IE-1

ALABAMA VOTING LAWS OBJECTED TO
BY THE DEPARTMENT OF JUSTICE
1965-September 1980

Submission	Jurisdiction	Date
Independent candidate qualification requirement	State	8/1/69
Independent candidate petition signature requirement	State	8/14/72
Absentee registration literacy requirement	State	3/13/70
Assistance to illiterates restricted	State	4/4/72
Elective to appointive judges(municipal)	State	12/26/72
Primary date contested elections	State	1/16/76
Combines two counties for judicial district	State	2/20/76
At-large election of county commission	Clarke County	2/26/79
At-large elections	Hale County	4/23/76
At-large elections	Hale County	12/39/76
At-large elections; Residency requirement	Autauga County Board of Education	3/20/72
At-large elections; Residency requirement	Sheffield	7/6/70
At-large elections; Majority vote requirement; Residency requirement	Autauga County	3/20/76
At-large elections; Majority vote requirement; Residency requirement; Staggered terms	Pike County	8/12/74

Method of election of county commission	Barbour County	7/28/78
Multi-member districts; Anti-single shot	Sumter County Democratic Executive Committee	10/29/74
Reapportionment of Democratic Party Executive Committee	Pickens County	2/18/76
Poll list signature requirement	Baldwin County	11/13/69
	Dale County	11/13/69
	Morgan County	11/13/69
	Montgomery County	11/13/69
	Mobile County	11/13/69
	Lee County	11/13/69
	Escambia County	11/13/69
	Russell County	11/13/69
	Mobile County	12/16/69
Redistricting	Pickens County Board of Education	3/5/76
Redistricting	Selma	4/28/80
Annexation	Alabaster	12/27/79
Annexation	Pleasant Grove	4/28/80
Annexations (6)	Alabaster	7/7/75
Annexations (7)	Bessemer	9/12/75
Candidate qualification procedures	Mobile	8/3/73
Form of city government Specified duties for commissioners	Mobile	3/2/76
Numbered posts	Birmingham	7/9/71
Staggered terms	Phenix City	12/12/75
Incorporation	Hayneville	12/29/78

Source: U.S. Department of Justice
Civil Rights Division, 9/30/80

Mr. Burroughs.

TESTIMONY OF THERESA BURROUGHS

Ms. BURROUGHS. My name is Theresa Burroughs, and I am from Greensboro in Hale County, Ala. I am chairman of the board of the Hale County Civic Improvement League. We are in the black belt of Alabama where blacks are a majority. Hale County has a population which is 63 percent black.

I have been involved in the struggle to get black people registered to vote and elected to office for many years. I marched with Dr. Martin Luther King from Selma to Montgomery in 1965. At that time only about 53 blacks were registered to vote in Hale County. After the Voting Rights Act passed we immediately registered 2,000 blacks.

In 1976, 11 years after the act passed, we elected the first blacks to office. We elected black persons as mayor and town council in Akron, a town of 604 persons where blacks are 75 percent of the population. For the very first time in 1980, we elected blacks to a countywide office. We elected a black to the Hale County School Board and to a county commission position. It is all a direct result of the Voting Rights Act.

Still we are having problems. The only place we can register is at the courthouse. The registrars are supposed to work 120 days out of the year. The law says that they are supposed to let the public know when they will sit. But we are not notified when they will be in. Two times prior to the 1980 elections they put notices in the newspapers, and then they were not there. As a result we made four or five trips down to the office with loads of people to get registered; the doors are locked, and no one is there.

There is so much harassment. At our last election in November 1980, the person over the box would not let literate people go in with illiterate people to help them, even though they knew the people could not read and write. Poll workers have even called the police on me. We have been threatened by the police that we will be taken to jail, and we have been accused of electioneering. Without the help of the Justice Department and the extension of the Voting Rights Act, blacks in the South would be in pretty bad shape.

Hale County has a long history of brutality to blacks, not only in the arena of political actions but physical violence to people who stand up and want to be counted. The climate is one of distrust and dissatisfaction with persons in charge. This will not be overcome unless blacks are able to vote where they want to vote and for whom they want to vote.

I would like to talk now about the suits that we filed against Hale County. When the 1965 Voting Rights Act was enacted, Hale County was electing commissioners from districts, but they immediately changed that. Under the new law when a black would run, he would have to run at large. We went into court seeking to have the commissioners run from the district that they lived in and be subject to the constituents there. The three U.S. district judges handed down a unanimous decision on September 4, 1980.

As a result, we were able to get a commissioner elected in 1980 by having them to run from just their district. Now we are in court

again. We are asking that the school board and the city of Greensboro also be changed to districts instead of the at-large method which dilutes the black vote.

We refuse to go back beyond 1965, and this is what will happen if we do not get the extension of the Voting Rights Act. The county election officials are not accountable; they are not dependable. Blacks in Hale County cannot move forward without the vote, without people voting, without being in office, without having a place of authority to express ourselves and our opinions. So without the renewal of the Voting Rights Act, we are lost people.

Thank you.

[The complete statement follows:]

TESTIMONY OF THERESA BURROUGHS
ON THE VOTING RIGHTS ACT BEFORE THE SUBCOMMITTEE ON
CIVIL AND CONSTITUTIONAL RIGHTS
OF THE HOUSE JUDICIARY COMMITTEE
JUNE 3, 1981

Mr. Chairman, members of the Subcommittee, my name is Theresa Burroughs, and I am from Greensboro in Hale County, Alabama. I am Chairman of the Board of the Hale County Civic Improvement League. We are in the black belt of Alabama where blacks are a majority. Hale County has a population which is 63% black.

I have been involved in the struggle to get black people registered to vote and elected to office for many years. I marched with Dr. Martin Luther King from Selma to Montgomery in 1965. At that time only about 53 blacks were registered to vote in Hale County. After the Voting Rights Act passed, we immediately registered 2,000 blacks.

In 1976, 11 years after the Act passed, we elected the first blacks to office. We elected black persons as mayor and town council in Akron, a town of 604 persons where blacks are 75% of the population. For the very first time in 1980, we elected blacks to a countywide office. We elected

a black to the Hale County School Board and to a county commission position. It is all a direct result of the Voting Rights Act.

Still we are having problems. The only place we can register is at the courthouse. The Registrars are supposed to work 120 days out of the year. The law says that they are supposed to let the public know when they will sit. But we are not notified when they will be in. Two times prior to the 1980 elections they put notices in the newspapers, and then they were not there. As a result we make four or five trips down to the office with loads of people to get registered; the doors are locked, and no one is there.

There is so much harassment. At our last election in November 1980, the person over the box would not let literate people go in with illiterate people to help them, even though they knew the people could not read and write. Poll workers have even called the police on me. We have been threatened by the police that we will be taken to jail, and we have been accused of electioneering. Without the help of the Justice Department and the extension of the Voting Rights Act, blacks in the south would be in a pretty bad shape.

Hale County has a long history of brutality to blacks, not only in the arena of political actions but physical violence to people who stand up and want to be counted. The climate is one of distrust and dissatisfaction with persons in charge. This will not be overcome unless blacks are able to vote where they want to vote and for whom they want to vote.

I would like to talk now about the suits that we filed against Hale County. When the 1965 Voting Rights Act was enacted, Hale County was electing commissioners from districts, but they immediately changed that. Under the new law when a black would run, he would have to run at-large. We went into court seeking to have the commissioners run from the district that they lived in and be subject to the constituents there. The three U.S. District Judges handed down a unanimous decision on September 4, 1980. As a result we were able to get a commissioner elected in 1980 by having them to run from just their district. Now we are in court again. We are asking that the school board and the City of Greensboro also be changed to districts instead of the at-large method which dilutes the

black vote.

We refuse to go back beyond 1965, and this is what will happen if we do not get the extension of the Voting Rights Act. The county election officials are not accountable, they are not dependable. Blacks in Hale County cannot move forward without the vote, without people voting, without being in office, without having a place of authority to express ourselves and our opinions. So without the renewal of the Voting Rights Act, we are lost people.

If there are specifics that you would like for me to go into, I would be more than glad to answer questions.

Mr. EDWARDS. Thank you very much.

We are going to have to recess now until 2 o'clock at which time we will hear from the Honorable Eddie Hardaway, who is State district court judge in Sumter County.

Judge Hardaway, I am sorry we don't have the time right at this moment to hear your testimony, but we will have plenty of time at 2 o'clock.

[Whereupon, at 11:52 a.m., the subcommittee recessed to reconvene at 2 p.m., the same day.]

AFTERNOON SESSION

Mr. EDWARDS. The subcommittee will come to order. I believe that we will now hear the testimony of Judge Eddie Hardaway, Jr. Judge Hardaway, we welcome you. You may proceed.

TESTIMONY OF HON. EDDIE HARDAWAY, JR.

Judge HARDAWAY. Thank you.

Mr. Chairman, members of the committee, my name is Eddie Hardaway, Jr, and I am the district judge of Sumter County, Ala. As district judge, I have jurisdiction of small claims, juvenile, criminal misdemeanor, and civil cases up to $5,000 without a jury. I also hear cases, preliminary hearings in felony cases.

I sincerely appreciate this opportunity to appear before this subcommittee today in wholehearted support of an extension of the Voting Rights Act of 1965.

The Voting Rights Act has been the major vehicle for change and electoral participation, particularly in the South, in the last 15 years and I believe that it is vitally necessary for the State of Alabama to remain a "covered jurisdiction."

Let me share with the subcommittee what is happening in the county of Sumter, which is part of the black belt counties of Alabama. According to the 1980 census, Sumter County is approximately 69.2 percent black, an increase of 3.2 percent over 1970 and 45 percent of the county's families are below the poverty level. The percentage of black males in Sumter County over the age of 25 who finished high school is 30.2 percent and 34.3 percent for females. Black males under the age of 25 who finish high school are only 10.7 percent and black females only 13.7 percent.

Recently, State Representative Preston Minus, who represents Choctaw and Sumter Counties where the black population has risen from approximately 54.6 black to 56 percent black since 1978, introduced in the State legislature a reidentification bill, which is not a purge but a total reregistration bill, in my opinion. The burden is placed on the voter, not the jurisdiction, to reidentify. The bill requires that all voters who are to remain registered in Sumter County to:

First, appear before the board of registrars and reidentify themselves by January 1982;

Second, answer questions and submit proof, under oath, to establish the voter's identity and place of residence. The required proof will be defined by the board of registrars, and the type of proof necessary is not defined in the bill. The bill further requires that the board of registrars purge all lists of qualified electors.

The notice requirement of the bill is clearly insufficient. It requires of the county no more than the board of registrars to place one notice in a county newspaper at least 10 days before spending 1 day from 9 a.m. to 5 p.m. in the beat. The bill even allows for the board to not show up on the announced day, requiring only the same notice of its rescheduled day.

The size of the notice is not specified nor must it be given any prominence in the paper. Compounding the problem of who will not see the notice is the problem of who will not even see the newspaper. The Sumter County Journal has a circulation of only 3,350 in a county whose population is 16,908. With the literacy rate among Sumter County's blacks far less than among its whites, the notice is not likely to be read by many citizens and few, if any black citizens.

Another discriminatory element of this reidentification bill is the time and place for voters to reidentify. As already noted, the hours are from 9 a.m. to 5 p.m. on any one day designated by the board of registrars. On this 1 day in the beat, each voter from the beat is to appear at the place set by the board. Available data on Alabama black belt transportation indicates that this restrictive provision will be far more problematic for blacks than whites.

From a 1975 study prepared for the Task Force on Southern Rural Development, it is evident that the number of automobiles

owned by blacks are proportionately fewer than those owned by whites. Although no statistics are given for Sumter County, Hale County, also with a majority black population is a good representative comparison of most black belt counties. In that county 35.1 percent of the total population had no automobile while 52.5 percent of the blacks were without transportation. The percentage of total population with one car or less was 78.6 percent with 91.8 percent of blacks so handicapped. Clearly, in a county that is more than 50 miles long and 30 miles wide, blacks will be disproportionately hurt by the restrictions of time and place that the bill provides.

An example of how such legislation impacts on minority voting is evident from the Choctaw County reidentification experience. In 1978 a bill almost identical to the Sumter County bill was passed. Prior to reidentification, there were 6,679 white registered voters. There were 5,269 black voters registered. An estimate compiled by the Alabama legal services program puts the postreregistration figures at 5,200 white voters and between 2,500 and 3,000 black voters. Choctaw County, 44 percent black, had roughly 44 percent registered black voters before the reregistration requirement. Afterward, registered blacks made up about 33 percent of the vote.

The Board of Registrars of Sumter is controlled by the white minority and the only black member was appointed by the State representative that introduced the bill. Further requests for blacks to act as deputy registrars have been denied by the board.

If the Sumter County Board of Registrars has a legitimate reason to remove nonvoters, that goal can be accomplished without removing disproportionately so many black voters. Other counties have done so.

Jefferson County, where there is a black representation in the legislature, is a good example. In 1979 a bill was passed to reidentify Jefferson County's voters. This bill, 79-297, differs significantly from the Sumter County one. It places a vigorous burden on the county to reidentify its qualified voters. This includes mailings to voters for a simple mailback reidentification, deputy registrars going into neighborhoods to reidentify voters, and other notice requirements. The Jefferson County registration data indicates that both black and white registration increased following the reidentification by slightly more than 10 percent. The percentage of black voters rose more than that of white voters.

In my humble opinion, these sweeping methods of reidentification have a recent origin in the black belt counties where it is increasingly necessary for incumbent white officials to reduce the number of black voters if they are to remain in office.

In addition to the Choctaw County reidentification, the Alabama Legislature has passed or is considering a similar bill for other black belt counties, such as Perry and Wilcox Counties. None of these jurisdictions is represented in the Alabama Legislature by blacks although each has a majority black population.

This levy of legislation has apparently been triggered by the fact that many of the black belt counties are gaining in black population. For the first time in 40 years, the black population of Alabama black belt counties is on the increase. In 1960, Sumter County had a population of 76.2 percent. In 1970, it was down to 66

percent. Now it has risen to 69.2 percent. The trend applies to many black belt counties.

Recent elections in these counties demonstrate the importance of these shifts in population and their danger for candidates opposed to black voters. In November 1980, I was elected to the office of district judge.

Also, in that election, two other black were elected to the board of education, which increased that number to three blacks on the board. My election as district judge was the first full-time job that a black person has been able to win in Sumter County.

In 1982, most major offices in county government will be up for grabs. That is, the probate judge, tax assessor, tax collector, circuit clerk, sheriff, and three county commissions will be up for reelection. As it now stands, there is a strong possibility that blacks may be elected to some of these positions.

Because of the custom in the Alabama Legislature, the Sumter bill could serve the purpose of hampering black voting without detection or objection. The bill was treated as local legislation to be decided only by legislators from the area. As a practice, such local legislation generally does not receive active discussion in the State legislative bodies, unless objected to by a member of the local delegation on which it impacts. If someone outside that delegation objects, he must show the statewide applicability of the bill. In essence, Mr. Chairman, legislation applying to a local jurisdiction will be passed by the Alabama legislature under a gentleman's agreement.

Mr. Chairman, and members of the subcommittee, you can easily see that Alabama State bills 81-224, in conjunction with bill 79-729, a bill which has also been introduced in the legislature allowing Sumter County to change from paper ballots to electronic voting machines. And in addition to the electronic voting machines, will have a substantial adverse effect on black voters in the county.

If legislation such as these bills can be passed to dilute the black vote in 1981 when Alabama is covered by the Voting Rights Act, I am certain that, without coverage of the act, legislation will be passed to disenfranchise voters, reminiscent of the post-Reconstruction period.

Mr. Chairman, the Voting Rights Act works. There are still irregularities but we do have a mechanism for speedy administrative relief. I sit here today, as living proof that a poor, rural black country boy in Alabama can, as a result of the Voting Rights Act, be elected to public office. Without a Voting Rights Act, there is no doubt in my mind that I would not be the district judge of Sumter County.

I urge the members of this committee to vote for an extension of the Voting Rights Act so that we, in Alabama, can fully participate in the electoral process without having our rights infringed by gentleman's agreements. (See p. 1556 for a copy of the Sumter County reidentification bill.)

Thank you for the opportunity to testify on this important issue.

[The complete statement follows:]

STATEMENT OF

THE HON. EDDIE HARDAWAY, JR.

DISTRICT JUDGE, SUMTER COUNTY, ALABAMA

BEFORE THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

U. S. HOUSE OF REPRESENTATIVES

ON THE ESTENSION OF THE VOTING RIGHTS ACT OF 1965

JUNE 3, 1981

B-352 RAYBURN HOUSE OFFICE BUILDING

Mr. Chairman and members of the Subcommittee,

My name is Eddie Hardaway, Jr. and I am the district judge of Sumter County, Alabama. As district judge, I hear small claims, juvenile, criminal misdemeanor cases, preliminary hearings and civil cases up to $5,000 without a jury.

I sincerely appreciate this opportunity to appear before this subcommittee today in wholehearted support of an extension of the Voting Rights Act of 1965.

The Voting Rights Act has been the major vehicle for change and electoral participation, particularly in the South, in the last 15 years and I believe that it is vitally necessary for the State of Alabama to remain a "covered jurisdiction".

Let me share with the Subcommittee what is happening in my County of Sumter, which is part of the so-called black-belt counties of Alabama. According to the 1980 Census, Sumter County is 69.2% black, an increase of 3.2% over 1970 and 45% of the County's families are below the poverty level. The percentage of black males in Sumter County over the age of 25 who finished high school is 30.2% and 34.3% for females. Black males under the age of 25 who finish high school is only 10.7% and black females only 13.7%.

Recently, State Representative Preston Minus (House District 90) who represents Choctaw and Sumter Counties where the black population has risen from approximately 54.6% black to 56% black since 1978, introduced in the State Legislature a re-identification bill, which is not a purge but a total registration. The burden is placed on the voter, not the jurisdiction, to re-identify. The bill requires that all voters who are to remain registered in Sumter County must:

1. Appear before the Board of Registrars and re-identify themselves by January, 1982;

2. Answer questions and submit proof, under oath, to establish the voter's identity and place of residence. The required

proof will be defined by the Board of Registrars (and the type of proof necessary is not defined in the bill.) The bill further requires that the Board of Registrars purge all lists of qualified electors.

The notice requirement of the bill is clearly insufficient. It requires of the county no more than the Board of Registrars to place one notice in a county newspaper at least ten(10) days before spending its one day from 9 to 5 in the beat. The bill even allows for the Board to not show up on that day, requiring only the same notice for its rescheduled day. The size of the notice is not specified nor must it be given any prominence in the paper. Compounding the problem of who will not see the newspaper. The Sumter County Journal has a circulation of only 3,350 (U.S. Publicity Directory, 1980) in a county whose population is 16,908 (Census Data, 1980). With the literacy rate among Sumter County's blacks far less than among its whites, (see tables attached), the notice is not likely to be read by many citizens and few, if any black citizens.

Another discriminatory element of this re-identification bill is the time and place for voters to re-identify. As already noted, the hours are from 9:00 A.M. to 5:00 P.M. on any one day designated by the Board of Registrars. On this one day in the beat, each voter from that beat is to appear at the place set by the board. Available data on Alabama Black Belt Transportation indicates that this restrictive provision will be far more problematic for blacks than whites. From a 1975 study prepared for the Task Force on Southern Rural Development, it is evident that the number of automobiles owned by blacks are proportionally fewer than those owned by whites. Although no statistics are given for Sumter County, Hale County, also majority black is a good representative comparison of most Black Belt Counties. In that county 35.1% of the total

population had no automobile while 52.5% of the blacks were without transportation. The percentage of total population with one car or less was 78.6% with 91.8% of blacks so handicapped. Clearly, in a county that is more than 50 miles long and 30 miles wide, blacks will be disproportionately hurt by the restrictions of time and place that the bill provides.

An example of how such legislation impacts on minority voting is evident from the Choctaw County re-identification experience. In 1978 a bill almost identical to the Sumter County one was passed. Prior to the re-identification there were 6,679 white voters registered. There were 5,269 black voters registered. An estimate compiled by the Alabama Legal Services Program puts the post re-registration figures at 5,200 white voters and between 2,500 and 3,000 black voters. Choctaw County, 44% black, had roughly 44% registered black voters before the re-registration requirement. Afterward, registered blacks made up about 33% of the vote.

The Board of Registrars in Sumter is controlled by the white minority and the only black member was appointed by the Representative that introduced the bill. Further requests by blacks to act as deputy registrars have been denied by the Board.

If the Sumter County Board of Registrars, has a legitimate reason to remove non-voters, that goal can be accomplished without removing disproportinately so many Black voters. Other counties have done so.

Jefferson County, where there is black representation in the legislature, is a good example. In 1979 a bill was passed to re-identify Jefferson County's voters. This bill, 79-297, differs significantly from the Sumter County one. It places a vigorous burden on the county to re-identify its qualified voters. This includes mailings to voters for a simple mail-back re-identification, deputy registrars going into

neighborhoods to re-identify voters, and other notice requirements. The Jefferson County registration data indicates that both black and white registration increased following the re-identification by slightly more than 10%. The percentage of black voters rose more than that of white voters.

In my humble opinion, these sweeping methods of re-identification have a recent origin in the Black Belt where it is increasingly necessary for incumbent white officials to reduce the number of black voters if they are to stay in office. In addition to the Choctaw County re-identification, the Alabama legislature has passed or is considering facsimiles of the Sumter bill for other Black Belt Counties, Perry and Wilcox. None of these jurisdications is represented in the Alabama legislature by blacks although each has a majority black population.

This levy of legislation has apparently been triggered by the fact that many of the Black Belt counties are gaining in black population. For the first time in forty(40) years, the black population of Alabama Black Belt Counties is on the increase. In 1960 Sumter County has a population of 76.2%. In 1970, it was down to 66%. Now it has risen to 69.2%. The trend applies to many Black Belt counties (See table, p. 6)

Recent elections in these counties demonstrate the importance of these shifts in population and their danger for candidates opposed to black voters. In November 1980, I was elected to the office of District Judge. Also, the number of blacks on the Board of Education increased from two to three. In 1982, most major offices in county government will be up for grabs. That is, the probate judge, tax assessor, tax collector, circuit clerk, sheriff, and three (3) county commissioners will be up for re-election. As it now stands, there is a strong possibility that blacks may be elected to some of these positions.

Because of custom in the Alabama Legislature, the Sumter bill could serve the purpose of hampering black voting without detection or objection. The bill was treated as "local legislation" to be decided only by legislators from the area. As a practice, such local legislation generally does not receive active discussion in state legislative bodies, unless objected to by a member of the local delegation on which it impacts. If someone outside that delegation objects, he must show the statewide applicability of the bill. In essence, Mr. Chairman, legislation applying to a local jurisdiction will be passed by the Alabama Legislature under a "gentlemen's agreement" (423 F. Supp., at 397).

Mr. Chairman, and members of the Subcommittee, you can easily see that Alabama State Legislature bills 81-224, in conjunction with bill 79-729 will have a substantial adverse effect on black voters in the county. If legislation such as these bills can be passed to dilute the black vote in 1981 when Alabama is covered by the Voting Rights Act, I am certain that, without coverage of the Act, legislation will be passed to disenfranchise voters, reminescent of the post-Reconstruction period.

Mr. Chairman, the Voting Rights Act works. There are still irregularities but we do have a mechanism for speedy administrative relief. I sit here today, as living proof that a poor, rural, black, country boy in Alabama can, as a result of the Voting Rights Act, be elected to public office. Without a Voting Rights Act, there is no doubt in my mind that I would not be the district judge of Sumter County.

I urge the members of this Committee to vote for a extension of the Voting Rights Act so that we, in Alabama, can fully participate in the electoral process without having our rights infringed by "gentlemen's agreements". Thank you for this opportunity to testify on this important issue.

TABLES

COUNTY	1960 BLACK POP.	1970 BLACK POP.	1980 BLACK POP.	B.E.O.
Sumter	76.2	66.0	69.2	9
Perry	65.6	58.0	60.0	
Wilcox	77.9	68.0	68.7	6

SUMTER COUNTY EDUCATION

MALES OVER 25 YEARS OLD	% COMPLETED HIGH SCHOOL	BLACK MALES OVER 25 YEARS OLD	% COMPLETED HIGH SCHOOL
3,559	30.2	2,177	10.7

FEMALES OVER 25 YEARS OLD	% COMPLETED HIGH SCHOOL	BLACK FEMALES OVER 25 YEARS OLD	% COMPLETED HIGH SCHOOL
4,425	34.3	2,833	13.7

	REGISTERED VOTERS (PRE) 1978	REGISTERED VOTERS (POST) 1980
CHOCTAW		
WHITE	6,679	5,200 (APPROX.)
BLACK	5,269	3,000 (APPROX.)
JEFFERSON		
WHITE	224,978	251,247
BLACK	81,009	92,544

TABLES

COUNTY	1960 BLACK POP.	1970 BLACK POP.	1980 BLACK POP.	B.E.O.
Sumter	76.2	66.0	69.2	9
Perry	65.6	58.0	60.0	
Wilcox	77.9	68.0	68.7	6

SUMTER COUNTY EDUCATION

MALES OVER 25 YEARS OLD	% COMPLETED HIGH SCHOOL	BLACK MALES OVER 25 YEARS OLD	% COMPLETED HIGH SCHOOL
3,559	30.2	2,177	10.7

FEMALES OVER 25 YEARS OLD	% COMPLETED HIGH SCHOOL	BLACK FEMALES OVER 25 YEARS OLD	% COMPLETED HIGH SCHOOL
4,425	34.3	2,833	13.7

	REGISTERED VOTERS (PRE) 1978	REGISTERED VOTERS (POST) 1980
CHOCTAW		
WHITE	6,679	5,200 (APPROX.)
BLACK	5,269	3,000 (APPROX.)
JEFFERSON		
WHITE	224,978	251,247
BLACK	81,009	92,544

Mr. EDWARDS. Well, thank you very much Judge Hardaway.

I don't quite understand why this reidentification bill, which is subject to preclearance under section 5, would be approved.

Judge HARDAWAY. I am sorry?

Mr. EDWARDS. I should think that State Representative Minus's reidentification bill would have to be approved by the Justice Department. I can't imagine them approving it. Do you think they will?

Judge HARDAWAY. It is under submission. I really don't know.

Mr. HYDE. Mr. Chairman, would you yield for just a second?

Mr. EDWARDS. Sure.

Mr. HYDE. Wouldn't it be true that a bill which has just been introduced would not require preclearance, but it would have to be passed, wouldn't it? Is it just a proposal?

Mr. EDWARDS. Oh, yes——

Ms. DAVIS. It has been passed, in that as I understand it, it is now necessary for the local jurisdiction to take some action. Is that true? The State legislature has acted, and there is something for the local jurisdiction to do at this point?

Judge HARDAWAY. Right. I think from my understanding the bill has passed both houses, I mean both parts of the Alabama Legislature. It has been submitted to the Justice Department.

I think if there is no ruling by June 14, they will implement the bill.

Ms. DAVIS. I talked to the head of the voting section this afternoon to find out the status of that submission. He indicated that the 60 days ends on June 15, and that today or tomorrow the Department was submitting a request for additional information. He seemed not to be familiar with the effects of the Choctaw reidentification bill, which you say is similar to the Sumter bill and has had the effect of reducing, by at least half, the number of black registered voters in Choctaw County.

Judge HARDAWAY. Right, in terms of talking with the State representative, who also represents Choctaw, he indicated that this bill was exactly identical to the Choctaw bill, except they changed the name to Sumter County.

Mr. EDWARDS. I am afraid that the only realistic view of legislation such as this is that its purpose is to discriminate. Coming from California, where we have postcard registration and encourage floating registrars, anybody who wants to register voters can go down and get a book and float around and register thousands. We encourage it on a statewide basis, which it seems to me to be the only way a country like ours can operate.

Your testimony is that it is exactly the opposite in Alabama, that registration is very restrictive, and purging methods are used to get the names of black people off the voter registration rolls, because it is so much more difficult to get them back on, because low-income people without transportation and so forth do have a heck of a time when they might live 20 to 30 miles from the one registration spot. I suppose that is true also.

Judge HARDAWAY. Right. If I——

Mr. EDWARDS. Yes, please.

Judge HARDAWAY. For instance, if a person resides in beat 5, but works in beat 7, and the board is reidentifying people in beat 7,

according to that bill he could not go and reidentify himself in beat 7. The bill specifies that he has to go back to the beat in which he resides, or go to the courthouse—the courthouse being to the office of the probate judge, or to the board of registrars.

Mr. EDWARDS. Well, these purging and reregistration requirements in your State seem to me to be some of the new discriminatory devices. I think that is the only possible interpretation.

Ms. Turner, would you agree with that view?

Ms. TURNER. Yes, sir, I would. Those bills apply to majority black counties, as they do in three of the five situations in Alabama where they passed.

Mr. HYDE. You mean the bills don't apply to all counties?

Ms. TURNER. No, sir, they are local legislation. Two years ago a similar bill was passed covering Choctaw County in the black belt. Then we had three this year for majority black counties in the black belt and two in North Alabama, which is a majority white area where there have been major problems in absentee ballots.

Mr. HYDE. The State legislature passes legislation relating to registration in certain counties?

Ms. TURNER. Yes, sir. We do not have what is called home rule in Alabama counties. And it is local legislation with a gentleman's agreement which Judge Hardaway was talking about.

Mr. EDWARDS. Is it the testimony of all three witnesses that 17 years has not been long enough, that the consequences will be serious if the Voting Rights Act is not extended as it is in its present form, that there are many devices being used even under the Voting Rights Act, and that discrimination is still a very serious problem? Is that your testimony, Mrs. Burroughs?

Ms. BURROUGHS. That is it. Yes, sir.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. I have no questions. I regret that I haven't heard all of the testimony, but I will study it very carefully, and I do appreciate what you have told us today.

Mr. EDWARDS. Counsel?

Ms. DAVIS. Thank you, Mr. Chairman.

Ms. Turner, can you describe in more detail the situation in Hayneville?

Ms. TURNER. Hayneville is a town in a majority black county. It is in Lowndes County, one of the poorest counties in this country. It was incorporated in 1968 after the Voting Rights Act was in effect; the incorporation was not precleared.

In 1978, legal services represented clients who had us inquire with Justice about whether it had been precleared and we found it had not. Negotiations began between the Justice Department and Hayneville about getting additional areas into the town. The town had been drawn in a shape of a cross, leaving out in each of the corners of the cross significant black populations who desired to be in the town.

I think it is important because it illustrates how things can be resolved under the Voting Rights Act, saving a lot of money and a lot of time for both jurisdictions and for plaintiffs. Through negotiations and our doing some canvassing to identify those who wanted to be in the town, there was an agreement where the Hayneville

City Council passed a resolution to include those new areas, and the legislature passed that annexation.

It saved many dollars and a lot of time. It was clear Justice was going to sue if that was not done.

Ms. DAVIS. You have identified a number of barriers to voting registration in Alabama. For example, at page 2 you describe that in Monroe County, where the black population is 44 percent, blacks have been denied registration for failure to produce a social security card, or cannot meet the voucher requirement. Can you describe for us why those kinds of requirements are discriminatory against blacks?

Ms. TURNER. Many more blacks than whites in those rural black belt counties have never worked in covered employment where they would need to have a social security card. So they would not have that type of identification. As shown in the data I cite here there are many fewer registered black voters, at least a smaller proportion of the population of blacks are registered than the whites.

It is hard for them to get a black registered voter to vouch for them, or it may be. The way this happens, is when you go to register, you have to list the name of that person. In some counties you have to list also the address and phone number of the person that can vouch for you, which we view as a direct violation of the act.

I might add that in other counties in the black belt, those identification requirements have appeared in different forms. In Marengo County, for example, if you don't have a social security card you have to produce a school record. In that county 70 percent of the black population in 1970 was below the poverty level. A school record costs a dollar in that county, so one has to spend money one probably doesn't have to obtain the proper identification to be able to register.

Ms. DAVIS. What is the role of the Justice Department in those kinds of matters? Haven't they been informed of these violations of the Voting Rights Act?

Ms. TURNER. I don't know whether they have or not.

Ms. DAVIS. In your survey have you identified examples where jurisdictions have failed to preclear their changes, under section 5?

Ms. TURNER. Yes. The cases I discussed, both the Hayneville and Clio cases were not precleared. We sampled 1 year of acts that were passed by the legislature in 1975. And as I discussed in my testimony, 33 acts passed that year have still not been submitted for preclearance.

Ms. DAVIS. Has the Justice Department been notified of that?

Ms. TURNER. Not to my knowledge. I would point out in Clio that another problem happened with preclearance. The State attorney general's office notified Justice that the Clio annexation has been passed. The Justice Department very soon thereafter, in 1977 asked for submission: the jurisdiction did not submit it, and it stayed unsubmitted until after the elections in 1980.

Ms. DAVIS. I raised this question with Mr. McDonald this morning. Do you have examples where the Justice Department on its own has sought to enforce its objections in the State of Alabama.

Ms. TURNER. Yes. I know about the example because I have used them in my cases. Barbour County which is the county that Clio is in, had a one-man, one-vote challenge. That case the Attorney General brought. In the case Mrs. Burroughs mentioned, I believe the Attorney General came in as an amicus.

In Clark County, adjacent to my county, Mobile County, the Justice Department sued because there was a change from district elections to at-large elections. And they are now in the process of redistricting that county in accordance with one man, one vote. Judge Pittman ruled last fall that the county commissioners, who would be elected then, would be allowed to serve a maximum of 1 year until they could redistrict.

Ms. DAVIS. Thank you. That is all.

Mr. EDWARDS. The gentleman from Wisconsin.

Mr. SENSENBRENNER. No questions, Mr. Chairman.

Mr. HYDE. The more I hear what is going on, I just wonder how efficacious preclearance is. We have had it for 17 years, and apparently things are not a great deal better. Would you say things have improved over the past few years at all?

Ms. TURNER. Yes, sir, I would say they have. The increasing registration indicates things have improved dramatically. And attached to the end of my testimony was a list of objections that the Justice Department had entered. There have been 43 from Alabama. It is, I would say, certainly worth the time and effort and the money that the act has cost us to stop those 43 changes.

There is a lot more to be done, but there have been very important strides.

Mr. HYDE. What would you think of moving section 11, which provides for—you don't need to—well, you can if you wish. Provides for pretty serious penalties for a litany of violations. It just seems to me that increased access to the local courts, maybe the U.S. District Attorney, under section 11 might have some therapeutic effect on the use of gimickry to make it tough for people to register to vote.

Ms. TURNER. I still think that the preclearance mechanism is the most effective mechanism that I have seen suggested. As Hayneville indicates, the possibilities of solving something rapidly and relatively inexpensively are just so much greater than if you depend on the Federal courts, the very complicated Federal rules of evidence, discovery and that type of thing. The U.S. attorney in Alabama has a lot of other things that he or she is working on.

Mr. HYDE. We are told voting rights are very important. But you say preclearance is working, despite all of the——

Ms. TURNER. Yes, sir, I think it is.

Mr. HYDE. I have no further questions.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman.

Ms. Turner, do you believe that there are any jurisdictions of any significance in Alabama which have improved their attitudes toward biracial voting, biracial candidacy?

Ms. TURNER. I hope there have been some. I cannot name what those may be.

Mr. BOYD. What about the city of Birmingham?

Ms. TURNER. The city of Birmingham is a good example when you place it in the context of Jefferson County. The city of Birmingham, because it has a majority black population, I believe that is correct——

Mr. BOYD. Majority white, I believe. The Congressional Research Service told me this morning that the registered voters in Birmingham are 76,459 whites and 63,042 blacks.

Ms. TURNER. OK. Well, it is very close to being a black majority. The city of Birmingham, it is true, has elected a black mayor. When you place it in the context of Jefferson County where you have at large elections, with a very substantial black majority, you still have an all-white county commission. Not being from Birmingham, not ever having lived there, I can't speak about what all has changed in Jefferson County or Birmingham.

Mr. BOYD. A New York Times article of October 31, 1979, suggested that when Dr. Arrington was elected, he could not have been elected without white crossover votes in Birmingham.

Ms. TURNER. That is consistent with things that I have heard pretty much in the political rumor mill in Alabama.

Mr. BOYD. So there are changes in some jurisdictions in the State of Alabama?

Ms. TURNER. Yes. Certainly in Birmingham, if the voting figures you have are correct, that would be the case.

Mr. BOYD. Thank you.

Thank you, Mr. Chairman.

Mr. EDWARDS. Ms. Burroughs, your testimony is very hard hitting. You have been there in the bad old days when it was dangerous business to talk like you are talking today. And a lot of people got killed, too. A lot of people got hurt. But your testimony indicates that regardless of progress being made with the Voting Rights Act that there are still pervasive concerted efforts to get around the bill, the Federal law.

Ms. BURROUGHS. That is true.

Mr. EDWARDS. It is constantly being avoided, if not violated, in many different ways, is that correct?

Ms. BURROUGHS. Both avoided and violated.

Mr. EDWARDS. And to use your own words, that if it is not renewed, you are a lost people?

Ms. BURROUGHS. Absolutely.

Mr. EDWARDS. What do you mean by lost people?

Ms. BURROUGHS. We have nowhere to go. No protection. The 1965 Voting Rights Act is our only protection. In 1978 the officials in Hale County purged the roll completely, so they told us. Everybody had to go back and reidentify. But all the whites were still on the rolls. But they purged all the blacks from the rolls, and we had to get them back, line up and get them back.

Prior to the 1965 Voting Rights Act, we would have to recite a portion to the Constitution in order to register. So only 50-some blacks—in the whole county, 16,000—were registered voters.

Mr. EDWARDS. You know, when I read the newspapers of Alabama, especially the ones in the big cities, the newspapers in Mississippi and South Carolina and so forth, they are progressive and certainly the Atlanta newspaper, in studying voting rights in that State and pointing out that we have a long way to go in

Georgia, all of that would indicate that the white establishment, the white people that run these States, some of them are forward thinking and would agree with your testimony.

But then we—your testimony is about a gentlemen's agreement, which makes us very uneasy because we all know what gentlemen's agreements happen to be. They are a way of avoiding the unspoken. Is that what goes on? Don't they read these newspapers and pay attention?

Ms. BURROUGHS. They don't do it. They read it. And that is where it stops. I am happy to be here in Washington today from the black belt of Alabama. And I bring an invitation to you, the panel, to visit the black belt of Alabama.

Mr. EDWARDS. Well, we are going to be in Montgomery a week from Friday, and we hope to have some good testimony at that time. Are there any further questions?

Ms. DAVIS. I have a question.

Mr. EDWARDS. Yes.

Ms. DAVIS. Mr. Hardaway, would you describe the significance of the changes, both to reidentify voters in Sumter County, and the coincidence that the number of positions that will be up for election in 1982 is much greater in 1980, which is when you ran?

Judge HARDAWAY. If I understood your question correctly, the two bills that I talked about, in my opinion, give local officials at least three or four ways to disenfranchise black voters, all before the 1982 election.

First of all, if you take the reidentification bill, it is common knowledge that rural black people will not go through the expense of reregistering. Most of them remember how difficult it was to register the first time. Thus, you implement the reidentification bill and naturally, a certain percentage of black voters will be eliminated from the rolls. That is one way to disenfranchise black voters.

In addition to that, if Act No. 79-729 is implemented, which allows the use of electronic voting machines, blacks will be unable to vote effectively, and thus this is another way to disenfranchise black voters. There is no assurance that black voters will get the same opportunity ahead of time to study and use these machines. The problem is compounded by the fact that the act will allow four or five beats to be consolidated. As I said earlier, people who have voted all their lives in Whitfield, Ala., would end up having to go 9 miles to Bellamy to vote. In my opinion, all of this is an effort to get black voters off the list so that next year, when the number of black voters will be fewer, the probate judge, the tax assessor, the circuit clerk, the sheriff, all three county commissioners, are up for reelection.

Ms. DAVIS. Does Alabama have a State purging statute or requirement, provisions about purging voting rolls?

Judge HARDAWAY. From what I can recall, in the Alabama code, you can remove dead people, if vital statistics would provide this information to the board of registrars. It is my understanding that the board of registrars has not been receiving the information from the Department of Vital Statistics. The circuit clerk is also to forward names of individuals convicted of felonies and crimes involving moral turpitude. It is alleged that this has not been done.

I think the probate judge is also to send a list to the board of registrars of all the people who have been declared incompetent. It is difficult to get information from the officials there so I don't really know.

Ms. DAVIS. It is your suggestion these reasons are being cited in support of the necessity for reidentification bill—that the purging provisions are not taking off ineligible voters.

Judge HARDAWAY. Right, and that a lot of people who are nonresidents are still voting. That is a way to make sure that we get those people off the list.

Ms. DAVIS. From your testimony, you indicated that the differences between the Sumter reidentification bill, and the Wilcox County, Perry County, and I believe you mentioned one other.

Judge HARDAWAY. Jefferson.

Ms. DAVIS. Well, you suggested that the Jefferson County bill had a different kind of effect, that in fact after voters had been reidentified in Jefferson County, the number of persons on the rolls increased. I was wondering if you had some explanation as to why that was true. You seemed to suggest that the Jefferson County reidentification bill put the responsibility on election officials to identify voters and the Sumter County bill puts the burden on the voters?

Judge HARDAWAY. Right. In Jefferson, you could reidentify by getting one member in your family to complete the questionnaire—and send it back in. That is not the case with the Sumter bill. The Sumter bill requires reidentification on a particular day in your beat, or come to the courthouse.

So really, there are two or three ways you can be reidentified. However, the ways impose a great burden on poor people in the county.

Ms. DAVIS. This question is addressed to the entire panel. Is it your view that the kinds of manipulations of the election laws in the State of Alabama, purgings, for example, are happening only in the black belt, or are similar things happening in areas where there are not significant numbers of black voters?

Ms. TURNER. Well, certainly they are happenng a lot more frequently in the black belt. As I pointed out, two of the reidentification bills are in north Alabama in small counties where there have been major scandals, I think it is correct to say, about absentee voting. It is addressed to an entirely different problem in those two counties.

Ms. DAVIS. Are the types of requirements different there than they are for the black belt counties?

Ms. TURNER. I have not reviewed in the last couple of weeks what those bills look like for those northern Alabama counties.

Ms. DAVIS. What about the State election officials, do they have any role in this, to try and correct any discriminatory actions? We have heard quite frequently that there is a deterrent effect sometimes on election officials. Before they make changes they consider what the Justice Department would do. In your view, do they ever make a judgment on whether it would be fair to black voters or not in the State?

Ms. TURNER. If that has happened, I don't know about it. There is no State election official in Alabama except the Secretary of

State, who is more or less a bookkeeper. He does put out some regulations, but elections are controlled either by the Code, or by the local election officials, who are the sheriff, the probate judge, and the county clerk.

Ms. DAVIS. I have no further questions.

Mr. EDWARDS. Thank you very much.

On this panel we are pleased to have the Honorable James Buskey, State representative, Mobile, Ala.; Rev. John Nettles from Anniston, Ala., and Fred Gray, an attorney from Tuskegee, Ala.

We are continuing to review the voting rights situation in the State of Alabama.

TESTIMONY OF HON. JAMES BUSKEY, STATE REPRESENTATIVE, MOBILE, ALA.; REV. JOHN S. NETTLES, STATE PRESIDENT, SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE, ANNISTON, ALA.; AND FRED GRAY, ATTORNEY, TUSKEGEE, ALA.

Mr. GRAY. Thank you, Mr. Chairman.

Mr. EDWARDS. Without objection, all of the testimony will be made a part of the record.

Mr. Gray, you may proceed.

Mr. GRAY. Mr. Chairman, members of the committee, my name is Fred Gray. I am an attorney from Tuskegee, Ala. I appreciate the invitation of this subcommittee asking that I appear and testify about the Voting Rights Act of 1965.

For most of my adult life I have worked in courtrooms, legislative chambers, churches, and meeting halls to guarantee all citizens regardless of color the right to vote and enjoy equal protection of the laws. These decades of experiences have taught me lessons about human relations, the dynamics of southern change, and the needed role of the Federal Government in the protection of rights of black citizens.

I would like this afternoon to share with the subcommittee some of my experiences and observations.

My own social concerns were developed at an early age from the teachings of my parents and in reaction to conditions which I witnessed growing up in the South and particularly my experiences in Alabama. Fortunately, life in Alabama and the rest of the South began to change as I left my schooling and started practicing law throughout middle Alabama. Slowly, step by step, repressive segregationist practices did yield to the pressures of legal action, boycotts, and other means of protest. It never came easy, the opposition never gave an inch. However, and at almost every moment of change, the protective mechanics of Federal law were necessary in order to expand the civil rights of black Alabamians.

When I stood by Mrs. Rosa Parks, as her counsel in December of 1955, in the police court of Montgomery, Ala., the judge would not seriously entertain the constitutional questions that we rose, or that we considered and presented. So it took us years and expensive appeals to take the cases involving the buses in Montgomery from the district court to the U.S. Supreme Court.

It was a Federal court that finally struck down the law. In March of 1956, when I represented Dr. Martin Luther King, and I was the first lawyer who represented him in civil rights litigation, and Dr. Ralph Abernathy, and other ministers in Montgomery in

the State courts, the charges that they had against my clients basically were that they had exercised their constitutional rights of peaceful protest against those who maintained segregation laws.

Nevertheless, local white municipal officials would not budge from their efforts to prosecute until Federal law duly established the rights of those ministers and many others who were connected with the Montgomery Improvement Association.

As the lawful, peaceful protest of black Alabamians spread across Alabama against segregation after the Montgomery bus boycott, the white resistance also became widespread, intransigent, and supported by local and State public officials. Because of its efforts to protect the rights of black citizens, the National Association for the Advancement of Colored People was held in civil contempt by the Alabama courts for its refusal to provide the names and addresses of all its Alabama members and agents. Because this attempted exposure was aimed at economic reprisals and physical coercion of NAACP members, my colleagues and I found it necessary to appear before the U.S. Supreme Court on five separate occasions to protect the rights of black citizens to organize and protest.

In 1957, the Alabama Legislature passed Act 140 which changed the boundaries of the city of Tuskegee from a square to what I described in my brief to the U.S. Supreme Court as a 28-sided sea dragon. The clear intent and effect of this extraordinary redistricting of political boundaries was the removal of black citizens' right to vote within the city. Because access to the ballot could not be denied effectively in Tuskegee at the polling place on election day, the Alabama Legislature resurrected an old, more indirect yet effective method of denying the franchise to black citizens.

After exhausting all other available remedies and with the passage of 3 long years, I finally argued before the Supreme Court in 1960 in the case of *Gomilion* v. *Lightfoot,* and incidentally, Dr. Gomilion is here at these hearings today, that it was a constitutional violation:

> * * * where a state in exercise of its power to rechart the boundary lines of one of its geographic subdivisions utilizes that power to deny the negro the rights and benefits of residence in a municipality including the right to vote in municipal elections.

Distinguishing other cases which had fenced off the jurisdiction of the Federal courts from the political thicket of reapportionment and redistricting, Justice Felix Frankfurter held for the Supreme Court that the Constitution forbade denial of the effective right to vote even when it was accomplished through indirect and circuitous means.

Today I am happy to say Tuskegee has changed. As a result of that suit we now have a black mayor, and the majority of our city council is black. I no longer have to sue the city of Tuskegee because I represent the city of Tuskegee as its city attorney. I am pleased that this case provided an important precedent that permitted the Federal courts to move further in protecting the constitutional and civil rights of black citizens in the important area of the franchise; however, other cases and an increased role of the Federal Government were necessary for these rights to become more secure.

During the 1960's as a member of the Alabama Advisory Committee of the U.S. Commission on Civil Rights, I listened to scores of black and white Alabamians tell of their problems in registration and voting especially in the black belt areas of the State. These witnesses often told of how once one local technique of resistance was removed by court action, organized protest or negotiation, another barrier—just as effective—was put in its place.

Added to my own experiences, this testimony from the victims of political and racial discrimination convinced me that the 1965 Voting Rights Act was a necessary and primary means to halt the momentum of resistance by local and State white officials to the voting rights of black people.

Now let's talk a little bit about after the act. After the act was passed by Congress, I recall that many observers speculated that the struggle for equal political rights had been won and that 1966 would see a new day in Alabama and the rest of the South. Regrettably, the passage of the act did not prompt an immediate respect for the lawful political rights of all Alabama citizens.

When I entered the chambers of the Alabama House of Representatives in the building that once served as the capitol of the Confederacy, I was grateful to be the first black Alabamian in the 1900's to serve in that high capacity. Because of continued opposition to an equitable legislative districting that recognized the voting strength of Alabama's 25 percent black population, I could share the honor of this service which was in the legislature with only one other black representative for almost 8 years.

As a State legislator I witnessed the continued use of local and State government to frustrate legal rights that had been guaranteed by both Federal court interpretation and Federal statutory enactment. Up to the last hearing on the last day, Alabama State and local officials continued to search for ways to keep from integrating Alabama's public schools. While the Federal court finally ordered statewide desegregation in 1967 as a result of a case we filed in 1964, it required 3 years of ongoing litigation to force the State to permit black and white children in Macon County, Ala., to go to the same school. For other schools in the State, the enforcement of this basic right by court order required several more years, and some school districts are still actively in Federal court because of continued resistance to desegregation.

The resistance also continued to center on the franchise. In the face of the Voting Rights Act, white officials in Greene County, Ala., in 1968 stole the election from black candidates under the supervision of Federal officials who finally provided a fair election which blacks won in 1970. In the early 1970's, the number of black elected officials evidenced the results of continued resistance and remained only a token of the black population in the State.

In 1973, I remained one of only two black State legislators, and only nine other blacks sat on any county governing boards throughout the entire State. Only one black served as probate judge, the chief administrative officer of the 67 counties of Alabama.

By 1975 when the Voting Rights Act was to expire, Alabama had made drastic improvements from the days when segregationist laws attempted to keep Rosa Parks on her feet. A 1974 Federal

court order had required the Alabama Legislature to redistrict once more, and black legislators from Birmingham, Mobile, and Montgomery were elected to serve. Yet, Alabama has not changed voluntarily, not so deeply that the Voting Rights Act was no longer needed.

Without exaggeration, I can tell this subcommittee truthfully that the same momentum of resistance which I witnessed in the fifties and in the sixties, in different parts of Alabama, has continued in the seventies and even until now, as you have heard from other witnesses here today. Even so, as we make some gains in those districts and counties where our numbers are significant, our legislators and county officials have begun to conspire to turn back the clock in an effort to dilute the black vote.

Let us look at some voting problems and strategies to dilute the black vote. In municipal elections, one of the most blatant practices being used more and more to dilute the black vote is for city clerks to omit the names of scores of black voters from the voting list. While this is being done, the poll officials do not make the voters aware that they can vote a challenge ballot if their names are not on the list. In 1972, I represented Andrew M. Hayden, who wanted to be the mayor of Uniontown, where approximately 200 black voters in that city were left off the official voting list. We won the suit, which resulted in the election of a black mayor and three black council members. Last July, a city clerk in Evergreen, Ala., omitted approximately 200 black voters from the voting list. One black candidate who was an incumbent lost his race to a white opponent by only four votes.

Although the Alabama Legislature passed a law in 1978 giving boards of registrars the authority to appoint deputy registrars, less than 15 out of 67 counties have appointed any blacks as deputy registrars. The present law says that boards "may" appoint deputy registrars. Therefore, the boards use the permissive language of the law to subvert the spirit and intent of the law. Even a letter from Gov. Fob James last year urging boards to appoint deputy registrars did not cause many boards to do so. In most instances where black deputies have been appointed, it has been only for a short time. Boards of registrars often require the deputies to turn in all registration forms the next day.

Poll workers often refuse to allow voters who are illiterate or who need assistance in voting to select someone of their own choosing to assist them.

In Alabama, very few new polling places have been established in the black community since the passage of the Voting Rights Act. On the other hand, it is a fairly common practice for election officials to select white churches, county stores, and white businesses as polling places. Since there is a direct correlation between voter turnout and proximity to the polling place, black votes are diluted because of the distances we usually have to travel to go vote.

The number of blacks serving as poll workers at the polls rarely approximates our numbers in the population. However, during the 1980 November elections, less than 12 blacks out of 150 poll workers in Conecuh County, Ala., were appointed. Conecuh County has a black population of nearly 44 percent.

Out of the 201 members of boards of registrars in Alabama, less than 12 are black. Few counties have boards of registrars who initiate an active voter outreach program. Registration is still a courthouse operation for the most part in most counties.

Changes in annexation and in districts have taken place which were not precleared by the Justice Department. For instance, in Conecuh County, Ala., the county changed from single-member districts to multimember districts in 1971. One of the single-member districts had a black population of over 60 percent. After the consolidation, no district had more than 50 percent black population. The change was not reported. There are other places in Alabama where the same thing happened.

Blacks are grossly underrepresented on the county Democratic executive committees.

For those who oppose the Voting Rights Act extension on the grounds that the act has a regional bias against the South, and feel that it should be extended nationally to insure fair coverage, I would like to offer a moral response to rebut that position. Throughout biblical history, God targeted specific places to root out evil. He sent Jonah to Nineveh. The whole point is to limit or to allow for God and man to concentrate on the problems or evils in a given area. Since human resources are limited, it would be an exercise in futility for the Justice Department to attempt to monitor the entire Nation when there is simply no need, and knowing that the Department does not have sufficient staff to do so anyway.

Any effort to convince black people or to convince me that we no longer need the act because we have become too successful in registering folk or in electing blacks will fail. Although black registration figures in Alabama are believed to be between 350,000 and 375,000, it is believed that there may be some 250,000 more blacks in Alabama who are not registered. Moreover, approximately 250 black elected officials in Alabama is nothing to rave about. For there are over 1,000 elected officials in the entire State.

Ultimately, I long for the day, Mr. Chairman, when there will be no need for the Voting Rights Act, but that day is not now. But since the amendment, and I am talking about the 15th amendment, which guaranteed blacks the right to vote never did work on its own, we must not be too hasty in eliminating this act which has, at least to some degree, worked.

Indeed, until the law has some teeth in it, it doesn't amount to much. For this reason, the Voting Rights Act should be extended. If anything, all we need to do now is to monitor more effectively the provisions of the act in order to insure that we will begin to take full advantage of the protections which are now provided.

Thank you very much, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Mr. Gray. (See p. 2160 for prepared statement.)

Reverend Nettles.

TESTIMONY OF REV. JOHN S. NETTLES

Mr. NETTLES. Mr. Chairman and distinguished members of the subcommittee, my name is John S. Nettles and I am Alabama State president of the Southern Christian Leadership Conference. I am here to express my unqualified support for the Rodino bill, H.R. 3112, and to emphasize to this committee that we, in Alabama,

have a present continuing need for the extension of the Voting Rights Act. Any dilution of the act and any weakening of section 5, the preclearance provision would wreak havoc with the right of blacks to participate meaningfully in the electoral process in Alabama.

I am pleased to have this opportunity to appear before this subcommittee to reason and to plead with you to extend the Voting Rights Act for 10 years, to put the bilingual balloting provisions on the same time track as the race provisions and to amend section 2 to include as discriminatory any voting practice "which results in the denial or abridgement of voting rights."

I have been associated with the Southern Christian Leadership Conference for the past 12 years. Since 1976 I have been president of the Alabama State chapter of the SCLC and for better than 10 years I have been the southeastern regional director. I have participated in voting registration drives in both northern and southern Alabama and throughout the southeast region.

I have been involved in the peaceful protest movement for many years and have been arrested numerous times for peacefully seeking voting rights as well as other civil rights for blacks in the South. Although I live in Anniston, Ala., which is in Calhoun County, I am constantly fighting against discriminatory practices and racial bigotry all over the State. I have observed and continue to observe many discriminatory and unfair voting practices heaped upon blacks in Alabama.

Three presently existing examples of current discriminatory practices immediately come to mind: First, Alabama's reidentification or reregistration scheme which in 1981 has been proposed not in 1965, but in 1981; and second, the 1981 proposal to exclude black counties from power to appoint additional registrars; and third, present electoral practices in my home of Anniston, Ala., which dilute the black vote and which, to my knowledge, have not been precleared with the Department of Justice.

Several bills have been introduced in that effort, in a mastermind scheme, if you will, to weaken the voting strength of blacks in Alabama. This is by no accident that in Alabama and in these various counties where this has been recommended, these are counties where overwhelmingly blacks are in the majority. In Wilcox County, in Perry County, in Lowndes County, this is a clear effort by those in authority to dilute black votes in these counties. The white sponsor of the bill for Wilcox and Lowndes County, Senator Cordy Taylor, exempted the white or predominately white counties in the district from the reach of this proposed legislation. Wilcox and Lowndes are heavily black counties on which a reregistration requirement would clearly have a discriminatory effort on black voting strength. It was reported that the senator indicated he introduced the bills at the request of the county commissioners. The present county commissioners are black and have indicated they did not request the bill. It appears that the request for the bill, if there was one, came from defeated white commissioners.

On the issue of registration which is still made extremely difficult for blacks in my State, there is a 1981 example of continuing efforts to block the ability of blacks to register to vote in Alabama.

The chairman indicated how in California they would welcome anyone to register or help other people to come register voters. I want to allude here to a case in Phoenix City, Ala., the Sumbry case, where a man's wife had been appointed to be a deputy registrar. She was pregnant. Her husband wanted to assist her in registering voters. He made inquiries to the State attorney general to see whether it was all right. He called the Justice Department to get clearance. They indicated that it would be all right. The only thing they should not actually verify, or process the application, his wife could do that, but he could assist her.

Mr. Sumbry aided his wife in this process. The local district attorney later prosecuted him because of the overwhelming number of blacks who were registered during this period. He was sentenced, and the verdict was they receive 4 years in prison for helping to register unregistered voters in Phoenix City, Ala.

Failure to extend the full protections of the Voting Rights Act and section 5 to us in Alabama would pave the way for the return of the reign of terror in Alabama as unforgettable and as inglorious as our dark history following postreconstruction. And if this bill is not extended, I for one don't want to live in Alabama. That region would certainly, that time and that reign of terror would certainly come.

Admittedly we in Alabama have made some gains, but the malignancy of discrimination is still very much with us. There is much that remains to be done. To take the act from us now or to weaken it would abort the slow painful healing process upon which we have embarked. However, we are far from healed. It is much too soon to withdraw the safeguards and the protections of the act from millions of minority Americans.

The Klan is on the rise in Alabama. I don't know about other parts of the country. In 1979 an attempt was made on my life in Decatur, Ala., while peacefully protesting on behalf of a handicapped young man. Three men were shot in the head. The FBI indicates my name right now in 1981 is on a hit list with the Klan in Alabama. Two lynchings have taken place in Mobile, Ala., not in 1965, but in 1981. My home has been shot into 17 times in Anniston, Ala.

Members of this committee, poor people, black people in Alabama would not be able to survive or register and vote if you deny us this opportunity of having the Voting Rights Act defend a people who are already known as the disinherited of this land. There is right now in Alabama a reign of terror existing through that State. Moreover in Anniston, Ala. where I live, we are presently violating the act. There has been no submission under section 5 from Calhoun County, the county in which Anniston is located. Yet since passage of the act there has been an electoral change which works this way. In Anniston where blacks approximate 30 percent of the population, and where there are two predominantly black wards, blacks cannot elect the council person of their choice because the city elections are at-large. Although we have a ward system in name, in fact the system is an at-large one. This system adopted after the passage of the Voting Rights Act was never precleared with the Department of Justice.

There are also examples of discriminatory electoral changes made in Alabama after the passage of the act which the Justice Department has learned of many years after the passage of the act and have objected to since.

Barbour County, Ala. Changes made in 1965 and 1967 with regard to the method of election of county commissioners were not submitted to the Department of Justice for section 5 preclearance until May 30, 1978, over 11 years after their adoption.

Until 1965, six of the seven members of the Barbour County Commission had been elected from single-member districts, and the seventh member had been elected at-large. The 1965 legislation provided for the at-large election of all members, with districts retained as residency districts only.

In 1967, further legislation reduced the size of the governing body from seven to five members and divided the county into four residency districts, with two members required to reside in one district and one member in each of the other three. The two positions for the first district were numbered. Continuing preexisting law, a majority vote was required for nomination, and terms of office were staggered.

The Justice Department objected to these changes and pointed out that according to the 1970 census, the county had a 46 percent black population. No blacks had ever been elected to the governing body under the at-large system, even though some of the pre-1965 districts and some of the residency districts established in 1967 had black population majorities. Under a system of fairly drawn single-member districts, some black majority districts could be expected to result. It should also be noted that the at-large election system was adopted soon after the Voting Rights Act of 1965 enabled substantial numbers of blacks to participate in the electoral process for the first time.

Hale County, Ala. Before January 1965, county commissioners in Hale County, Ala., had been elected by single-member districts. The county changed its method of election in 1965, but did not submit the change for section 5 preclearance until July 1974. After the change, commissioners were elected in the county at-large, with districts used only for residency requirements. Evidence showed that the black population was concentrated in certain areas, there was a pattern of racial bloc voting in the county, and no black had ever been elected to countywide office.

The Department of Justice accordingly concluded after receiving additional information that the change from single-member to at-large elections was dilutive and discriminatory, and objected by letter of April 23, 1976.

Some others have mentioned Haynesville, Ala., a town that is in the county of Lowndes, where blacks have been able to gain access to the ballot resulting from the 1965 Voting Rights Act and where their political strength has not only been seen, but has also been felt. But there was a small community of whites in the area of Haynesville who decided that because of the strength and political power of the blacks in that community, that they were going to incorporate their own city, their own town. I wish you could see the boundaries which they utilized in order to get enough whites in

that particular area, pulling them from sparsely populated areas to make sure that they had a white majority.

This is indeed an effort to curtail the strength of black voters in the State of Alabama. You have enabled us to move up the ladder to some extent in Alabama. Even though the Voting Rights Act has not done all, it has helped in many instances. But it is like the man who was in a 20-foot hole. He was given a 10-foot pole to get out. He climbed to the top of the pole. But even at the top of the pole, he was still 10 feet in the hole.

The Voting Rights Act has been our pole. It has enabled blacks to register and vote in Alabama. It has enabled some small groups to be elected. But we are still in the hole. And if blacks are really to understand and realize the full meaning of the Voting Rights Act, we need that pole extended for 10 years so that we might reach the top.

Thank you. And I plead with you to help the disinherited of the State of Alabama.

[The statement of Mr. Nettles follows:]

STATEMENT OF REV. JOHN S. NETTLES, STATE PRESIDENT OF THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE IN ALABAMA

Mr. Chairman, and distinguished members of the Subcommittee, my name is John S. Nettles and I am Alabama State President of the Southern Christian Leadership Conference. I am here to express my unqualified support for the Rodino Bill, H.R. 3112, and to emphasize to this Committee that we, in Alabama, have a present continuing need for the extension of the Voting Rights Act. Any dilution of the Act and any weakening of Section 5, the preclearance provision would wreak havoc with the right of blacks to participate meaningfully in the electoral process in Alabama.

I am pleased to have this opportunity to appear before this Subcommittee to reason and to plead with you to extend the Voting Rights Act for ten years, to put the bilingual balloting provisions on the same track as the race provisions and to amend Section 2 to include as discriminatory any voting practice "which results in the denial of abridgement of voting rights."

I have been associated with the Southern Christian Leadership Conference for the past twelve years. Since 1976 I have been President of the Alabama State Chapter of the SCLC and for better than ten years that I have been the Southeastern regional director. I have participated in voting registration drives in both Northern and Southern Alabama and throughout the Southeast region.

I have been involved in the peaceful protest movement for many years and have been arrested numerous times for peacefully seeking voting rights as well as other civil rights for blacks in the South. Although I live in Anniston, Alabama which is in Calhoun County, I am constantly fighting against discriminatory practices and racial bigotry all over the state. I have observed and continue to observe many discriminatory and unfair voting practices heaped upon blacks in Alabama.

Three presently-existing examples of current discriminatory practices immediately come to mind: (1) Alabama's reidentification or reregistration scheme which in 1981 has been proposed; and (2) 1981 proposal to exclude black counties from power to appoint additional registrars; and (3) present electoral practices in my home of Anniston, Alabama which dilute the black vote and which, to my knowledge have not been precleared with the Department of Justice.

Several bills have been introduced in the Alabama legislature to require reregistration or reidentification of voters in Sumter, Wilcox, Perry and Lowndes counties. Tuscaloosa, Dallas and Winston counties have also been proposed for this procedure. Five of the seven counties have over fifty percent black population. These bills would compel all electors to reidentify themselves in order to vote in the 1982 elections. With respect to the predominantly black Perry County, the white sponsor of the bill, Lee Pegues, won the last election in his district by only 82 votes. A reregistration bill that will be more harmful to blacks than whites will aid the sponsor's re-election.

The white sponsor of the bills for Wilcox and Lowndes Counties, Senator Cordy Taylor, exempted the white or predominantly white counties in his district from the reach of the proposed legislation. Wilcox and Lowndes are heavily black counties on

which a reregistration requirement would clearly have a discriminatory effect on black voting strength. It was reported that the Senator indicated he introduced the bills at the request of the county commissioners. The present County Commissioners are black and have indicated they did not request the bill. It appears that the request for the bill, if there was one, came from defeated white commissioners.

On the issue of registration which is still made extremely difficult for blacks in my state, there is a 1981 example of continuing efforts to block the ability of blacks to register to vote in Alabama.

In this most recent session of the Alabama legislature, Senate Bill 9 was introduced to provide for the appointment of City Clerks as voting registrars upon the request of the municipal governing body. However, just prior to Senate passage in 1981, S.B. 9 was amended by Senator Cordy Taylor, the author of the reidentification bills for the black counties in his district, to exempt ten counties in the South Central area from coverage of the bill. If the bill passes in present form the heavily black counties in the South Central area which includes Wilcox and Lowndes counties will be deprived of extra deputy registrars which every other county in the state will be empowered to have.

A further example of the iron hand with which Alabama succeeds in blocking and impeding black registration efforts can be seen in the 1980 case of Mr. Arthur Sumbry. It was not in 1965 but in 1980 that Arthur Sumbry, a black male, was found guilty of unauthorized voter registering in Phoenix City, Alabama. He was aiding his pregnant wife who was a deputy registrar to register previously unregistered voters in Phoenix City. Mr. Sumbry was prosecuted by the local district attorney and sentenced to four years in prison.

Failure to extend the full protections of the Voting Rights Act and Section 5 to us in Alabama would pave the way for the return of a reign of terror in Alabama as unforgettable and as inglorious as our dark history following Reconstruction. And that reign would certainly come. Admittedly, we in Alabama have made some gains but the malignancy of discrimination is still very much with us. There is much that remains to be done. To take the Act from us now or to weaken it would abort the slow painful healing process upon which we have embarked. However, we are far from healed. It is much too soon to withdraw the safeguards and the protections of the Act from millions of minority Americans.

The Klan is on the rise in Alabama, even making their paramilitary camps in our state. It was in 1981, not in 1965, that a black man was found hanging from a tree in a residential area of Mobile.

It was in 1979, not in 1965, that three black youths were shot in the head by hooded men in broad daylight while peacefully protesting the conviction of a mentally retarded boy in Decatur, Alabama.

Moreover, Anniston, Alabama, where I live is presently in violation of the Act. There has been no submission under Section 5 from Calhoun County, the county in which Anniston is located, and yet, since the passage of the Act there has been an electoral change which works this way: In Anniston where blacks approximate thirty percent of the population, and where there are two predominantly black wards, blacks cannot elect the council person of their choice because the city elections are at-large. Although we have a ward system in name, in fact the system is an at-large one. This system adopted after the passage of the Voting Rights Act was never precleared with the Department of Justice.

There are also examples of discriminatory electoral changes made in Alabama after the passage of the Act which the Justice Department has learned of many years after the passage of the Act and have objected to since.

Barbour County, Ala.—Changes made in 1965 and 1967 with regard to the method of election of county commissioners were not submitted to the Department of Justice for Section 5 preclearance until May 30, 1978, over eleven years after their adoption.

Until 1965, six of the seven members of the Barbour County Commission had been elected from single-member districts, and the seventh member had been elected at-large. The 1965 legislation provided for the at-large election of all members, with districts retained as residency districts only. In 1967, further legislation reduced the size of the governing body from seven to five members and divided the County into four residency districts, with two members required to reside in one district and one member in each of the other three. The two positions for the first district were numbered. Continuing pre-existing law, a majority vote was required for nomination, and terms of office were staggered.

The Justice Department objected to these changes and pointed out that according to the 1970 Census, the county had a 46 percent black population, No blacks had ever been elected to the governing body under the at-large system, even though some of the pre-1965 districts and some of the residency districts established in 1967

had black population majorities. Under a system of fairly drawn single-member districts, some black majority districts could be expected to result. It should also be noted that the at-large election system was adopted soon after the Voting Rights Act of 1965 enabled substantial numbers of blacks to participate in the electoral process for the first time.

Hale County, Ala.—Before January 1965, county commissioners in Hale County, Alabama had been elected by single-member districts. The county changed its method of election in 1965 but did not submit the change for Section 5 preclearance until July 1974. After the change, commissioners were elected in the county at-large, with districts used only for residency requirements. Evidence showed that the black population was concentrated in certain areas, there was a pattern of racial bloc voting in the County, and no black had ever been elected to county-wide office. The Department of Justice accordingly concluded after receiving additional information that the change from single-member to at-large elections was dilutive and discriminatory, and objected by letter of April 23, 1976.

Haynesville, Ala.—Haynesville, Alabama, is located in Lowndes County, where, according to the 1970 Census, blacks constitute 77 percent of the population.

The preincorporation contiguous community known as "Haynesville" was also predominantly black. Before the passage of the Voting Rights Act in August 1965, few blacks in Lowndes County had been registered to vote, but by 1967, black political strength in the county was growing. In 1967, the residents of a predominantly white area within the unincorporated community of "Haynesville" established a new incorporated town where whites constituted a majority and could retain white political control.

The boundaries of the new town was a star-shaped figure with points reaching in just to the point where large segments of the black community began. In using this peculiar method of drawing boundaries, which amounted to gerrymandering, the coummunity the whites in Haynesville deliberately excluded many of the black sections of unincorporated Haynesville. This change was objected to on December 29, 1978. As a result of that objection a more acceptable rounded figure has been drawn as the new boundary.

Alabama continues to attempt electoral changes to dilute black votes. Were it not for Section 5 of the Act, these changes would be permanently in place. In February 1980 the Department of Justice objected to an annexation plan submitted by Pleasant Grove, Alabama. The city population was 6,500 and exclusively white. The areas proposed for annexation were developed for exclusively white use. Several identifiably black areas had petitioned for annexation, but the city had taken no action to annex these areas. Finally, the objection letter noted reports of activities indicating the presence of considerable antagonism toward black persons in the vicinity of Pleasant Grove.

You've enabled us through the Voting Rights Act to begin climbing towards the top of a very deep pit. We've been climbing steadily but we have not yet reached the top. The pit is twenty feet deep. The pole, the Voting Rights Act is only fifteen feet. We're only 10 feet from the top—halfway. Taking the pole from us now—the Voting Rights Act—would cause us to descend rapidly to the bottom. I plead with you today, to extend the pole 10 additional years.

Mr. EDWARDS. Thank you very much, Reverend Nettles, for very moving testimony.

The last witness on this panel is the State representative, Mr. James Buskey.

STATEMENT OF HON. JAMES BUSKEY

Mr. BUSKEY. Mr. Chairman, my name is James Buskey. I am a State representative from Alabama serving in the house. I first was elected in 1976 and reelected in 1978. I would like also to express my appreciation for the opportunity to appear here today.

Dr. Martin Luther King, Jr., and hundreds that marched with him in Selma in early 1965, recognized the desperate need for the protection of landmark Federal voting rights legislation. Later that same year, Congress passed into law the measure drafted by President Lyndon Johnson, who considered the Voting Rights Act the single most important civil rights law generated by the Congress.

Yet, in my estimation we have not come far since 1965. During the harrowing registration campaigns in Alabama between 1964 and 1966, the percentage of voting age blacks registered reached 51.2 percent. But since that time, registration figures have improved by less than 6 percent.

Blacks and other minorities clearly have a much longer way to go toward achieving adequate representation. Blacks in Alabama hold only 238 of 4,100 elected offices in the State. There is no black representation from Alabama in this Congress. And, since the last renewal of the act in 1975, black representation in the State legislature has risen by only one seat.

I represent a district in the city of Mobile, and, since my career in politics has been in that city, I am quite familiar with a lawsuit called *Mobile* v. *Bolden.* In my judgment the decision rendered by the Supreme Court at that time was probably the worst that I have witnessed. While urging the continuation of the Voting Rights Act, I must also strongly urge you to amend section 2 of the act to conform with section 5 and make clear that Congress prohibits any practice which is racially discriminatory, whether in purpose or effect.

Proving the discriminatory intent of practices that deny minority voters choice in the electoral process is a terrible and unfair burden that Congress must repudiate. Voting practices, and the at-large system in particular, have operated to deny black electors their choice of candidates for the Mobile City Council for over 70 years. We must urge the Congress to remedy this grievous and horrendous situation. Some claim the State of Alabama and its local jurisdictions are now adhering closely to the letter of the Voting Rights Act, and that the State should no longer be required to submit electoral changes to the Nation's chief law enforcement officer for review. I dispute those claims. The section 5 provisions of the act have been and remain vital to the effectiveness of the law. The significant progress made by blacks in democratic participation is constantly threatened. Ten counties in central Alabama that you have heard testimony on this morning and this afternoon have majority black populations and blacks have finally attained office in various capacities in each of those jurisdictions. Yet, I have no doubt that blacks would quickly lose such political footholds if Federal preclearance requirements were removed from the law.

Federal district courts have been suggested as a substitute for administrative scrutiny by the Attorney General. This proposal is extremely worrisome to me, considering the costly and time-consuming *Mobile* v. *Bolden* case. It is my understanding from the information published in that case, if it goes back to the Supreme Court after retrial at the district level in Mobile, the price tag that has been estimated, conservatively, will be $6 million to the city of Mobile. That does not include any estimation on what it would cost the plan. It is a time-consuming and very costly measure in order to go through the court process. One thing that has happened in the court processes is the years it has taken to resolve a judicial proceeding. Thus, from my perspective, judicial proceedings are extremely cumbersome and largely ineffective, and could not be

substituted for the simple and practical administrative procedures now available through the Voting Rights Act.

Protests against the mechanics of section 5, in fact, echo the same sentiments that judicial enforcement of Federal rights have historically prompted from some quarters in Alabama. Effective enforcement, not administrative burden, is at bottom what has been objectionable to the critics of the Voting Rights Act.

While it has not done all that is needed, section 5 has had an important deterrent effect. I believe this subcommittee can assume that many changes in voting law and practice have been wisely avoided by State and local legislators because of the act. During my term in the State legislature, I have heard numerous changes in voting procedures discussed and abandoned due to the existence of Federal clearance requirements. I know the deterrent effect of section 5 is real.

Still, without section 5, at least 72 discriminatory changes would now be in effect in Alabama, according to the Department of Justice. Forty-five objections have been filed since 1975. I have a list of subdivisions in the State of Alabama who have altered and changed, even from the same district to at-large election of its officials who have illegally redistricted counties. They have changed city and school board governing bodies. The Attorney General has also stopped numerous annexations, acts involving candidates' qualifications, restriction of assistance to persons, reapportionment, changing of judgeships from elected to appointed positions, and various other plans to blunt minority strength at the polls.

Another indication of the indispensible nature of section 5 is the evidence that procedures have been changed without submission to the Justice Department. The Department discovered 70 unsubmitted changes in the period following the 1970 extension. Although I do not have complete information on the entire period since 1965, I believe this evasive tactic to be widespread and comparable to the documentation of almost 400 unsubmitted changes in the neighboring State of Georgia during the same period.

I can also cite a number of instances of long delays in submissions. In 1969, Washington County, 29 percent black, in 1979 it changed from single-member districts to at-large election of its county commission. This act was not submitted to the Attorney General until December 1979. I have other instances that show that a delay has ranged from 5 to 13 years in submission.

Such attempts to subvert the law convincingly demonstrate the continued need for the present section 5 provisions. The danger of Congress permitting the essential elements of the Voting Rights Act to die are real, and have already appeared in early form with passage of enactments in my own State legislature to require "reidentification of voters" as the term is incorrectly stated.

Reidentification has to be understood to mean complete re-registration. The net result is the instant lowering of the percentage of black registration built over a number of years. True, the white registration is reduced to zero as well. But what happens is that whites very quickly reidentify. Blacks do not. Case in point is the recent reidentification experience in Choctaw County which you have heard here. Survey reveals that white registration fell ap-

proximately one-fifth. Black registration, however, collapsed to 52 percent of the previous level.

It is no coincidence that "reidentification" legislation passed in the 1981 session would give boards of registrars in three majority black counties, each with increasing black populations and voting registration, the license to completely purge the rolls. This would be true in Perry County, with a 60-percent black population, as well as Sumter and Wilcox Counties, with nearly 70-percent black population; none, by the way, ever represented by a black legislator. It will force blacks to start from scratch 1 year prior to the next legislative election. Without section 5 these techniques cannot be challenged quickly and can become the latest form of disenfranchisement.

Such bills, introduced as local legislation, and I heard the discussion that you had on that a few minutes ago, are practically impossible to defeat in the Alabama legislature. Under the rules of each chamber, such legislation is uncontestable unless one represents the particular county affected. A vote against another legislator's local bill is a breach of the etiquette of the chamber and an open invitation to reprisal against one's own crucial local measures.

Even with 16 black legislators in the statehouse, we are simply unable to protect black people from such injurious legislation outside the districts we represent. Without the protection of section 5, black people in Perry, Sumter, Wilcox, and all the other counties away from Birmingham, Mobile, Montgomery, and Tuskegee have little protection from serious obstacles to black registration and representation.

The era of denial of voting rights is not past in Alabama. The Voting Rights Act functions as the bedrock of civil rights legislation. Should Congress allow the act to die, blacks and other racial minorities will have the doors to legislative processes slammed in their faces, and the tremendous contribution minorities have just begun to make in government, so especially important in the cities and counties of our Nation, will be lost. The history of racial discrimination has taught me that we can go backward on race relations and voting rights.

I hope that the action of 1965, where the blood of black citizens flowed in the streets of Selma like rain, or anywhere else in this Nation, never happens again.

Thank you, Mr. Chairman.

[The statement of Mr. Buskey follows:]

TESTIMONY OF REPRESENTATIVE JAMES E. BUSKEY

SECRETARY OF ALABAMA LEGISLATIVE BLACK CAUCUS

TO BE PRESENTED BEFORE THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL

RIGHTS OF THE HOUSE JUDICIARY COMMITTEE

MR. CHAIRMAN, I DEEPLY APPRECIATE YOUR INVITATION TO APPEAR BEFORE THE SUBCOMMITTEE TODAY. DR. MARTIN LUTHER KING, JR., AND HUNDREDS THAT MARCHED WITH HIM IN SELMA IN EARLY 1965, RECOGNIZED THE DESPERATE NEED FOR THE PROTECTION OF LANDMARK FEDERAL VOTING RIGHTS LEGISLATION. LATER THAT SAME YEAR, CONGRESS PASSED INTO LAW THE MEASURE DRAFTED BY PRESIDENT LYNDON JOHNSON, WHO CONSIDERED THE VOTING RIGHTS ACT THE SINGLE MOST IMPORTANT CIVIL RIGHTS LAW GENERATED BY THE CONGRESS.

YET, IN MY ESTIMATION WE HAVE NOT COME FAR SINCE 1965. DURING THE HARROWING REGISTRATION CAMPAIGNS IN ALABAMA BETWEEN 1964 AND 1966, THE PERCENTAGE OF VOTING AGE BLACKS REGISTERED REACHED 51.2%.[1] BUT SINCE THAT TIME, REGISTRATION FIGURES HAVE IMPROVED BY LESS THAN 6%.[2]

BLACKS AND OTHER MINORITIES CLEARLY HAVE A MUCH LONGER WAY TO GO TOWARD ACHIEVING ADEQUATE REPRESENTATION. BLACKS HOLD ONLY 238 OF 4,100 ELECTED OFFICES IN THE STATE.[3] THERE IS NO BLACK REPRESENTATION FROM ALABAMA IN THIS CONGRESS. AND, SINCE THE LAST RENEWAL OF THE ACT IN 1975, BLACK REPRESENTATION IN THE STATE LEGISLATURE HAS RISEN BY ONLY ONE SEAT.

I REPRESENT A DISTRICT IN THE CITY OF MOBILE, AND, SINCE MY CAREER IN POLITICS HAS BEEN IN THAT CITY, I AM QUITE FAMILIAR WITH A LAWSUIT CALLED MOBILE v. BOLDEN. WHILE URGING THE CONTINUATION OF THE VOTING RIGHTS ACT, I MUST ALSO STRONGLY URGE YOU TO AMEND SECTION 2 OF THE ACT TO CONFORM WITH SECTION 5 AND MAKE CLEAR THAT CONGRESS PROHIBITS ANY PRACTICE WHICH IS RACIALLY DISCRIMINATORY, WHETHER IN PURPOSE OF EFFECT.

PROVING THE DISCRIMINATORY INTENT OF PRACTICES THAT DENY MINORITY VOTERS CHOICE IN THE ELECTORAL PROCESS IS A TERRIBLE AND UNFAIR BURDEN THAT CONGRESS MUST REPUDIATE IMMEDIATELY. VOTING PRACTICES, AND THE AT-LARGE SYSTEM IN PARTICULAR, HAVE OPERATED TO DENY BLACK ELECTORS THEIR CHOICE OF CANDIDATES

FOR THE MOBILE CITY COUNCIL FOR OVER 70 YEARS. WE MUST NOW URGE THE CONGRESS TO REMEDY THIS GRIEVOUS SITUATION.

SOME CLAIM THE STATE OF ALABAMA AND ITS LOCAL JURISDICTION ARE NOW ADHERING CLOSELY TO THE LETTER OF THE VOTING RIGHTS ACT, AND THAT THE STATE SHOULD NO LONGER BE REQUIRED TO SUBMIT ELECTORAL CHANGES TO THE NATION'S CHIEF LAW ENFORCEMENT OFFICER FOR REVIEW. I MUST DISPUTE SUCH CLAIMS. THE SECTION 5 PROVISIONS OF THE ACT HAVE BEEN AND REMAIN VITAL TO THE EFFECTIVENESS OF THE LAW. THE SIGNIFICANT PROGRESS MADE BY BLACKS IN DEMOCRATIC PARTICIPATION IS CONSTANTLY THREATENED. TEN COUNTIES IN CENTRAL ALABAMA HAVE MAJORITY BLACK POPULATIONS AND BLACKS HAVE FINALLY ATTAINED OFFICE IN VARIOUS CAPACITIES IN EACH OF THOSE JURISDICTIONS. YET, I HAVE NO DOUBT THAT BLACKS WOULD QUICKLY LOSE SUCH POLITICAL FOOTHOLDS IF FEDERAL PRECLEARANCE REQUIREMENTS WERE REMOVED FROM THE LAW.

FEDERAL DISTRICT COURTS HAVE BEEN SUGGESTED AS A SUBSTITUTE FOR ADMINISTRATIVE SCRUTINY BY THE ATTORNEY GENERAL. THIS PROPOSAL IS EXTREMELY WORRISOME TO ME, AND NOT ONLY DUE TO MY FAMILIARITY WITH THE COSTLY AND TIME-CONSUMING MOBILE v. BOLDEN CASE. THE U.S. ATTORNEY GENERAL HAS HAD CONSIDERABLE EXPERIENCE WITH VOTING RIGHTS LITIGATION IN ALABAMA, HAVING ENTERED A DOZEN CASES THERE AS PLAINTIFF SINCE 1965, 14% OF ALL THOSE FILED BY THAT OFFICE. NINE OF THOSE CASES INVOLVED SEVEN OF THE MAJORITY BLACK COUNTIES. ALL HAVE TAKEN YEARS TO RESOLVE. THUS, FROM MY PERSPECTIVE, JUDICIAL PROCEEDINGS ARE EXTREMELY CUMBERSOME AND LARGELY INEFFECTIVE, AND COULD NOT BE SUBSTITUTED FOR THE SIMPLE AND PRACTICAL ADMINISTRATIVE PROCEDURES NOW AVAILABLE THROUGH THE VOTING RIGHTS ACT.

I WONDER HOW THE DISTRICT COURTS WOULD RESPOND TO SUCH A STAGGERING INCREASE IN DEMAND FOR JUDICIAL PROCEEDINGS, UNLESS WE CONTEMPLATE THEIR TRANSFORMATION

TO ADMINISTRATIVE FUNCTIONING. WILL LOCAL OFFICIALS MORE ENJOY BEING HAULED INTO FEDERAL COURT FOR MONTHS AND YEARS THAN THE PRESENT PROCESS OF REVIEW? WILL DISTRICT JUDGES -- JUDGE PITTMAN WAS RECENTLY LABELLED "JUST ANOTHER FEDERAL BUREAUCRAT" BY THE MOBILE PRESS-REGISTER -- BE ANY LESS DESPISED THAN THE EXPERIENCED STAFF OF THE VOTING RIGHTS SECTION AT THE DEPARTMENT OF JUSTICE, EVEN WITH THE BURDEN OF PROOF SHIFTED TO MINORITY PLAINTIFFS?

PROTESTS AGAINST THE MECHANICS OF SECTION 5, IN FACT, ECHO THE SAME SENTIMENTS THAT JUDICIAL ENFORCEMENT OF FEDERAL RIGHTS HAVE HISTORICALLY PROMPTED FROM SOME QUARTERS IN ALABAMA. EFFECTIVE ENFORCEMENT, NOT ADMINISTRATIVE BURDEN, IS AT BOTTOM WHAT HAS BEEN OBJECTIONABLE TO THE CRITICS OF THE VOTING RIGHTS ACT.

WHILE IT HAS NOT DONE ALL THAT IS NEEDED, SECTION 5 HAS HAD AN IMPORTANT DETERRENT EFFECT. I BELIEVE THIS SUBCOMMITTEE CAN ASSUME THAT MANY CHANGES IN VOTING LAW AND PRACTICE HAVE BEEN WISELY AVOIDED BY STATE AND LOCAL LEGISLATORS BECAUSE OF THE ACT. DURING MY TERM IN THE STATE LEGISLATURE, I HAVE HEARD NUMEROUS CHANGES IN VOTING PROCEDURES DISCUSSED AND ABANDONED DUE TO THE EXISTENCE OF FEDERAL CLEARANCE REQUIREMENTS. I KNOW THE DETERRENT EFFECT OF SECTION 5 IS REAL.

STILL, WITHOUT SECTION 5, AT LEAST 72 DISCRIMINATORY CHANGES WOULD NOW BE IN EFFECT IN ALABAMA, ACCORDING TO THE DEPARTMENT OF JUSTICE.[4] 45 OBJECTIONS HAVE BEEN FILED SINCE 1975. I ASK YOU TO CONSIDER THIS LIST OF JURISDICTIONS WHICH HAVE ATTEMPTED TO SUBMERGE BLACK POLITICAL PARTICIPATION THROUGH SUCH MEANS AS CHANGING FROM DISTRICT TO AT-LARGE VOTING, ILLEGALLY REDISTRICTING COUNTY, CITY AND SCHOOL GOVERNING BODIES, ADOPTING STAGGERED TERMS, CHANGING RESIDENCY TO REQUIREMENTS TO EXCLUDE BLACK CANDIDATES, AND

OTHER UNLAWFUL TACTICS:

AUTAUGA COUNTY,	23% BLACK	PHENIX CITY,	37% BLACK
BIRMINGHAM,	42% BLACK	PICKENS COUNTY,	42% BLACK
CHAMBERS COUNTY,	36% BLACK	PIKE COUNTY	35% BLACK
CLARKE COUNTY,	43% BLACK	SELMA,	50% BLACK
HALE COUNTY,	63% BLACK	SHEFFIELD,	19% BLACK
AND TALLADEGA,	33% BLACK		

THE ATTORNEY GENERAL HAS ALSO STOPPED NUMEROUS ANNEXATIONS, ACTS INVOLVING CANDIDATE QUALIFICATIONS, RESTRICTIONS OF ASSISTANCE TO ILLITERATE PERSONS, REAPPORTIONMENT OF PARTY EXECUTIVE COMMITTEES, CHANGING OF JUDGESHIPS FROM ELECTIVE TO APPOINTIVE, AND VARIOUS OTHER PLANS TO BLUNT MINORITY STRENGTH AT THE POLLS.

ANOTHER INDICATION OF THE INDISPENSABLE NATURE OF SECTION 5 IS THE EVIDENCE THAT MANY PROCEDURES HAVE BEEN CHANGED WITHOUT SUBMISSION TO THE JUSTICE DEPARTMENT. THE DEPARTMENT DISCOVERED 70 UNSUBMITTED CHANGES IN THE PERIOD FOLLOWING THE 1970 EXTENSION.[5] THOUGH I DO NOT HAVE COMPLETE INFORMATION FOR THE ENTIRE PERIOD SINCE 1965, I BELIEVE THIS EVASIVE TACTIC TO BE WIDESPREAD AND COMPARABLE TO THE DOCUMENTATION OF ALMOST 400 UNSUBMITTED CHANGES IN THE NEIGHBORING STATE OF GEORGIA DURING THE PERIOD.

I CAN ALSO CITE A NUMBER OF INSTANCES OF LONG DELAYS IN SUBMISSIONS. IN 1969, WASHINGTON COUNTY, 29% BLACK, CHANGED FROM SINGLE-MEMBER DISTRICTS TO AT-LARGE ELECTION OF ITS COUNTY COMMISSION. THIS ACT WAS NOT SUBMITTED TO THE ATTORNEY GENERAL UNTIL DECEMBER 1979. IN 1971, CONECUH COUNTY, 44% BLACK, REARRANGED ITS COUNTY COMMISSION DISTRICTS TO ELIMINATE A MAJORITY BLACK DISTRICT. JUSTICE DEPARTMENT POLL WATCHERS DISCOVERED THE CHANGE

NINE YEARS LATER, PROMPTING ITS SUBMISSION IN 1980. I HAVE SIMILAR DATA ON FIVE ADDITIONAL JURISDICTIONS. (ST. CLAIR COUNTY, 10% BLACK, 10-YEAR DELAY; CRENSHAW COUNTY, 27% BLACK, 11-YEAR DELAY; JEFFERSON COUNTY, 34% BLACK, 5-YEAR DELAY; HALE COUNTY, 63% BLACK, 6-YEAR DELAY; AND THE CITY OF CLIO, 33% BLACK, 13-YEAR DELAY), AND CAN POINT TO SEVERAL-YEAR DELAYS IN MANY OTHER CASES.

SUCH ATTEMPTS TO SUBVERT THE LAW CONVINCINGLY DEMONSTRATE THE CONTINUED NEED FOR THE PRESENT SECTION 5 PROVISIONS. THE DANGER OF CONGRESS PERMITTING THE ESSENTIAL ELEMENTS OF THE VOTING RIGHTS ACT TO DIE ARE REAL AND HAVE ALREADY APPEARED IN EARLY FORM WITH PASSAGE OF ENACTMENTS IN MY OWN STATE TO REQUIRE "REIDENTIFICATION OF VOTERS", AS THE TERM IS INCORRECTLY STATED.

ALTHOUGH IT IS THE TASK OF COUNTY BOARDS OF REGISTRARS TO SYSTEMATICALLY REVIEW THE VOTING ROLLS IN ORDER TO REMOVE PERSONS DISQUALIFIED AS VOTERS, MANY BOARDS HAVE HIT ON "REIDENTIFICATION" AS A WAY TO RELIEVE THEMSELVES OF THE BURDEN OF THEIR SWORN DUTIES, CAUSING LEGISLATION TO ALLOW A NUMBER OF BOARDS TO COMPLETELY PURGE THE ROLLS AND REQUIRE VOTERS TO APPEAR BEFORE THEM TO "REIDENTIFY" AS QUALIFIED ELECTORS. AT FIRST GLANCE THIS MAY APPEAR A HANDY, IF SOMEWHAT LAZY, MEANS OF MAKING CERTAIN THE VOTING ROLLS ARE NOT CARRYING GREAT NUMBERS OF DISQUALIFIED PERSONS. BUT "REIDENTIFICATION" MUST BE UNDERSTOOD AS COMPLETE RE-REGISTRATION. THE RESULT IS THE INSTANT LOWERING OF THE PERCENTAGE OF BLACK REGISTRATION, BUILT OVER THE YEARS THROUGH PAIN-STAKING AND COSTLY MEANS, TO ZERO.

THOUGH WHITE REGISTRATION IS REDUCED TO ZERO AS WELL, WHITES QUICKLY REGAIN HIGH LEVELS OF REGISTRATION. BLACKS DO NOT. A CASE IN POINT IS THE RECENT "REIDENTIFICATION" EXPERIENCE IN CHOCTAW, A COUNTY WITH 44% BLACK POPULATION. A 1978 LAW MANDATED "REIDENTIFICATION" THERE. SURVEYS REVEALED THAT WHITE REGISTRATION FELL BY APPROXIMATELY ONE-FIFTH. BLACK REGISTRATION

HOWEVER, COLLAPSED TO ONLY 52% OF PREVIOUS LEVELS.[6] THUS, AN 8% DIFFERENCE (56/44) IN WHITE-BLACK REGISTRATION GREW TO 30% (65/35) FOLLOWING "REIDENTIFICATION."

IT IS NO COINCIDENCE THAT "REIDENTIFICATION" LEGISLATION PASSED IN THE 1981 SESSION WOULD GIVE BOARDS OF REGISTRARS IN THREE MAJORITY BLACK COUNTIES, EACH WITH INCREASING BLACK POPULATIONS AND VOTING REGISTRATION, THE LICENSE TO COMPLETELY PURGE THE ROLLS AND PLACE THE BURDEN OF REGISTERING ONCE AGAIN ON THE VOTERS. THUS, PERRY, 60.2% BLACK, SUMTER, 69.5% BLACK, AND WILCOX, 68.9% BLACK, NONE EVER REPRESENTED BY A BLACK LEGISLATOR, WILL FORCE BLACKS TO START FROM SCRATCH ONE YEAR PRIOR TO THE NEXT LEGISLATIVE ELECTION. WITHOUT SECTION 5 THESE TECHNIQUES CANNOT BE CHALLENGED QUICKLY AND CAN BECOME THE LATEST FORM OF DISENFRANCHISEMENT.

SUCH BILLS, INTRODUCED AS LOCAL LEGISLATION, ARE PRACTICALLY IMPOSSIBLE TO DEFEAT IN THE ALABAMA LEGISLATURE. UNDER THE RULES OF EACH CHAMBER, SUCH LEGISLATION IS UNCONTESTABLE UNLESS ONE REPRESENTS THE PARTICULAR COUNTY AFFECTED. A VOTE AGAINST ANOTHER LEGISLATOR'S LOCAL BILL IS A BREACH OF THE ETIQUETTE OF THE CHAMBER AND AN OPEN INVITATION TO REPRISAL AGAINST ONE'S OWN CRUCIAL LOCAL MEASURES.

EVEN WITH SIXTEEN BLACK LEGISLATORS IN THE STATEHOUSE, WE ARE SIMPLY UNABLE TO PROTECT BLACK PEOPLE FROM SUCH INJURIOUS LEGISLATION OUTSIDE THE DISTRICTS WE REPRESENT. WITHOUT THE PROTECTION OF SECTION 5, BLACK PEOPLE IN PERRY, SUMTER, WILCOX, AND ALL THE OTHER COUNTIES AWAY FROM BIRMINGHAM, MOBILE, MONTGOMERY, AND TUSKEGEE HAVE LITTLE PROTECTION FROM SERIOUS OBSTACLES TO BLACK REGISTRATION AND REPRESENTATION.

THE ERA OF DENIAL OF VOTING RIGHTS IS NOT PAST IN ALABAMA. THE VOTING RIGHTS ACT FUNCTIONS AS THE BEDROCK OF CIVIL RIGHTS LEGISLATION. SHOULD CONGRESS

ALLOW THE ACT TO DIE, BLACKS AND OTHER RACIAL MINORITIES WILL HAVE THE DOORS TO LEGISLATIVE PROCESSES SLAMMED IN THEIR FACES, AND THE TREMENDOUS CONTRIBUTION MINORITIES HAVE JUST BEGUN TO MAKE IN GOVERNMENT, SO ESPECIALLY IMPORTANT IN THE CITIES AND COUNTIES OF OUR NATION, WILL BE LOST. THE HISTORY OF RACIAL DISCRIMINATION HAS TAUGHT ME THAT WE CAN GO BACKWARDS ON RACE RELATIONS AND VOTING RIGHTS. THERE CAN ONCE AGAIN BE NO BLACKS ON THE CITY COUNCILS, IN THE COUNTY COURTHOUSES, IN THE SHERIFF'S OFFICES. COUNTLESS SOCIAL, POLITICAL, AND ECONOMIC GAINS CAN SOON EVAPORATE.

IT IS THE RESPONSIBILITY OF THIS CONGRESS TO SEE THAT THOSE GAINS ARE THE STRENGTH OF FUTURE PROGRESS AND THAT SELMA, 1965, NEVER HAPPENS AGAIN.

FOOTNOTES

[1]1976 VOTER REGISTRATION IN THE SOUTH, SUMMER 1966, A REPORT BY THE VOTER EDUCATION PROJECT, ATLANTA, GEORGIA.

[2]CALCULATION BASED ON CURRENT POPULATION REPORTS, MARCH 1980, U.S. CENSUS BUREAU, AND VOTER EDUCATION PROJECT SURVEY, 1980.

[3]NATIONAL ROSTER OF BLACK ELECTED OFFICIALS, 1980, PUBLISHED BY THE JOINT CENTER FOR POLITICAL STUDIES, WASHINGTON, D.C.

[4]U.S. DEPARTMENT OF JUSTICE, 1965-1980, AS CITED IN CONGRESSIONAL QUARTERLY, APRIL 11, 1981, p. 636.

[5]VOTING RIGHTS ACT-ENFORCEMENT NEEDS STRENGTHENING, FEBRUARY 6, 1978, A REPORT BY THE COMPTROLLER GENERAL OF THE UNITED STATES.

[6]ALABAMA LEGAL SERVICES CORPORATION SURVEY, 1981.

Mr. EDWARDS. Thank you very much, Representative Buskey. The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Well, I have no specific questions other than to extend my appreciation for the three of your statements, and all the statements we have heard today. I know there is another panel which I cannot remain for. It is very illuminating, and I appreciate it. I just want to comment parenthetically that what may be good in one section of the country may be abused in another. Assistance voting, for example, which you have stated is desirable where you are, is one of the most abused things up in my jurisdiction where the precinct captain goes in and sees how you vote and makes sure you vote right and maybe votes for you. That happens under the guise of assisting people from other countries who do not speak the language. It may be a good thing as I say in some jurisdictions, and it can be abused in others. But what you have told us has been very important, and I thank you.

Mr. EDWARDS. I certainly say amen to what my colleague from Illinois says. The testimony today has been very impressive and you three gentleman have added to the impact of it. We face a very serious situation, not only in the South, but the signal that would go out to the country and to the world at large if this bill is not extended would be catastrophic. Absolutely catastrophic. That is the message that I think you are carrying here to Washington, and that is the message that is going to have to go out throughout the United States, because an awful lot of people think that everything is just fine. Your testimony and the other witnesses indicate that things are not just fine, and that we have got a long, long way to go. Is complying with section 5 expensive and time consuming to these local officials?

Mr. BUSKEY. Mr. Chairman, the only thing the officials will have to do once they pass the bill that would either rearrange some borderlines or reidentification, or whatever impact it would have,

the only thing they would have to do is submit it to the Justice Department. That takes, what, an 18-cent stamp now. The Justice Department will take the length of time under the law, 60 days with the extension, perhaps 90, and evidence whether or not it is going to object to it.

I wanted to make just one point. No, it is not time consuming for the officials or the person who passes the measure, particularly as it relates to Alabama, because the Secretary of State has the responsibility to forward it to the Justice Department. It does not take that much time. But what is happening is that we are getting ready for an election in Alabama, a legislative election next year. You come up with the reidentification bill. Unless the Justice Department acts very quickly on it, then the provisions of the bill are carried out, which means that the rolls would be purged, if we are talking about reidentification, before the Justice Department has brought the pressure of its office to bear. But in specific answer to your question, no, sir, just an 18-cent stamp from the secretary of state to Washington.

Mr. GRAY. Mr. Chairman, looking at it from another point of view, in Macon County, of which Tuskegee is the county seat, I represent the county as county attorney. We have had occasion to have to move voting places. All it has taken is simply what our office usually does is write a letter to the Justice Department, set out exactly what needs to take place, what we are trying to do, and usually we will get a phone call or so back that they need additional information. So it is not difficult at all.

Mr. EDWARDS. Do these jurisdictions who submit these changes feel that the Justice Department is unfair in approving or disapproving the changes?

Mr. GRAY. It is difficult to say what they believe. I would think that if they have a bill, a change that is a legitimate change, and the design, the effect, is to disenfranchise blacks, they do not have any problems. But I think they have problems whether there are other motives other than genuine objective changes.

Mr. NETTLES. I agree. I also think though it gives some of them an out because of the mandate of the guideline. It gives them an opportunity in some instances to do what is right and to save face.

Mr. EDWARDS. Do you hear them say or do they put in the newspaper a complaint that the decision should not be made by some bureaucrat sitting in Washington?

Mr. GRAY. Well, you always have that. Local politicians always look for a whipping boy. Washington is the farthest distance, so they use that. But we do not see that as a genuine concern. It is a political matter.

Mr. EDWARDS. Thank you.

Mr. BUSKEY. Mr. Chairman, as relates to the same question you are addressing, section 5 preclearance has in my judgment a significant deterrent effect. As I look at the members of the legislature and trying to understand them as a body and as individuals, they are often people who served in the legislature, would probably do anything under the Sun and Moon and heaven and Earth in order to protect themselves and their positions. I am fairly sure that they would pass any law that would keep them in the position where they are and have the effect of impacting adversely on

blacks who constitute a majority in those areas. Section 5 preclearance section says that the deterrent effect to keep them from passing laws in that district, that in effect will disenfranchise the majority black population there.

Mr. EDWARDS. The testimony today has surprised and disappointed me in one way. And that is that the act has been so widely avoided by either not producing and sending to Washington these submissions, or by new devices to get around the thrust of the act. So it is not the strongest bill in the world. It certainly does not reach into every home or office or covered jurisdiction, does it?

Mr. BUSKEY. You are right. It is not the best in the world, but it is the best we have at the present time.

Mr. NETTLES. Correct, and we could not survive without it.

Mr. EDWARDS. Yes.

Counsel.

Ms. DAVIS. Thank you, Mr. Chairman.

Attorney Gray, you used some very strong language. You did it both times on the same page, page 5 of your testimony. You indicated, "In the face of the Voting Rights Act, white officials in Greene County, Ala., in 1968 stole the election from black candidates." At the bottom of the page you indicated that, "Our legislators and county officials have begun to conspire to turn back the clock." That is awfully strong language, and I wonder if you could explain in a bit more detail what you mean by those statements.

Mr. GRAY. With respect to the election in 1969, I am sorry we do not have some elections here from Greene County, but I understand from the black residents of Greene County that they in fact did win the elections over there. And they were stolen from them. It is somewhat similar to what happened to me when I ran for the legislature the first time in 1966. This happpened in Lowndes County, which is the same place where you have Clio you heard about. It happens the white businessman who told me this was from Clio. He said:

> Well, Fred, I think if you were elected you could be an effective legislator. But you know we have been stealing the elections down here from each other for years, and you know what will happen if you get elected.

True enough, when the votes were in, I had won the election by some 300 votes. We thought they were all in. The next day the absentee ballots came in, and it was some 500 absentee ballots. I ended up losing, and finally won some 4 years later. So you have any number of situations like that and others where elections are in fact stolen.

I do not think there is any question but when you consider the testimony you heard earlier, if you just take these so-called reidentification deals, they are red flags, and they are designed, you look at the area where they come from. All predominantly black areas, all where you have no black legislators.

They have no objective criteria like they did in the Birmingham bill. See, Birmingham took place some time before. So you could not say they did not have an example that they could have gone by. The purpose there is not to get the persons who were ineligible off the voters' list. But I think the effect of it is, it takes a little more coercion of people and a little more hard work because of a lot of problems to get us to go back and get registered again.

So I think that in and of itself points up that there is really a concerted effort as a conservative mood on the part of this country, and I do not need to say that here in Washington, and it is turning back the clock against minorities in as many areas as they can. They do not say it. I will fight now, and I have been in this battle 26 years. It was easy when I got out of law school. Folks will tell you, "I believe in segregation"; we had enforced segregation laws and they were on the books. But now they believe in it. They want to practice it. They will not tell it to you, but they will do it to you the same way, and the results will be the same. So I think it definitely is a concerted effort to turn back the time.

Ms. DAVIS. So you stick to your position?

Mr. GRAY. I stick to it.

Ms. DAVIS. Mr. McDonald from the ACLU this morning indicated he was born and raised in the South. He is white. He is not proud of the fact that in his region of the country there is still a need for the Voting Rights Act. But there certainly are people in the country who want to believe that the race problem has been solved, that there is still a race problem in the South. My question to the panel is whether you agree with that viewpoint. Furthermore are there any white officials in your State who would speak in support of the extension of the act?

Mr. NETTLES. I overwhelmingly agree with that viewpoint. I do not know of any white in Alabama who would support that viewpoint.

Mr. BUSKEY. Would you repeat the last part of your sentence, I know you said he was not proud——

Ms. DAVIS. That there was still a race problem in the South. Would you agree with that?

Mr. BUSKEY. I most certainly will. We had a little trial down there in Mobile last week, *City of Mobile* v. *Bolden*. That is a retrial case returned to the district court from the Supreme Court. In my judgment the plaintiff put on overwhelming evidence that race is a factor in the city and county of Mobile and we believe in the State of Alabama. Mr. McDonald said that race was a problem. He is drinking from the same cup that I am drinking out of.

Mr. GRAY. If Alabama and other Southern States were genuinely concerned about helping and protecting the rights of blacks, and I think in each of these State's constitutions they have as much a right to protect blacks' rights as the Federal Constitution. But history has taught us they do not do it, never have, and I do not think they ever will on their own. And until such time as these States do something affirmative to show their good faith and their intentions to do something, we will always need a civil rights bill. One of the things I was trying to do in the legislature, even though they were not enforcing a lot of the rights on the books, I introduced a bill to have them all repealed. They did not get out of the committee. They are still there. They are not enforced, but they are there.

We have to continue to keep the pressure on. In my county of Macon and we have about 86 percent black, and I had to, before I could win jury cases in that county, I had to file a suit in order that blacks would serve on the jury in proportion to the population. I came to court one day about 5 or 6 years ago and got a venire,

and on that I had about 40 percent black people. I refused to go forward.

The only persons in the world that I know of they want to experiment with is with the rights of black people. If white people could be in our place for just a little while I think it would be a different situation.

We have an act. It is not perfect. If it were properly implemented it would help, but I do not think we need to give away what we had until we have something that is better and has been tried at least to the extent of the Voting Rights Act.

Ms. DAVIS. I have to move along. I have so many questions. We talked about the deterrent effect, or other witnesses have talked about the deterrent effect of section 5.

I wonder, Mr. Gray, as a former State legislator, and Mr. Buskey, as a current State legislator, if you have any evidence to suggest that State officials make their decisions about changes on the basis of whether they would be fair to black people or if they decide to check their actions, is it always because they are concerned about what the Justice Department might say?

Mr. BUSKEY. The laws are passed by the legislature so the State officials, as relates to Governor, secretary of state, whatever State elected official, do not have that much to do with it. It is the local legislators, those 140 individuals who sit in that body up there without the preclearance section, I have no doubt in my mind that particularly those legislators who are white, who represent districts that are majority white, will do everything they can to purge the voting roll if that would be a factor in terms of being reelected or even just outright shooting black people if they could get away with it. There is no doubt in my mind, if they could get away with it they would do it. So the section 5 preclearance does have a deterrent effect. Without that the whole floodgate will be loosed on those people.

Ms. DAVIS. This question requires only a single answer from all of you. Is it your view that if we were to look at changes that have occurred in the State of Alabama, voting changes since 1965, that where black people have begun to move into positions of strong voting power, changes have been made to try and check that power, dilute that power?

Mr. NETTLES. Yes.

Ms. DAVIS. Thank you.

Mr. EDWARDS. And if a white elected official came out for this extension in Alabama, that white official would probably be, or undoubtedly be defeated the next election?

Mr. GRAY. If you are in an area, in a predominantly white area; in a predominantly black area you would have the opposite effect. In my area it would be the opposite.

Mr. NETTLES. But the statement is true.

Mr. GRAY. Quite true.

Mr. BUSKEY. We have had, not had a white politician who has been willing to come forward and say something different than what you just said.

Mr. EDWARDS. Well, I communicate with some who state off the record that they hope the bill is extended. But it is strictly off the record.

Tom.

Mr. BOYD. No questions.

Mr. EDWARDS. Thank you very much. Your testimony was very impressive.

Mr. EDWARDS. We now move to the State of South Carolina, and with us are the Honorable Robert Woods, who is a State representative from Charleston, and Mr. Thomas C. McCain of Edgefield County, S.C.

Reverend Wood, I believe you are going to be the first witness. Without objection your statement will be made a part of the record. You may proceed.

Do you want to introduce your colleague in the middle?

TESTIMONY OF HON. ROBERT WOODS, STATE REPRESENTATIVE, CHARLESTON, S.C., ACCOMPANIED BY ARMAND DERFNER, DIRECTOR, VOTING RIGHTS PROJECT, JOINT CENTER FOR POLITICAL STUDIES, WASHINGTON, D.C.; AND THOMAS C. McCAIN, CHAIRMAN, EDGEFIELD COUNTY DEMOCRATIC PARTY, EDGEFIELD COUNTY, S.C.

Mr. WOODS. This is our good friend, Counselor Armand Derfner, whom we have known for a number of years, Mr. Chairman.

Mr. EDWARDS. Well known to this subcommittee also. We are delighted to have you here.

Mr. DERFNER. Thank you, Mr. Chairman.

Mr. WOODS. Mr. Chairman, my name is Robert Woods, a member of the South Carolina State Legislature, serving since 1973. I am a member of the Ways and Means Committee, chairman of the Invitations Committee, chairman of the Joint Charleston County Legislative Delegation, former vice-moderator of the General Assembly of the United Presbyterian Church, and minister of Wallingford United Presbyterian Church in Charleston, S.C.

I want to thank this committee for extending an invitation to me to appear before this panel and talk about the extension of the Voting Rights Act of 1965, as amended.

Mr. Chairman, I would rather not be here today testifying before this committee on the extension of the Voting Rights Act, I would rather be before some other committee, or back in South Carolina attending to the affairs of my constituents. However, since the Congress and the courts refuse to solve the lingering question of "what to do with the rights of black Americans," I find it impossible not to appear and to again assist with solving what has become a perennial and difficult problem. I often wonder what it is so difficult for this Nation to make a permanent commitment to protecting the rights of black Americans, particularly those rights that are so basic and enjoyed by all Americans, except blacks and other racial minorities.

The Founding Fathers of the United States proclaimed to the world the American belief that all men are created equal and that governments are instituted to secure the inalienable rights to which all men are endowed. In the Declaration of Independence and the Constitution of the United States, they eloquently express the aspirations of all mankind for equality and freedom. These ideas inspired the peoples of other lands and their practical fulfill-

ments made the United States the hope of the oppressed everywhere.

Throughout our history, men and women of all colors and creeds, of all races and religions, have come to this country to escape tyranny and discrimination. Millions strong, they have helped build this democratic Nation and have constantly reinforced our devotion to the great ideals of liberty and equality. Those who proceeded them have helped to fashion and strengthen our American faith.

That faith today had a great deal of meaning in the 1965 Voting Rights Act. We believe that act has opened for citizens the world over, more especially in the South, a door of responsibility, a responsiveness on the part of a large segment of people to create avenues by which citizens of all persuasions have been able to live together, work together, pray together, struggle together.

For the past 16 years, real representation in South Carolina has not been a reality. Even though the Voting Rights Act has opened some doors in some places throughout our great State, there are still far too many doors that remain closed to blacks and other minorities. In areas where there has been conscious effort by public officials to uphold the law and make efforts to include all persons in the political process, regardless of color or political affiliation, the governments that have emerged reflected these efforts.

Charleston, S.C., the city that I represent in the State house, is an example of an area where public officials have eventually accepted the law of the land and strived to implement these laws equitably. Even though there is much to be done in our city to uplift the living conditions of all of our citizenry, the city still exemplifies what can happen when all parties work together to bring about an acceptable solution.

Prior to 1975, my city was torn with dissension which had deep racial overtones. Even though up to two blacks have been elected to sit in our city council, most of the minority residents still believed that their needs were not represented by the pre-1975 city government. Prior to 1975, the two blacks that had served on the city council had been chosen by the predominantly white organizations. Basically it was impossible to vote for a single candidate, or to field a candidate that was responsive to the needs of my constituents. We had to vote for the entire slate, or not vote at all.

However, thanks to the Voting Rights Act, all of that has changed; and the government now is comprised of persons who truly espouse the views of all citizens.

Let me explain how this came to be. As a result of prodding from the Justice Department, and the court-imposed redistricting plan, the city converted from an at-large election scheme which had closed the electoral process to blacks, to a more equitable single-member plan.

After this plan was implemented, the black citizens immediately desposed the white-backed black councilmen in favor of black candidates of their choice. At the present time, our city council consists of six blacks and six whites. Our city was selected by the U.S. League of Cities as an All-American City. I do not believe that my city would have been so honored had it not been for section 5 of the Voting Rights Act.

The Charleston County Council and the Charleston County School Board cannot boost these achievements. These two bodies still maintain at-large election procedures and only reflect token black representation. Not only does the Charleston County government fail to reflect the political views of all its citizens, the South Carolina Senate has totally ignored the needs of a full one-third of the State's population. There has not been a black to sit in our State senate since Reconstruction.

Gentlemen, let me cite some information about how the upper house of our State legislature operates. First of all, the body consists of 46 members, all elected from multimember, at-large and numbered post. Interestingly enough, the most powerful man in the body is white and represents Calhoun County which is over 55 percent black. This gentleman, Mr. Lawrence Marion Gressette, formerly headed the anti-integration committee, a group of legislators who organized to halt integration in our State at all cost. Mr. Gressette also presides over redistricting in the senate, and has stated publicly that he will wait until the Voting Rights Act expires in 1982 before he tackles the problem of redistricting the South Carolina Senate.

I hope that you do not grant Senator Gressette his wish. I hope that this committee, and ultimately the Congress, recognize that there are too many Mr. Gressette's in our State and perhaps in the South, to entrust these individuals with protecting the voting rights of minorities.

I find it unexplainable that 33 percent of our people are not represented in the upper chamber of our legislature. I am not saying that blacks are required to be represented by blacks, because that obviously is a fallacy.

However, I am saying that black Americans have a right to exercise their franchise in a manner that is fully protected by the equal protection clause of the 14th amendment of the Constitution. The tactics that many of my fellow legislators in South Carolina employ to maintain white and unresponsive rule borders on the apartheid practices of South Africa, a country that has been indicted by the civilized world for its abusive racial policies, and their refusal to permit blacks to vote and participate in the political process. Yet, in a country that has the Declaration of Independence the Constitution, the Bill of Rights, the Emancipation Proclamation, and other great documents that have made this country great, my State can persist with its practices. These practices have continued unabated since Reconstruction and appear unreachable through court action.

Indeed there are many others who are hoping that the act would not be extended. They hope that the act would not be extended because they are of the established habit of regarding certain people as objects of insults and humiliation. When society makes an error in an area where hostilities can freely be vented on others, it provides for its own more disintegration. He who permits evil, commits evil; and to permit the 1965 Voting Rights Act to expire is to commit an evil that is tantamount to destroying the very foundations of our Nation and of our State.

The opening up of State legislatures, of city halls, county school boards, of county councils, the opening up of government so that

all might be involved is one of the surest ways of keeping government of the people, by the people and for the people. There may well be some timid ones among us who say that we should not continue to have good government, they are less timid than one would imagine, for today we most successfully continue to struggle and defend this democracy. We must not be defeated by the fear of the very danger we are preparing to resist.

The Magna Carta, the Declaration of Independence, the Constitution of the United States, the Emancipation Proclamation and every other real milestone in human progress were all ideas which seemed impossible of attainment, yet they were attained.

I submit that the 1965 Voting Rights Act is such a document, that if we roll up our sleeves, we can make it work. The way is there, we only need to foster the will. We will not give up on what we have begun. We ask you not deny us the right to continue to struggle to work together. We ask you not to create a situation where all that we have worked for becomes lost because we did not have the courage of our convictions.

If the 1965 Voting Rights Act was not extended, many blacks who now served in the South Carolina House of Representatives would find that the attempts on the part of the general assembly to enhance adequate participation on the part of all would stop. There would be no effort to insure that minorities, blacks, and Republicans were given consideration in representation.

Gentlemen, the submission process works, and many of the citizens of South Carolina are supportive of it.

There is another issue that gives us reason to know that it works. Under the 1970 reapportion plan, Charleston had grown. Our numbers increased from 11 to 12. But under the 1980 census plan, our numbers have decreased, and Charleston would lose a House seat.

Immediately, there were many in Charleston who readily admitted that the loss of one seat was a loss that the black community would have to bear, and that rather than having three black representatives from Charleston, we would no longer have three, but two.

It was only when Charleston was reminded of the preclearance section of the bill that the legislators from Charleston and from the State in general readily agreed that they would not destroy one of the black districts, but would continue to make possible in minority areas the opportunity for minorities to elect minorities.

The point that I would have you consider is the fact that we have come a long way in these past 15 years. If it were not for the 1965 Voting Rights Act, government in South Carolina would not be as progressive. The coalitions that Republicans, blacks, and women have pulled together to create sentiment for attitudinal changes that are in the best interest of all citizens would not be. And for us to deny the basic right of effective vote for responsible representation by refusing to extend the act with an effect standard is for us to destroy the very vibrant in human progress for good government that we have worked so hard for.

History recaptures the plight of the black man in America. History need not repeat itself. Wednesday, December 31, 1862 was a day of anticipation and rumor. People gathered in little knots and

tried to read the signs of the time. That night, Negroes gathered in churches and prayed the old age out and the new age in.

An old man got up—"Onst the time was," he said, "dat I cried all night. What's the matter? What's the matter? Matter enough. De nex mornin my child was t be sold, and she was sold. I never spec to see her no more till de day of judgment. Now, nor more dat! No more dat! No more Dat! We'se free now, bless the Lord! Day can't sell my wife and child no more, bless the Lord. No more dat! No more dat!" They prayed all night.

January 1, 1863, about 11 at night, after waiting and praying all day, about to lose hope, the word came, the document had been signed, the Emancipation Proclamation. "We'se free, we'se free. No more dat! No more Dat!"

On January 31, 1865, following the Civil War, the 13th amendment was adopted abolishing slavery throughout the Union. We were free. "No more dat! No more dat.

But you and I know there was more of that. For 100 years, there was more of dat!

In 1965, 100 years later, once again the sacred obligations which were developed on this Nation and on our generation sank deeply into our hearts and the Voting Rights Act was put into law. To abolish it now is to take us back to "more of dat."

Thank you.

[The statement of Mr. Woods follows:]

PREPARED STATEMENT OF REPRESENTATIVE ROBERT R. WOODS, STATE REPRESENTATIVE, SOUTH CAROLINA HOUSE OF REPRESENTATIVES

Good afternoon, ladies and gentlemen, Mr. Chairman, my name is Robert Woods, a member of the South Carolina State Legislature serving since 1973. I am a member of the Ways and Means Committee, Chairman of the Invitations Committee, Chairman of the Joint Charleston County Legislative Delegation, former Vice-Moderator of the General Assembly of the United Presbyterian Church and minister of Wallingford United Presbyterian Church in Charleston, South Carolina.

I want to thank this Committee for extending an invitation to me to appear before this panel and talk about the extension of the Voting Rights Act of 1965, as amended.

Mr. Chairman, I would rather not be here today testifying before this Committee on the extension of the Voting Rights Act, I would rather be before some other Committee, or back in South Carolina attending to the affairs of my constituents. However, since the Congress and the Courts refuse to solve the lingering question of "what to do with the rights of Black Americans", I find it impossible not to appear and to again assist with solving what has become a perennial and difficult problem. I often wonder what it is so difficult for this nation to make a permanent commitment to protecting the rights of Black Americans, particularly those rights that are so basic and enjoyed by all Americans, except Blacks and other racial minorities.

The founding fathers of the United States proclaimed to the world, the American belief that all men are created equal and that governments are instituted to secure the inalienable rights which all men are endowed. In the Declaration of Independence and the Constitution of the United States, they eloquently express the aspirations of all mankind for equality and freedom. These ideas inspired the peoples of other lands and their practical fulfillments made the United States the hope of the oppressed everywhere.

Throughout our history men and women of all colors and creeds, of all races and religions, have come to this country to escape tyranny and discrimination. Millions strong they have helped build this democratic nation and have constantly reinforced our devotion to the great ideals of liberty and equality. Those who proceeded them have helped to fashion and strengthen our American faith.

That faith today had a great deal of meaning in the 1965 Voting Rights Act. We believe that Act has opened for citizens the world over, more especially in the South, a door of responsibility; a responsiveness on the part of a large segment of people to create avenues by which citizens of all persuasion have been able to live together, work together, pray together, struggle together.

For the past 16 years, real representation in South Carolina has not been a reality. Even though the Voting Rights Act has opened some doors in some places throughout our great state, there are still far too many doors that remain closed to Black, and other minorities. In areas where there has been conscious effort by public officials to uphold the law, and make efforts to include all persons in the political process, regardless of color or political affiliation, the governments that have emerged reflected these efforts.

Charleston, South Carolina the city that I represent in the State House, is an example of an area where public officials have eventually accepted the law of the Land and strived to implement these laws equitably. Even though there is much to be done in our city to uplift the living conditions of all of our citizenry, the City still exemplifies what can happen when all parties work together to bring about an acceptable solution. Prior to 1975, my city was torn with dissension which had deep racial overtones. Even though up to two Blacks had been elected to sit in our City Council, most of the minority residents still believed that their needs were not represented by the pre-1975 city government. Prior to 1975, the two Blacks that had served on the city council had been chosen by the predominantly white organizations. Basically, it was impossible to vote for a single candidate, or to field a candidate that was responsive to the needs of my constitutents. We had to vote for the entire slate, or not vote at all.

However, thanks to the Voting Rights Act, all of that has changed; and the government now is comprised of persons who truly espouse the views of all citizens. Let me explain how this came to be. As a result of prodding from the Justice Department, and the court-imposed redistricting plan, the city converted from an at-large election scheme which had closed the electoral process to Blacks, to a more equitable single-member plan. After this plan was implemented, the Black citizens immediately deposed the White backed Black Councilmen in favor of Black candidates of their choice. At the present time, our City Council consists of six Blacks and six Whites. Our city was selected by the United States League of Cities as an All-American City. I do not believe that my city would have been so honored had it not been for Section 5 of the Voting Rights Act.

The Charleston County Council and the Charleston County School Board cannot boost these achievements. These two bodies still maintain at-large election procedures and only reflect token Black representation. Not only does the Charleston County Government fail to reflect the political views of all its citizens, the South Carolina Senate has totally ignored the needs of a full one third of the state's population. There has not been a Black to sit in our State Senate since Reconstruction. Gentlemen, let me cite some information about how the upper house of our State Legislature operates. First of all, the body consists of 46 members, all elected from multi-member, at-large and numbered post. Interestingly enough, the most powerful man in the body is white and represents Calhoun County which is over 55 percent Black. This gentleman, Mr. Lawrence Marion Gressette, formerly headed the Anti-Integration Committee a group of Legislators who organized to halt integration in our State at all cost. Mr. Gressette also presides over redistricting in the Senate, and has stated publicly that he will wait until the Voting Rights Act expires in 1982 before he tackles the problem of redistricting the South Carolina Senate.

I hope Gentlemen, that you do not grant Senator Gressette his wish. I hope that this Committee, and ultimately, the Congress, recognize that there are too many Mr. Gressette's in our State and perhaps in the South, to entrust these individuals with protecting the Voting Rights of minorities. I find it unexplainable that 33 percent of our people are not represented in the upper Chamber of our legislature, I am not saying that Blacks are required to be represented by Blacks, because that obviously is a fallacy. However, I am saying that Black Americans have a right to exercise their franchise in a manner that is fully protected by the "Equal Protection Clause" of the 14th Amendment of the Constitution. The tactics that many of my fellow legislators in South Carolina employ to maintain White and unresponsive rule, borders on the apartheid practices of Southern Africa, a country that has been indicted by the civilized world for its abusive racial policies, and their refusal to permit Blacks to vote and participate in the political process. Yet in a country that has the Declaration of Independence, the Constitution, the Bill of Rights, the Emancipation Proclamation, and other great documents that have made this Country great, my state can persist with its practices. These practices have continued unabated since reconstruction and appear unreachable through court action.

Indeed there are many others who are hoping that the Act would not be extended. They hope that the Act would not be extended because they are of the established habit of regarding certain people as objects of insults and humiliation. When society makes an area in an area where hostilities can freely be vented on others, it provides for its own moral disintegration. He who permits evil, commits evil; and to

permit the 1965 Voting Rights Act to expire is to commit an evil that is tantamount to destroying the very foundations of our nation and of our State.

The opening up of state legislatures, of city halls, county school boards, of county councils; the opening up of government so that all might be involved is one of the surest ways of keeping government of the people, by the people and for the people. There may well be some timid one among us who say that we should not continue to have good government, they are less timid than one would imagine; for today we must successfully continue to struggle and defend this democracy; we must not be defeated by the fear of the very danger we are preparing to resist.

The Magna Carta, the Declaration of Independence, the Constitution of the United States, the Emancipation Proclamation and every other real milestone in human progress were all ideas which seemed impossible of attainment, yet they were attained. I submit that the 1965 Voting Rights Act is such a document, that if we roll up our sleeves we can make it work. The way is there, we only need to foster the will. We will not give up on what we have begun. We ask you not deny us the right to continue to struggle to work together, we ask you not to create a situation where all that we have worked for becomes lost because we did not have the courage of our convictions.

If the 1965 Voting Rights Act was not extended, many Blacks who now serve in the South Carolina House of Representatives would find that the attempts on the part of the General Assembly to enhance adequate participation on the part of all would stop. There would be no effort to ensure that minorities, Blacks, and Republicans were given consideration in representation.

South Carolina is going through its reapportionment of the South Carolina House at this very moment. More than once, we have heard the Committee call to the attention of the entire body, the fact that our reapportionment has to be submitted to the Justice Department. We have been reminded more than once that the plan has to have within it the assurance that there has been no gerrymandering of lines and areas so as to deny Blacks the right to have an adequate and equal opportunity to be elected. We have been reminded that where there were 23 black districts under our last reapportionment plan, we should have at least 23 under the new plan. Because of the 1965 Voting Rights Act the submission process is one that enhances good government. The submission process works and many of the citizens of South Carolina are supportive of it.

There is the other issue that gives credence to the submission process. Under the 1970 reapportionment plan Charleston had grown and our numbers increased from eleven to twelve; but under the 1980 Census Plan, our numbers had decreased and Charleston would lose a House Seat. Immediately, there were many in Charleston who readily admitted that the lost of one seat was a lost that the Black community would have to bear, and that rather than having three black representatives from Charleston, we would no longer have three but two. It was only when Charleston was reminded of the Pre-Clearance Section of the Bill, that the legislators from Charleston and from the State in general readily agreed that they would not destroy one of the Black districts; but would continue to make possible in minority areas the opportunity for minorities to elect minorities. The point that I would have you consider is the fact that we have come a long way in these past fifteen years; if it were not for the 1965 Voting Rights Act, government in South Carolina would not be as progressive. The coalitions that Republicans, Blacks, and women have pulled together, to create sentiment for attitudinal changes that are in the best interest of all citizens, would not be. And for us to deny the basic right of effective vote for responsible representation by refusing to extend the Act, with an effect standard, is for us to destroy the very vibrant in human progress for good government that we have worked so hard for. As indicated earlier, there are no Blacks in the State Senate of South Carolina and there is not likely to be any change in the South Carolina Senate if the 1965 Voting Rights Act is not extended with clarification of Section 2 which precludes for an effect standard to prove dilution or discriminatory impact.

History recaptures the plight of the black man in America and needs not repeat itself.

Wednesday, December 31, 1962, was a day of anticipation and rumor. People gathered in little knots and tried to read the signs of the times. That night, Negroes gathered in churches and prayed the Old Age Out and the New Age In. An old man got up—Onst, the time was he said, dat I cried all night. What's the matter? What's the matter? Matter enough. De nex mornign my child was to be sold, and she was sold. I never spec to see her no more till de day of judgment. Now, no more dat! no more dat! no more dat! Wid my hands agin my breast i was gwine to my work, when the overseer used to whip me along. Now, no more dat! no more dat! no more dat!

We'se free now, bless the Lord! Dey can't sell my wife and child no more, bless the Lord. No more dat! no more dat! They prayed all night.

January 1, 1863, about 11:00 at night, after waiting and praying all day; about to lose hope; the word came, the document had been signed; We'se free, we'se free. No more dat! no more dat!

On January 31, 1865, following the Civil War, the 13th Amendment was adopted abolishing slavery throughout the Union. We wer free. No more dat! no more dat!

But there was more of dat! For a hundred years, there was more of dat!

1965, a hundred years later, once again the sacred obligations which were devolved on this nation and on our generation, sank deeply into our hearts and the Voting Rights Act was put into law. To abolish it now is to take us back to "more of dat!"

Thank you.

Mr. EDWARDS. Well, thank you, Representative Woods. That is very, very impressive. Thank you.

Mr. McCain, I believe that you are the last witness on this panel. You may proceed.

STATEMENT OF THOMAS C. McCAIN

Mr. McCAIN. Mr. Chairman, and members of the House subcommittee, my name is Thomas "Tom" C. McCain, and I am from Edgefield County, S.C., where I serve as chairman of the Edgefield County Democratic Party.

Thank you for giving me this opportunity to appear before your committee. I wish that I could say that I am elated to come before you today, but deep in my heart I am sad because it is still necessary, 118 years after the Emancipation Proclamation and in America, for me to be pleading for my voting rights.

When you look at conditions in Edgefield County, S.C., and the history of whites depriving blacks of their rights to participate in the political process, you can clearly see that it is necessary to extend the Voting Rights Act in its full form.

The Edgefield County power structure has used every trick possible to keep blacks from participating in the political process. These range from offering bribes to an outright refusal to abide by the law. In 1966, the form of county government was changed from a three-member appointed county council to a three-member elected at-large form without getting preclearance from the U.S. Justice Department, as required by section 5 of the 1965 Voting Rights Act. The net effect of this change was the dilution of black voting strength.

In 1970, blacks organized in Edgefield County to demand participation in the development of a school desegregation plan for a unitary school system. The county school district was 65 percent black, but the county school board had no black representation. The group was organized in January on a Monday night and was known as Community Action for Full Citizenship [CAFC], with myself as its chairman.

The local weekly newspaper carried the story of the organization and its purpose the following Thursday. The Carey Hill Baptist Church was burned to the ground before daybreak the next Monday. The church had a membership of about 75 percent McCains and had long been known in the community as the McCains' church. The members of the church were too afraid to talk about this other than among themselves.

In planning for a voter registration drive, CAFC made a request to the local registration board for black deputy registrars to be

given permission to register persons at different locations in the community. It took 2-years for the registration board to grant CAFC's request. During the voter registration drive, some blacks were not permitted to register because they could not write their names. The registration board drew a precinct line beside my house and used that line to move my registration to another precinct to satisfy the wishes of a white precinct president.

Also in 1970, Strom Thurmond High, a formerly white school, was designated the high school for all students. It kept "Confederate Rebel" and "Dixie" as the school nickname and school song, and kept the use of the Confederate flag as the school symbol at athletic and other events. Black citizens complained that Strom Thurmond High was being maintained as an essentially segregated school, and that the school symbols were badges of slavery, white racism and were degrading signals of second-class citizenship for blacks. The school board promptly resolved that, "the existing traditions now in force in all schools of the system will continue," and CAFC had to get a Federal court order to resolve these issues.

Blacks were traditionally excluded from jury service in Edgefield County. As late as 1968 and 1970, the grand jury had no blacks at all. It was not until suit was brought in 1971 that the jury list was reconstituted to include blacks fairly. The Edgefield County Council historically kept the county chain gang segregated by race, until a suit was brought in 1971.

Until 1970, no black had ever served as a precinct election official, and since that year the number of blacks appointed to serve has been negligible, although the percentage of registered voters who were black ranged from 33 percent in 1970 to 40 percent in 1974. For 3 years, 1970, 1972, and 1974, the total number of precinct workers appointed in the 17 precincts of Edgefield County by race is as follows:

	Whites	Blacks	Percentage
All primaries	192	17	8.1
All general elections	281	33	15.4
School board elections	34	4	10.5
Total (all elections)	507	54	9.6

The race of those appointed to serve as precinct election officials has traditionally been regarded as an important barometer of the degree of minority participation in the voting process.

In 1972, I qualified as the first black since reconstruction to run for a county council seat in the Democratic primary. The county attorney had the registration board remove my name from the registration books to prevent me from running as a candidate in the Democratic primary. In 1974 and 1976, I was finally able to run for county council. Each time I would have won a seat on the council had there not been at-large elections. At-large elections combined with racial bloc voting makes it nearly impossible for any black candidate to win in Edgefield County.

In 1975, I wrote an open letter to the community criticizing the board of education policies for being in violation of Federal regulations. The school board sued me personally for libel for $245,000.

And when the school board was under pressure from the Office of Civil Rights [OCR] in Atlanta, the board tried to get me to write a letter to OCR asking that more time be given for the school board to comply with Federal regulations and the board offered as a favor to me to withdraw the libel suit.

Another incident illustrates the determination of Edgefield County officials to resist change at all costs. In 1976, while the litigation was pending, a State home rule law was passed which allows at-large counties to shift to single-member districts by referendum, if a referendum was called either by the county council or by petition of 10 percent of the registered voters.

In Edgefield County, of course, the county council made no move to call a referendum, so the citizens started circulating petitions. We needed 650 signatures because there were 6,494 registered voters in the county. On May 13, several weeks before the deadline, we submitted 57 petition pages, marked pages 1-57, 715 signatures, and 6 days later submitted 16 more pages, marked pages 58-73, with another 113 signatures. When they were all counted, and after striking out the names of those that were not properly registered, there were over 700 valid signatures, more than enough to require a referendum. Yet, we never had the referendum, and the reason why is almost unbelievable.

The county officials actually said that since these petitions were given in on different days, they were separate petitions and could not be added together. This is what they said even though the petitions had the same heading and even though the first set was numbered pages 1-57 and the second set was numbered 58-73. They kept up this charade until we had to go to court, and in the meantime, the time allowed under the State home rule law ran out and the referendum could not be held.

Now it is true that there were two black members on the registration board, but when those two women asked to be able to come in to help certify names in order to speed up the process, they were turned away.

Anyway, we have never had the referendum.

That little experience teaches us a number of things: First, there is no incredible fairy tale that officials in my county will not resort to in order to maintain total control of the county. Second, they are not even willing to trust the democratic process of allowing the voters to have a referendum. Third, ordinary resort to the courts will not work as a way of protecting the right to vote. And least, the so-called progress that has been made in appointing blacks to official positions is obviously pure window dressing.

The power structure in Edgefield County has a history of systematically excluding blacks from participating in the political process and the situation is not much improved today. At present in Edgefield County, there is only one black serving on the school board who is obviously serving at the pleasure of the white power structure. There are no blacks serving on the county council, although blacks make up 54 percent and 44 percent of the registered voters.

Without the extension of the Voting Rights Act, there is no hope of ever getting a black elected to county government in Edgefield.

Thank you.

[The statement of Mr. McCain follows:]

STATEMENT OF THOMAS MCCAIN

Mr. Chairman and members of the House subcommittee, my name is Thomas (Tom) C. McCain and I am from Edgefield County, South Carolina where I serve as Chairman of the Edgefield County Democratic Party.

Thank you for giving me this opportunity to appear before your Committee. I wish that I could say that I am elated to come before you today, but deep in my heart I am sad because it is still necessary, 118 years after the Emancipation Proclamation and in America, for me to be pleading for my voting rights.

When you look at conditions in Edgefield County, South Carolina and the history of whites depriving blacks of their rights to participate in the political process, you can clearly see that it is necessary to extend the Voting Rights Act in its full form. The Edgefield County power structure has used every trick possible to keep blacks from participating in the political process. These range from offering bribes to an outright refusal to abide by the law. In 1966, the form of county government was changed from a three-member appointed county council to a three-member elected at-large form without getting preclearance from the U.S. Justice Department, as required by Section 5 of the 1965 Voting Rights Act. The net effect of this change was the dilution of black voting strength.

In 1970, blacks organized in Edgefield County to demand participation in the development of a school desegregation plan for a unitary school system. The County school district was 65 percent black but the County School Board had no black representation. The group was organized in January on a Monday night and was known as Community Action for Full Citizenship (CAFC) with myself as its Chairman. The local weekly newspaper carried the story of the organization and its purpose the following Thursday. The Carey Hill Baptist Church was burned to the ground before daybreak the next Monday. The church had a membership of about 75 percent McCains and had long been known in the community as the McCains' church. The members of the church were too afraid to talk about this other than among themselves.

In planning for a voter registration drive, CAFC made a request to the local Registration Board for black deputy registrars to be given permission to register persons at different locations in the community. It took two years for the Registration Board to grant CAFC's request. During the voter registration drive, some blacks were not permitted to register because they could not write their names. The Registration Board drew a precinct line beside my house and used that line to move my registration to another precinct to satisfy the wishes of a white precinct president.

Also in 1970, Strom Thurmond High, a formerly white school, was designated the high school for all students. It kept "Confederate Rebel," and "Dixie" as the school nickname and school song, and kept the use of the Confederate Flag as the school symbol at athletic and other events. Black citizens complained that Strom Thurmond High was being maintained as an essentially segregated school, and that the school symbols were badges of slavery, white racism and were degrading signals of second-class citizenship for blacks. The school board promptly resolved that "the existing traditions now in force in all schools of the system will continue," and CAFC had to get a federal court order to resolve these issues.

Blacks were traditionally excluded from jury service in Edgefield County. As late as 1968 and 1970, the grand jury had no blacks at all. It was not until suit was brought in 1971 that the jury list was reconstituted to include blacks fairly. The Edgefield County Council historically kept the county chain gang segregated by race, until a suit was brought in 1971.

Until 1970, no black had ever served as a precinct election official, and since that year the number of blacks appointed to serve has been negligible, although the percentage of registered voters who were black ranged from 33 percent in 1970 to 40 percent in 1974. For three years, 1970, 1972, and 1974, the total number of precinct workers appointed in the seventeen precincts of Edgefield County by race is as follows:

	Whites	Blacks	Percent
All primaries	192	17	8.1
All general elections	281	33	15.4
School board elections	34	4	10.5
Total (all elections)	507	54	9.6

The race of those appointed to serve as precinct election officials has traditionally been regarded as an important barometer of the degree of minority participation in the voting process.

In 1972, I qualified as the first black since Reconstruction to run for a County Council seat in the Democratic Primary. The County Attorney had the Registration Board remove my name from the registration books to prevent me from running as a candidate in the Democratic Primary. In 1974 and 1976 I was finally able to run for County Council. Each time I would have won a seat on the Council had there not been at-large elections. At-large elections combined with racial bloc voting makes it nearly impossible for any black candidate to win in Edgefield County.

In 1975, I wrote an open letter to the community criticizing the Board of Education policies for being in violation of federal regulations. The School Board sued me personally for libel for $245,000. And when the School Board was under pressure from the Office of Civil Rights (OCR) in Atlanta, the Board tried to get me to write a letter to OCR asking that more time be given for the School Board to comply with federal regulations and the Board offered as a favor to me to withdraw the libel suit.

Another incident illustrates the determination of Edgefield County officials to resist change at all costs. In 1976 while the litigation was pending, a state home rule law was passed which allows at-large counties to shift to single member districts by referendum, if a referendum was called either by the County Council or by petition of 10 percent of the registered voters. In Edgefield County, of course, the County Council made no move to call a referendum, so the citizens started circulating petitions. We needed 650 signatures because there were 6,494 registered voters in the County. On May 13, several weeks before the deadline, we submitted 57 petitions pages (marked pages 1-57) 715 signatures, and 6 days later submitted 16 more pages (marked pages 58-73) with another 112 signatures. Whey they were all counted, and after striking out the names of those that were not properly registered there were over 700 valid signatures, more than enough to require a referendum. Yet we never had the referendum, and the reason why is almost unbelievable.

The County officials actually said that since these petitions were given in on different days they were separate petitions and could not be added together. This is what they said even though the petitions had the same heading and even though the first set was numbered pages 1-57 and the second set was numbered 58-73. They kept up this charade until we had to go to court, and in the meantime, the time allowed under the state home rule law ran out and the referendum could not be held.

Now it is true that there were two black members on the Registration Board, but when these two women asked to be able to come in to help certify names in order to speed up the process, they were turned away.

Anyway, we have never had the referendum.

That little experience teaches us a number of things: first, there is no incredible fairy tale that officials in my county will not resort to in order to maintain total control of the county. Second, they are not even willing to trust the democratic process of allowing the voters to have a referendum. Third, ordinary resort to the courts will not work as a way of protecting the right to vote. And last, the so-called progress that has been made in appointing blacks to official positions is obviously pure window-dressing.

The power structure in Edgefield County has a history of systematically excluding blacks from participating in the political process and the situation is not much improved today. At present in Edgefield County, there is only one black serving on the School Board who is obviosly serving at the pleasure of the white power structure. There are no blacks serving on County Council, although blacks make up 54 percent of the population and 44 percent of the registered voters. Without the extension of the Voting Rights Act, there is no hope of ever getting a black elected to County Government in Edgefield.

Mr. EDWARDS. Thank you very much, Mr. McCain.

Today we have had a number of very knowledgeable witnesses from, first, the States of Georgia and Alabama. And their testimony has consistently been that there are numerous devices used in those States to circumvent the Voting Rights Act, and that in those States there is no real commitment by the white people who are in charge of those States to give in on this issue.

That is apparently what your testimony is with regard to the State of South Carolina; is that correct?

Mr. McCAIN. There is no open commitment that can be supported, yes. You will find, in talking to individuals one to one, where one or two persons will say that they would like to see some changes. But they admit they cannot withstand the pressure from their peers in order to support it.

Mr. EDWARDS. Representative Woods, you agree?

Mr. WOODS. I would agree.

Of course, I would extend that just a bit further to indicate that the law itself must be committed. I think that if the law is committed, then those who would flout the law, like driving an automobile beyond the speed limit, will soon come to understand that the law does in fact apply and they must comply with the law.

I think that is the problem we are faced with as we talk about the Voting Rights Act. It is a law that has merit. It is a law that we as a people must and should accept. I think, in due time, we will.

Mr. EDWARDS. If we would enforce the law more diligently, perhaps we would have been further down the road. I am not like none of the witnesses blaming the Justice Department for any of the real problems we have. But certainly I think it is clear from the testimony that there could have been better communication between the people in the various covered States and Congress, for example, and with the Justice Department, so that these devices and inappropriate submissions would have been reported, at least, to the Justice Department.

Mr. Derfner?

Mr. DERFNER. I don't have anything to add to the statements so far. I agree with them wholeheartedly.

Mr. EDWARDS. Counsel?

Ms. DAVIS. Thank you, Mr. Chairman.

Mr. McCain, you suggested that the problems, or you have indicated what the problems are in Edgefield County. I was wondering what kinds of information you have about whether the problems you are experiencing in Edgefield are unique, or whether they are more widespread throughout the State of South Carolina?

Mr. McCAIN. I think that they are widespread. I serve as chairman of the Edgefield County Democratic Party, so I get occasion to meet with all of the other State chairmen. There have been several occasions where there have been a number of black chairpersons, but there have been other times which I have been the only one, or one or two others.

So I think that these problems that we have alluded to exist in several areas of the State. In talking to other persons, they are confronted with the same kinds of conditions in certain places, to keep persons from voting, or to keep persons from having access to the political process.

Ms. DAVIS. You suggested in your statement that the two times in which you were qualified to run for county office—I believe 1974 and 1976?

Mr. McCAIN. Yes.

Ms. DAVIS. That you would have won but for the fact that the election system was an at-large system. That was due to racial bloc voting.

I am curious as to how you achieved the chairmanship of the Edgefield County Democratic Party if things are as racially polarized as you have indicated?

Mr. MCCAIN. That was a struggle. It was really a struggle in order to be elected chairman of the Edgefield County Democratic Party. I was the first black to serve as a member of the county executive committee, and the experience I had that first term did not allow me to have any participation. When I took the Voting Rights Act to an executive committee meeting, I was told to "Get that out of my face. I will not listen to anything you have to say."

So, by being a member, not having an opportunity to have input, I decided to work with blacks in the outlying areas to try and organize so that we could get more delegates elected to the county convention where we could elect more members to the executive committee. And we were successful in doing that.

Eventually, we were able to get enough delegates to support my candidacy for chairman of the Edgefield County Democratic Party.

Ms. DAVIS. Did you have anything to add to that?

Mr. MCCAIN. Well, the chairman position is countywide. It represents the whole county.

However, the delegates are elected from precincts. So this really makes up the difference, in that precincts are larger than others, and bring more delegates from the black community to the convention.

Ms. DAVIS. I understand now.

Representative Woods, I wonder if you might explain a bit more about the reapportionment process that is going on right now in the State legislature in South Carolina. It is my understanding that your vote will be critical, as will the other members of the Black Caucus there, and that there is an effort underway right now with the Black Caucus to prevent the bill from being brought to the floor because you are absent at this time.

Mr. WOODS. Thank you. We are, of course, reapportioning the State house. We have discovered that in our efforts to reapportion the house on the 1980 census report, that there are some changes. There have in fact been some increases in the percentages of blacks within our State.

We have tried to get our State legislature to look at the State as a whole, and to deal with the question of reapportionment based on the fact that the 1965 Voting Rights Act has clear indications as to the means and methods for us to achieve what we believe to be in the best interests of all of the citizens of the State.

Our legislature has basically remained in the 1970's, and has not wanted to look at 1980 and look in terms of seeing where increases can in fact benefit the whole State when one things of who is in fact in a position to elect whom and who is in fact in a position to be elected himself.

But what we are suggesting to the general assembly, that until the general assembly takes a critical look at reapportioning the State, to be sure that representation is adequate and equal, that that bill should not in fact pass, and that we are in a position to bring to the general assembly the clear meaning of the 1965 Voting Rights Act and the implications of that Act so that we can in fact be sure that reapportionment takes place, not in a vacuum, but in

a county and in a State where all people have a chance to be involved.

We are hoping that this will occur, and we are sort of having an education or seminar take place now until such time as we can get back to South Carolina, and hopefully to the State, as we have said in the past, that the State has more to do, and that the way is there to do it if we only come up with the will to carry it out.

Ms. DAVIS. I will pose the same question to you that I have to other panelists today.

In your experience, is the deterrent effect of section 5 such that State legislators or election officials make decisions on the basis of their fairness to black people in the State, or is it because of the fear that the Justice Department will not approve those changes that are at work?

Mr. WOODS. Well, I think it is clearly stated that the fear is there. The fact that these various bills would have to be in fact presented to the Justice Department, that they may not be approved, this is a fear that is clearly brought to the forefront when we talk about what the State ought to be doing.

It is not done out of love. It is not done out of respect. It is not done out of the fact that we are in fact created equal and have the same rights and privileges pertaining thereto.

It is because of the 1965 Voting Rights Act, and the fact that these bills have to be cleared by the Justice Department, the fact that someone is in fact looking over your shoulder. That is what has caused our State to come to the point where we can feel that some progress is being made and that we look forward to coming to the point where that progress says to us that, hey, we can in fact live together and we can in fact help each other. That has not occurred yet.

Mr. BOYD. I have no questions.

Ms. DAVIS. Mr. McCain, I wonder if you could describe what life would be like in Edgefield County if the Voting Rights Act were vigorously enforced. What kinds of changes would you envision in Edgefield County?

Mr. MCCAIN. I think that if the 1965 Voting Rights Act was vigorously enforced, that life would be tremendously different. If we look at conditions where, in one of the towns in Edgefield County, you can go and find raw sewage running down the streets, we have persons elected to to represent the community that do not give equal representation.

I think one of the things we will be able to accomplish, we will have persons elected that will represent all of the people instead of certain segments of the community. The Edgefield County School Board has one black, although the school system is 65 percent black. The Edgefield County Council has no blacks.

I think that if we had strict enforcement of the Voting Rights Act, these conditions would change and we would be able to elect persons to represent the total community.

Mr. EDWARDS. Thank you very much.

If there are no further questions, we thank the witnesses.

Oh, yes.

Mr. WOODS. I just want to say, Mr. Chairman, that we are in the process of reapportioning the house. Of course, that is occurring because the house members run every 2 years in South Carolina.

We have serious problems as relates to the South Carolina Senate. As indicated, no black has served there since Reconstruction. If the Voting Rights Act is not extended, there will be no blacks. No one can accuse us of not having come up with candidates that are in fact acceptable candidates, who are in fact qualified with all of the credentials. We have had all of those candidates.

There is an additional problem that we have, and it relates to the color of our skin. But, of course, the president of the senate has indicated, the president pro tempore, has indicated he also has the responsibility of redistricting the senate. That because the senate does not have to be in a position where they are running for reelection before 1984, that the act is going to expire in 1983. He feels that it will. And—1982. He feels it will expire. That they are not going to reapportion the South Carolina Senate until 1983, as it were, and that they are going to allow the senate to remain just as it is now.

I think that South Carolina would be in a position where, for another 100 years or more, we would find that no blacks are in the senate. The extension of this act would give the hope and give the fiber necessary to bring about vital changes in government.

We are sure, under the Voting Rights Act, if it were extended, that the senate, no matter how it reapportioned itself, would come under the preclearance section, and we would find once again that, just as we have been able to elect blacks to the South Carolina House, we would elect to the South Carolina Senate. That is important to the lifestyle of the State of South Carolina.

Mr. EDWARDS. That is a very helpful observation.

Mr. McCain?

Mr. MCCAIN. Yes, Mr. Chairman, I have several articles and news clippings I would like to submit for the record that will exemplify the attitude of many of the persons in the county in terms of giving blacks access to the political process.

Mr. EDWARDS. Without objection, they will be received for the file. (See p. 2635.)

Thank you all very much for your great contribution to our deliberations.

Our next meeting is in Austin on Friday.

[Whereupon, at 4:45 p.m., the subcommittee adjourned, to reconvene at 9:30 a.m., Friday, June 5, 1981, Austin, Tex.]

○